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**ADDIS ABABA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE
SCHOOL OF LAW**

**THE IMPLICATION OF BILATERAL INVESTMENT
TREATIES OF ETHIOPIA ON LABOUR REGULATION**

A Thesis Submitted in Partial Fulfillment of the Requirements of the
LLM Degree in Business Law

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ADDIS ABABA, ETHIOPIA

ADDIS ABABA UNIVERSITY
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(Approval Sheet)

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DECLARATION

I TESFAHUN WORKU HAILEMARIAM, do hereby declare that the thesis – THE IMPLICATION OF BILATERAL INVESTMENT TREATY OF ETHIOPIA ON LABOUR REGULATION is my original work and that it has not been submitted for any degree or examination in any other university. Whenever other sources are used or quoted, they have been duly acknowledged.

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Signature Date

A decorative border in an orange-brown color frames the text, resembling a scroll with two grey circular elements at the top corners.

DIDICATION

This thesis dedicated to my beloved and late mother, Tirunesh Abebe, who imbued me with wisdom and knowledge during my LLM program. It is also a tribute to my esteemed sister, Genet Worku, whose unwavering support and encouragement sustained me through this arduous journey.

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ABBREVIATIONS

BITs -	Bilateral Investment Treaties
FDI -	Foreign Direct Investment,
FET -	Fair and Equitable Treatment
ICJ -	International Court of Justice
IAs -	International Investment Agreements
ILO -	International Labour Organization, or
ISDS -	Investor State Dispute Settlements
MFN -	Most Favored Nation
MNCs -	Multinational Corporations
NAALC -	North American Agreement on Labour Cooperation
NAFTA -	North American Free Trade Agreement
NT -	National Treatment
NGOs -	Non-Governmental Organizations
OECD -	Organization for Economic Co-operation and Development
SADC -	South African Development Communities
UNCITRAL -	United Nations Commission on International Trade Law
VCLT -	Vienna Convention on the Law of Treaties

ABSTRACT

Bilateral Investment Treaties are legal agreements between two sovereign nations to entice Foreign Direct Investment into the capital-importing country. Meanwhile, the capital-exporting nation endeavors to shelter investors from political uncertainties and instability, and more widely, to safeguard their investments on foreign soil. Ethiopia has sign nearly 35 BITs with other nations. Upon meticulous scrutiny of the country's existing BITs, it surfaced that most of them were ignorant of the labour clause, which is the primary obligation of the investor in the host country. The majorities of Ethiopia's ratified BITs are disadvantageous in terms of labour rights and exhibit the symbol of outdated investment treaties. While Ethiopian BITs have ample safeguards for foreign investors, they do not impose any legal duties on investors to protect labour rights. This absence of labour-friendly clauses in BITs undermines the right to steer FDI towards labour protection. However, Ethiopia's BITs have endeavored to integrate labour provisions in two ways. The BIT between Ethiopia and Finland features a labour clause in the preamble as a non-binding element of the investment agreement. In contrast, the other BITs incorporate a labour clause in the substantive section of the agreement. Examples of such BITs are the BIT between Ethiopia and the United Arab Emirates, the BIT between Ethiopia and Qatar, the BIT between Ethiopia and the Belgium-Luxembourg Economic Union, and the BIT between Ethiopia and Brazil. The study employed the doctrinal method of legal research. To safeguard labour rights, Ethiopia has integrated most international labour instruments into its bilateral investment treaties. The concept of labour regulation has also been entrenched in the country's constitution and domestic legislation. However, it is absent in most BITs. As such, any action taken by Ethiopia to comply with labour regulation may be deemed indirect expropriation. Consequently, Ethiopian BITs must be amplified with domestic and international labour responsibilities defined by its constitution and domestic legislation. Therefore, the study recommends a remedial measure, such as renegotiating existing BITs and amending them to expressly incorporate labour protection provisions. The Ethiopian government must scrutinize BITs with utmost care, striking a balance between investor rights and obligations. It is crucial that any fresh BITs include a provision mandating governments to safeguard and enforce labour.

CHAPTER ONE

1. INTRODUCTION

1.1. Background

BITs entangle and interweave two autonomous nations in a delicate balance, as they interlock their economic ambitions. This intricate web of agreements can lead to a legalities and complexities, with potential implications for both signatories. The capital-importing host country attract Foreign Direct Investment, while the capital-export home country safeguards investors from political upheaval and instability, and more broadly, shields the investments made by its citizens in a foreign land. BITs govern the intricate of diplomacy between foreign investors and the host state, weaving an intricate web of international agreements that link the investor's homeland and the host state. In the realm of international law, treaties reign supreme as potent legal sources, and the provisions they contain hold immense legal impact.¹ The first-ever bilateral investment treaty was signed in 1959 between the Federal Republic of Germany and Pakistan, with the sole purpose of targeting foreign investment activities.² BITs have transmogrified over the years, undergoing a remarkable proliferation, and now enveloping a vast spectrum of issues.³

Foreign investors frequently stumble upon a variety of complex scenarios in their host nations, where they are exposed to a plethora of disparities in culture, rituals, convictions, legislative and political framework, red tape, and governmental intervention.⁴ Hence, BITs were concocted to curtail the foreign investors' vulnerability to the labyrinthine of novel systems.⁵ In the year 1994, the US and Polish BITs ushered in cardinal labour rights for the first time, signifying a momentous milestone. The inclusion of labour provisions in BIT has proliferated significantly in recent years. The vast expanse of investment regulations levies sovereignty constrains the independence of local regulation, encompassing labour and public policies.

1. The International Court of Justice, as enshrined in the Article 38.

2. Mary Footer, BITs and Pieces Social and Environmental Safeguarding in the Supervision of Environment

3. Jonathan Bonnitcha, Delving into the Effects of Investment Treaties: A Comprehensive Study of the Evidence

4. *ibid.*

5. Mary Footer, BITs and Pieces Social and Environmental Safeguarding in the Supervision of Environment.

Moreover, the fetters of unsustainable practices manacle progressive strategies for development, and impede governments from achieving their aspirations for labour and social policies. Ethiopia is not impervious to such a predicament. To attract foreign investors, the Ethiopian government has forged bilateral investment agreements with both advanced and emerging nations.⁶ However, the majority of these treaties are deficient in integrating labour regulations and the antiquated features of old generations of investment agreements. This thesis plunges headfirst into the intricate implications of Ethiopia's Bilateral Investment Treaty on labour regulations, revealing the convoluted and serpentine effects that it unleashes upon the nation's labour regulation.

1.2. Statement of the problem

When BIT first emerged onto the scene, its sole focus was on shielding the interests of investors, completely neglecting the well-being of the labour regulation. However, a glimmer of hope emerged with the enforcement of the US and Polish BITs in 1994, as fundamental labour rights finally came to light. Slowly but surely, labour provisions have been creeping their way into BITs over the years. The far-reaching grasp of investment regulations extracts a hefty price on sovereignty and puts a damper on domestic regulations, including those for labour, environment, and health policies. As a result, sustainable development strategies become hindered, and governing bodies struggle to achieve their social policy goals.⁷

Currently, Ethiopia has signed 35 BITs, with 21 in effect, 12 awaiting procedural prerequisites, and only 2 terminated. Unfortunately, the majority of these BITs fail to incorporate labour standards and instead cling to outdated generations of investment agreements. This neglect of labour regulation goes against the fundamental principle of labour embodied in the FDRE's constitution.⁸

It's a regret that not all Ethiopian BIT signatories prioritize labour protection clauses, with only Finland, the United Arab Emirates, Brazil, Qatar, and Belgium-Luxembourg being the exceptions.⁹ Explicitly including labour clauses in BITs forces investors to comply with labour standards, thus promoting a healthier and more equitable workforce.

6. Mary Footer, BITs and Pieces, for social and environmental preservation in the regulating foreign investment.

7. Jonathan Bonnitcha (n 3)

8. The UNCTAD Investment Policy Hub, the Ethiopian International Investment Agreements,

9. *ibid.*

Serving only economic interests, this egregious behavior flagrantly violates Ethiopia's Constitution and its labour regulations. The thorny issue of labour standards is not adequately addressed by Ethiopia's BITs, exacerbating the problem. Even if the host country takes action to enforce labour regulation, it may be perceived as an indirect expropriation. To rectify this, legally binding obligations must be imposed on investors. Unfortunately, the Ethiopian bilateral investment treaty falls short of establishing fair and equitable treatment for all. Instead, it presents a golden opportunity for investors to file claims under the guise of FET violation. To align with international labour commitments and obligations, Ethiopia's BITs must be revised. Thus, this paper delves into the implications of Ethiopia's bilateral investment treaties on labour regulation, exploring the many faceted and complex challenges that must be addressed.

1.3. Literature Review

An abundance of publications and research studies have been penned regarding bilateral investment treaties, with the majority of existing research fixated on the impacts of such treaties on environmental and human rights protection. This paper endeavors to blaze a new trail by meticulously dissecting the BIT clause on labour regulation in Ethiopian BITs, delving into novel methods to fortify labour rights. The focus is solely on the implication of labour regulation. Collaborators Martha Belete and Tilahun Ismail¹⁰ their objective is to uncover a profound examination of Ethiopia's BIT, meticulously examining the norms of most-favored-nation (MFN) treatment and their pertinence to dispute resolution. Albeit the authors concede that this is the most all-encompassing contribution to the subject, the investigation centers around the enigmatic complexities of MFN principles, rather than the overarching framework of Ethiopian BIT. Getahun Seifu¹¹ navigates the intricate and perplexing labyrinth that is foreign direct investment regulation in Ethiopia. The fundamental principle of non-discriminatory transactions, known as national treatment, and the state's most favored treatment, a bountiful offering for foreign investors, are both enigmatic entitlements.

10. Martha Belete, T. Esmael Kassahun, Rethinking Ethiopia's Bilateral Investment Treaties in Light of Recent Developments in International Investment Arbitration.'(2014), Mizan Law Review 8 (1).

11. Getahun Seifu, Regulatory Space in the Treatment of Foreign Investment in Ethiopian Laws.

The State is therefore burdened with the weighty responsibility of adroitly maneuvering the labyrinth of regulatory scope, catering to its own residents and nationals of other States with deftness. While the BIT may offer non-discriminatory treatment and leave no room for party regulation, it is not invincible against national policies that deviate from it, which may be important or even unavoidable. However, this study fails to address the impact of BIT on labour regulation.

According to Wakgari¹², Ethiopia's bilateral investment treaty is a veritable treasure trove of protection, promotion, and safeguarding of foreign investments. This article, however, fails to delve into the ways in which Ethiopia's bilateral investment treaties influence national and international labour standards. Gizaw¹³ concludes that Ethiopia's BIT system has been in existence for quite some time, and that unilateral actions may lead to costly proceedings before the International Investment Court. Dr. Mehari Redea¹⁴ scrutinized national experiences on the applicability of labour laws in so-called "industrial parks." Based on this research, several nations exclude the application of their labour laws in their industrial parks to attract and retain international investment. Dr. Mehari Redea After a thorough examination of labour conditions in Ethiopian industrial parks, it was deduced that although the labour laws are applicable, their implementation is either feeble or nonexistent. This research delved into the intricate implications of Ethiopian BITs on labour regulation, with the aim of bridging the gaps in existing literature and creating a noteworthy impact in the field.

12. Wakgari Kebeta, The adequacy of Ethiopian Bilateral Investment Treaties in Safeguarding the Environment in the Race to Bottom.

13. Gizaw AD, Ethiopia's bilateral investment treaties and their impact on environmental protection, Central European University in 2017.

14. Mehari Redae, labour rights in the Industrial Parks: Lessons for Ethiopia, the Ethiopian Civil and Commercial Law Series (Volume IX) Addis Ababa University School of Law.

1.4. Objective of the Study

1.4.1. General Objective of the Study

- The aim of this thesis is to scrutinize the implication of Ethiopian BITs in regards to the labour regulation.

1.4.2. Specific Objective of the Study

- Examine whether or not the BITs Ethiopia has signed attain labour commitments.
- Identify fundamental components that must be integrated into BITs to actualize Sustainable development by counterbalancing investment with labour regulation.
- Provide recommendations on the strategic actions Ethiopia could undertake to stimulate the promotion of labour regulation through BITs.

1.5. Research Questions

1. What are the current trends in Ethiopian BITs in relation to labour commitments?
2. What is the current status of Ethiopian laws in relation to labour regulation?
3. What are the consequences of Ethiopian BITs on labour regulation?
4. How should Ethiopia balance between foreign investment protection and labour regulation in its Bilateral Investment Treaties (BITs)?

1.6. Research Methodology

In this study, I wielded the enigmatic and elusive doctrinal research methodology, mining a plethora of primary and secondary sources. Among the primary sources lay the Ethiopian Constitution, Labour Proclamation No.1156/2020, Industrial Parks Proclamation No.886/2015, in addition labour laws, as well as International Labour Organization (ILO) treaties. I also consulted a range of secondary sources such as journals, articles, reports, and online sites. The research delved into a 35 Ethiopian BITs, resembling in exclusively on select provisions related to our research objectives. To add a practical dimension to theoretical analysis, I sought the wisdom of two relevant Minister of Labour and Skill of Ethiopia, conducting an interview. The interview questions were designed to be semi-structured, intended to tease out the most elusive and inscrutable data, leaving no stone unturned in quest for knowledge.

1.7. Scope of the Study

This thesis avoids delving into the motivations enter into the intricacies of ratifying a BIT with a specific state. Instead, it sidesteps analyzing each and every clause of those agreements, choosing to concentrate on a relevant fraction that aligns with the primary objective of the thesis. Consequently, this thesis delves exclusively into Ethiopian BITs and the way they impact labour regulation.

1.8 Significance of the Study

This thesis plumbs the depths of Ethiopia's bilateral investment treaties, delving into their kaleidoscopic implication on Ethiopian BITs on labour regulation. The analyses unearth bewildering facets that provide a richer understanding of the current bilateral investment treaties. Moreover, the thesis is poised to spark additional research in the field.

1.9. Limitation of the Study

This research faces a daunting challenge, as the lack of pertinent literature regarding Ethiopia's BITs and their impact on labour regulation impedes progress. One could argue that the scarcity of material on the implication of Ethiopia's BITs on labour regulation is a gaping void that must be bridged.

1.10. Organization of the Study

This thesis is divided into five distinctive segments, each with its own unique purpose and trajectory. The opening chapter charts the course of the research, paving the way for the subsequent analysis. The second chapter plunges into the revolutionary strides that have been made in Ethiopian BITs, with a particular emphasis on the labour commitments therein. In the third chapter, I embark on a deep-sea dive into the current status of Ethiopian labour laws, exploring the subtleties and complexities of this critical topic. In the fourth chapter, I scrutinize the far-reaching implications of Ethiopian BITs on labour regulation, exploring the ways in which these agreements influence the employment landscape in Ethiopia. Finally, chapter five serves as the apotheosis of our scholarly endeavors, presenting the revelations, conclusions, and recommendations that have emerged from my extensive analysis.

CHAPTER TWO

2.1. Regulatory Space in Ethiopian BITs for Labour Regulation

When it comes to regulating labour rights under investment treaties, specifically BITs, there are two divergent perspectives to consider. The conventional approach is investor-centric and lacks any explicit requirements for labour rights. Instead, it prioritizes ensuring investor protection and security for their assets in the host country, acting as a legal fortress for countries that export capital. However, with time, BITs have evolved to encompass non-economic societal issues, with labour rights being increasingly included in treaty provisions. During the 1990s, the United States seared a path for others to follow by infusing verbiage concerning universally acknowledged labour rights into the non-binding preambles of their investment treaties. This groundbreaking move ignited a wave of experimentation and a mounting inclination towards overtly alluding to labour rights, which has since persisted.¹⁵

Labour rights are expressed in a diversity of ways, using unique languages and styles. Some treaties utilize declaratory or preamble language to address labour rights issues, which is the gentlest approach.¹⁶ Preambles lack operative clauses but hold value in interpreting agreements. The inclusion of labour-related provisions in BIT preambles signals a clear intention to conclude the relevant treaty on a value foundation that differs from previous treaty practices, making it a significant departure from tradition. Alternatively, non-lowering of standard provisions or treaty language labour standards are used to specify labour rights, providing a more direct approach.¹⁷ Certain BITs do not overtly tackle labour rights complications in their preambles. Contrary to popular belief, the agreement does not solely prioritize economic conundrums. Belgium's (2002) and Canada's (2002) model BITs serve as prime examples of this ideology. Moreover, the 2012 U.S. Model BIT takes a comprehensive approach to tackle labour issues, utilizing a spectrum of cutting-edge methodologies.¹⁸ In the preamble, internationally recognized labour rights are enshrined, as is the case with the 2008 Austrian model BITs.

15. Tove Lovgren Frisk, the scrutinizing the efficacy of labor provisions in the potentiality of future bilateral investment treaties, Master Thesis in International Investment Law

16. David Charney, Regulatory Competition and Global Coordination of Labour Standards, Journal of International Economic Law

17. Bertram Boie, web of Labour related Provisions in International Investment Agreements, within the Employment Sector, as evidenced by his Employment Working Paper No. 126,

18. *ibid.*

Another tactical maneuver is the non-lowering of standard phrases which bolsters the practical articulation of labour rights. Through this action, the agreement is propelled by the tenets of labour rights, and it secures that these values are executed with greater precision. The stipulations state that any attempt to undermine labour standards in order to augment investments is deemed unlawful. This agreement serves to fortify the rights of labourers and uphold the integrity of fair business practices. Rather than asserting the appropriate level of labour rights, the provisions adopt a comparative approach. This approach has been embraced by the United States Model BIT,¹⁹ Belgium Model BITs, and Austrian Model BITs.²⁰ One intriguing tactic is to incorporate international labour organization accords via labour language criteria. The 2012 U.S. Model BIT unambiguously alludes to the ILO Declaration on Fundamental Principles and Rights at Work and Its Follow-Up.²¹ The Belgium model BITs itemize pertinent global labour standards, like the right of association, the right to organize and bargain collectively, the denunciation of any form of forced or compulsory labour, the minimum age for child employment, and occupational safety and health.²²

An examination of extant U.S, Canadian, Belgian, and Austrian BITs manifests that there is a meager inclination for labour concerns to evolve into a more substantial attribute in forthcoming BITs.²³ In *SGS v. Philippines*, the tribunal relied on the preamble of the applicable BIT, highlighting the significance of incorporating labour rights in investment agreements.²⁴ Back in 1964, Ethiopia etched its inaugural BIT with Germany, marking the start of a new era in foreign investment. The agreement was revised in 2004, and since then, the government has formed agreement with 35 nations. Out of these, 22 have been brought to effect, with the remaining 12 lying dormant. Termed as "old-generation BITs," most of them were signed in the 90s and early 2000s, lacking the innovative provisions of their successors. However, the latest breed of Ethiopian BITs are a cut above their predecessors, boasting of provisions that level the playing field between investor interests and the regulatory role of the state.

19. The 2012 US Model Bilateral Investment Treaty has enmeshed labour concerns in its Preamble section,

20. The 2008 Austrian Bilateral Investment Treaty has ingeniously interwoven the topic of labour into its introductory Preamble section,

21. The 2012 US Model Bilateral Investment Treaty, article 13.

22. The 2002 Belgium Model Bilateral Investment Treaty artfully delineates in article 6 the myriad of ramifications and implications of investment between two sovereign nations.

23. The 2008 Austrian Bilateral Investment Treaty, article 5.

24. *SGS Societe Generale de Surveillance SA and the Republic of Philippines*, as documented in the ICSID Case No ARB/02/6, witnessed a tribunal's decision on objections to jurisdiction on January 29, 2004.

These agreements - with Brazil, Qatar, the United Arab Emirates, as well as Belgium and Finland - impose obligations on investors, ensuring that they contribute to the social and economic growth of the country. Furthermore, the labour clauses of these BITs go beyond economic concerns, incorporating non-economic and social aspects, making them more comprehensive and forward-thinking. In 2007, two of these partnerships (with India and Germany) were terminated. The move was seen as a bold statement by Ethiopia, indicating that it was no longer content with the old ways of doing things. The country had evolved, and its foreign investment policies had to reflect that. In conclusion, Ethiopia's new BITs are a testament to its commitment to progress, and it will be exciting to see what the future holds.

2.2. Ethiopian BITs Generation

For this thesis, BITs are bifurcated into two distinct generations, regardless of their chronological emergence. The author's classification is rooted in the contents pertaining to stakeholder rights and duties, resulting in the "old generation" BITs, which solely focus on safeguarding investments without considering the regulatory terrain of host nations.²⁵ Conversely, the "new generation" BITs strive to strike a balance between promoting and protecting investments and the regulatory powers of host countries. The author strongly advocates for embracing this new wave of BITs, as they are indispensable in today's global economy.²⁶

The new BITs are a far appeal from their predecessors in terms of stakeholder rights and obligations.²⁷ At the policy level, the newfangled investment schemes embody three cardinal features: Reinforcing investment protocols to realize states' developmental aspirations, attaining sustainable progress by luring in investment undertakings that are answerable to societal and labour regulations, and enacting legislations that trigger and expedite investments. These policies must navigate a delicate balance between two conflicting objectives. In essence, it's about striking a harmonious chord between economic growth and social responsibility. The upcoming wave of BITs will empower conscientious investments, recognizing the policy sphere of the host nation.

25. Luke Peterson, *Bilateral Investment Treaties, exploring their ramifications on sustainable development*.

26. Surya Subedi, *International Investment Law and its relationship with policy and principle*, published by Hart Publishing in Oxford and Portland in 2008.

27. *ibid.*

28. *ibid.*

Investment agreements, if skillfully crafted, possess the potential to be a game-changing force for sustainable and labour-friendly development. They can effectively facilitate the implementation of appropriate labour standards, thereby bridging the gap for enduring investments and affording ample policy space and adaptability for nations to instate and foster labour-friendly policies. Such agreements could be the catalyst for a long-overdue shift towards socially responsible investments that prioritize the well-being of both labour regulation and investment protection.

2.3. Ethiopian BITs Introducing a Labour Clause

The Ethiopia-Finland BIT²⁹ is a trailblazing agreement in Ethiopian BIT history, as it incorporates a labour clause into its preamble, signifying a radical departure from the usual. The treaty's language bears witness to the new generation of BITs, embodying a fresh perspective that is both invigorating and thrilling. Nonetheless, despite this noble objective, the treaty's labour provisions have not been assimilated into the substantive provisions, rendering them impotent with no repercussions for non-compliance.

The Belgium Luxembourg-Ethiopia BIT is an enigmatic bilateral investment treaty that fuses a radical labour provision, a distinguishing feature of the new generation of BITs, compelling state parties to embrace labour standards.³⁰ This Belgian-Ethiopian BIT is a momentous milestone in their transition from an obsolete BIT to a progressive labour negotiating framework. Ethiopia has also forged BITs with Qatar³¹ and Brazil.³² The treaty between Ethiopia and Qatar, as well as the BIT between Brazil and Ethiopia, brimming with a labour clause, is a remarkable paradigm of how Ethiopia is amalgamating labour provisions into the meaty provisions of bilateral investment treaties.³³ It's a bold move that cements Ethiopia's allegiance to labour standards and serves as a blueprint for other nations to follow.

29. The 2006 Bilateral Investment Treaty between the Republic of Finland and the Government of the Federal Democratic Republic of Ethiopia, aimed at promoting and safeguarding investments.

30. The Belgian-Luxembourg Economic Union and the Federal Democratic Republic of Ethiopia investment promotion and protection.

31. The Federal Democratic Republic of Ethiopia and the government of Qatar a bilateral investment agreement, aimed at fostering and safeguarding investments.

32. The Federative Republic of Brazil and the Federal Democratic Republic of Ethiopia bilateral investment agreement.

33. Surya P Subedi, *International Investment Law, reconciling policy and principle*, Hart Publishing in 2008.

Table 1 - A Survey of Bilateral Investment Treaties (BITs) Signed by Ethiopia

N O.	Parties ETHIOPA with	Status	BITs Generation	Inclusion of labour Clause	type of labour clause	Type of FET in the BITs
1	Sudan	Ratified	Old	Not Include	No	Undefined
2	Russia	Not Ratified	Old	Not Include	No	Undefined
3	Yemen	Ratified	Old	Not Include	No	Undefined
4	Malaysia	Ratified	Old	Not Include	No	Undefined
5	Switzerland	Ratified	Old	Not Include	No	Undefined
6	China	Ratified	Old	Not Include	No	Undefined
7	Kuwait	Ratified	Old	Not Include	No	Undefined
8	Italy	Ratified	Old	Not Include	No	Undefined
9	Germany	Terminated	Old	Not Include	No	Undefined
10	Brazil	Not Ratified	Modern	Include	substantive	-
11	Qatar	Not Ratified	Modern	Include	Substantive	Undefined
12	UEA	Not Ratified	Modern	Include	substantive	Undefined
13	Morocco	Not Ratified	Old	Not Include	No	Undefined
14	UK	Not Ratified	Old	Not Include	No	Undefined
15	Equatorial Guinea	Not Ratified	Old	Not Include	No	Undefined
16	Spain	Not Ratified	Old	Not Include	No	Undefined
17	South Africa	Not Ratified	Old	Not Include	No	Undefined
18	India	Terminated	Old	Not Include	No	Undefined
19	Netherland	Ratified	Old	Not Include	No	Undefined
20	Algeria	Ratified	Old	Not Include	No	Undefined
21	Denmark	Ratified	Old	Not Include	No	Undefined
22	Tunisia	Ratified	Old	Not Include	No	Undefined
23	Turkey	Ratified	Old	Not Include	No	-
24	Belgium	Not Ratified	Modern	Include	Substantive	Undefined
25	Egypt	Ratified	Old	Not Include	No	Undefined
26	Finland	Ratified	Modern	Include	Preamble	Undefined

27	Sweden	Ratified	Old	Not Include	No	Undefined
28	Israel	Ratified	Old	Not Include	No	Undefined
29	Iran	Ratified	Old	Not Include	No	Undefined
30	Belgium	Not Ratified	Old	Not Include	No	Undefined
31	France	Ratified	Old	Not Include	No	Defined
32	Austria	Ratified	Old	Not Include	No	Undefined
33	Libya	Ratified	Old	Not Include	No	Undefined
34	Germany	Ratified	Old	Not Include	No	Undefined
35	Nigeria	Not Ratified	Old	Not Include	No	Undefined

Source: UNCTAD data.

Of the 35 investment treaties signed by Ethiopia, a paltry four boast a labour clause in their substantive provisions. These clauses must be upheld as guardians of labour rights, imposing non-negotiable prerequisites to safeguard existing standards and obstruct unscrupulous governments from diluting them for investment gains. The Ethiopian-Belgian³⁴ and Ethiopian-Brazil BITs³⁵ are exalted for their exemplary models. The former, in particular, takes a unique approach by referencing the International Labour Organization (ILO) standards. However, this BIT is not without its flaws. Firstly, the clause lacks any legal brawn, rendering it a toothless standard that confirms ILO obligations. Secondly, the ILO has proven to be an insufficient enforcement tool, further diluting the BIT's efficacy. Consequently, while the reference to the ILO in the Ethiopia-Belgium BIT is a step in the right direction, it fails to ensure the much-needed labour protections. Countries must prioritize labour rights when signing investment treaties to prevent foreign investments from infringing upon the rights of workers.

34. Bilateral investment treaties between the Belgian-Luxembourg and Ethiopia,(n 30).

35. Ethiopia and Brazil bilateral investment agreement, (n 32).

Table 2 –The Inconsistency of Labour Clause in Ethiopian Bilateral Investment Treaties

	UEA	Brazil	Belgium	Finland	Qatar
Does the BITs Ratified	-	-	-	-	-
Does the labour provision compulsory	-	-	-	-	-
Does the labour provision contain sanction	-	-	-	-	-
Does it incorporate core labour standards	-	-	-	-	-
Reference to the international instruments	-	-	-	-	-
Promotion of labour rights in preamble	-	-	-	-	-
Labour clause in the substantive provision of the BIT	yes	Yes	Yes	-	Yes
Promoting sustainable development	-	Yes	-	-	-
Not lowering labour Standards	-	Yes	Yes	yes	Yes

2.4. Examine the Contents of the Ethiopian BITs in Light of Core Labour Standards in Ethiopian Laws

2.4.1. A BIT between Ethiopia and Belgium Luxembourg

The Ethiopian-Belgian Luxembourg BIT embarks on a valiant mission to combat labour rights apprehensions, Commencing with a labour legislation and labour rights definition, the accord unleashes a plethora of internationally acclaimed labour rights, as enumerated in Article 1(6) of the BIT. These rights encompass the autonomy to associate, the capacity to organize and negotiate collectively, and the prohibition of coerced or mandatory labour. Moreover, the BIT commands the implementation of minimum age prerequisites for child employment and compels the maintenance of acceptable working conditions, including the guarantee of minimum wages, predetermined working hours, and occupational safety and health.

The term "labour legislation" shall encompass the legal structures of the Kingdom of Belgium, the Grand-Duchy of Luxembourg, and the Federal Democratic Republic of Ethiopia, or their corresponding provisions, which relate to the universally recognized labour rights.³⁶

These rights are imperative for the protection and welfare of workers across the globe. The legislation sets forth the rules and regulations that govern the conduct of employers and employees, and ensures a fair and just workplace for all.

36. Bilateral investment treaty that has been forged between the Belgian-Luxembourg and Ethiopia.

The agreement encompasses a unique article devoted to labour rights, compelling the undersigned to adhere to its principles. Article 6 of the agreement grants the authority to the

signatories to institute and adjust labour statutes as required. It is obligatory for every party to strive towards assimilating internationally recognized labour rights into their national legislation. The provision unambiguously declares that-

1. Recognizing the innate power of every Contracting Party to forge their individual labour regulations and to modify or tweak their labour laws as they see fit, It is anticipated that every party to the contract will endeavor to implement rules that uphold labour standards equivalent to the universally acknowledged labour rights articulated in sub 6 of Article 1.³⁷
2. No Party will relinquish or manifest derogation from such laws, nor will they offer it as an enticement for initiating, maintaining, or expanding investments within their jurisdiction. This is a crucial step towards ensuring fair and equitable working conditions for all employees, regardless of the size or scope of the investment. The Parties are resolute in their commitment to safeguarding labour laws, and they will not waver in their efforts to do so.³⁸
3. The signatories of this agreement renew their obligation as constituents of the International Labour Organization. Their steadfastness to the Declaration on Fundamental Principles and Rights at Work and its Follow-up radiates with an intense fervor as they embark on a noble undertaking to shield these ideals from any harm. Through their united efforts, they will fervently strive to secure the recognition and preservation of these crucial labour principles. With a laser-like focus, they will work tirelessly to enshrine the universally recognized labour rights expounded in paragraph 6 of Article 1 into domestic legislation.³⁹

37. Bilateral investment treaty between Belgian-Luxembourg and Ethiopia, enshrined in art 1(6)

38. Bilateral investment treaty between Belgian-Luxembourg and Ethiopia, art 6(2).

39. The Belgian-Luxembourg Ethiopian bilateral investment treaty art 6(3).

4. In accordance with the wishes of either Party, the other shall concede to convening highly-specific consultations on any topic that falls

under the ambit of Article. This symbiotic relationship has the power to unfurl unparalleled opportunities for growth and development in the realm of labour standards.⁴⁰

The agreement solidifies the unflinching commitment of both sides to abide by the International Labour Organization's Declaration on Fundamental Principles and Rights at Work and its Pursuit. Additionally, the two nations' investment treaty outlaws any attempt to tempt investments by easing domestic labour regulations. Instead, the undersigned are compelled to maintain these regulations to cultivate, sustain, or expand investments within their own spheres of influence. It's a crucial accord that sets a precedent for the rest of the world to follow in promoting ethical and sustainable investment practices.

Despite the agreement not yet being in full swing, it holds immense significance in Ethiopia's bilateral investment agreements. When it comes into force, it will fortify the protection of labour rights and ensure that both parties meet their global obligations. This agreement emphasizes the crucial role of fair treatment for workers and highlights the unrelenting dedication of both countries to uphold these values in their investment ventures. Ultimately, this agreement will act as a shield for labourers and a beacon of hope for those striving towards ethical investment practices.

40. The Belgian-Luxembourg Ethiopian bilateral investment treaty, art 6(4).

2.4.2. A BIT between Ethiopian and Finland BIT

The Ethiopia-Finland BITs of 2006 blaze a trail as one of the more revolutionary BITs on the agreement. Its preamble boldly proclaims that investment protection and economic cooperation can be achieved without relinquishing health, safety, and environmental measures. While this statement is a step in the right direction, it bears noting that it does not create a legal obligation. Despite being a new generation and non-traditional BIT, the treaty lacks any substantial provisions on labour protection.⁴¹

However, the preamble of the BIT can be regarded as a blueprint for balancing investment protection and sustainable development. It acknowledges the desire for economic cooperation and sustainable development while also advocating for the safeguarding of social concerns. This concern for social objectives cannot be undervalued and should influence tribunals in interpreting the BIT. Remarkably, the Ethiopia-Finland BIT features a labour clause in its preamble, but it is not expressed in a mandatory manner. Its sole function is to influence investors to act righteously, making it ineffectual. The BIT woefully neglects to mandate coequal responsibilities on investors concerning safeguarding labour rights, encompassing essential principles such as the right to unionize and engage in collective bargaining, the eradication of coerced labour, the efficacious extermination of child exploitation, and the obliteration of discriminatory employment practices.⁴² This convoluted and multifaceted issue demands attention and action at all levels to ensure that labour rights are protected and respected.⁴³

The Ethiopia-Finland BIT incorporates a labour clause in its preamble, albeit in a non-compulsory manner. Its primary function is to inspire people to behave responsibly, rendering it impotent. The treaty falls short in demanding that investors undertake coequal duties regarding protecting labour, including fundamental labour principles and rights. These principles comprise the freedom to form associations and engage in collective bargaining, the extinguishing of compelled labour, the efficacious end of child labour, and the obliteration of discrimination in employment.⁴⁴ The treaty's terms do not account for the crucial necessity of safeguarding the rights and welfare of workers affected by investment activities.

41. Bilateral Investment Treaty between Ethiopia and Finland.

42. *ibid.*

43. Bilateral Investment Treaty between Ethiopia and Finland (n 29)

44. *ibid.*

2.4.3. A BIT between Ethiopia and United Arab Emirates

In December 2006, Ethiopia and the United Arab Emirates inked an agreement that aimed to harmonize the often-conflicting interests of investment protection and public policy. Bilateral Investment Treaty (BIT), the agreement also incorporated a labour clause in Article 12 - that recognized the pivotal role played by labour protections. This provision empowered the host nation to tweak its labour laws and policies to better the lot of the working class, all while remaining true to its investment commitments. Despite being signed, the BIT has yet to be implemented, languishing in limbo and gathering dust. This interminable delay has raised doubts about the BIT's efficacy and whether it will have any discernible impact on the Ethiopian investment and labour relation.

Acknowledging the sovereignty of each Contracting Party to alter their own strategies for safeguarding the environment and promoting development, as well as their labour regulations, and to concoct or modify those legal frameworks, every Contracting Party shall endeavor to guarantee unparalleled levels of environmental and labour protection, and must endeavor to intensify and improve upon this standards.⁴⁶

2.4.4. A BIT between Ethiopia and Qatar

The BIT between Ethiopia and Qatar is a revolutionary specimen of modern BITs, encompassing a self-reliant segment addressing labour rights conundrums. Alas, this BIT neglects to oblige investors with congruent obligations for upholding labour preservation. The bedrock tenets and privileges of labour, including the autonomy of association and the right to collective bargaining, the complete eradication of any form of forced or mandatory work, the forceful elimination of child labour, and the obliteration of discrimination in employment and profession, fail to receive the warranted contemplation. The clause in question proclaims that the regulations concerning labour and the environment imposed by the mighty contracting party that hosts states. Admittedly, the governance and administration of the bilateral investments treaty shall be subject to the watchful of the home state.

45. Bilateral investment agreement between Federal Democratic Republic of Ethiopia and the government of the Republic of United Arab Emirates, enshrined in Article 12.

46. *ibid.*

This BIT cannot impose any legal obligations on treaty parties. Lamentably, the BITs forged by Ethiopia lack the teeth to compel investors into upholding labour protection. This includes safeguarding the fundamental principles and rights of labour.⁴⁷

2.4.5. A BIT between Ethiopia and Brazil

The ratified BITs of Ethiopia and Brazil are groundbreaking, for they contain a provision that addresses labour rights issues independently. These modern BITs endeavor to synchronize investment protection with police power. Article 12 of the BIT, with its clauses, recognizes the paramount importance of safeguarding employees, thus allowing the host country to establish, modify, and enforce labour laws and policies without renegeing on its commitment to protect investments. However, this BIT has yet to take effect, and none of the listed BITs, aside from Ethiopia-Finland, which holds labour protection elements, are currently in force. Therefore, this BIT cannot impose any legal obligations on treaty parties.⁴⁸ Lamentably, the BITs forged by Ethiopia lack the teeth to compel investors into upholding labour protection. This includes safeguarding the fundamental principles and rights of labour, such as empowering the freedom of association and cementing the right to collective bargaining. However, the provision ardently opposes anti-union discrimination and meddlesome interference, motivating collective bargaining to carve out a fair employment landscape. It also yearns to stamp out the scourge of forced or compulsory labour, dismantle the exploitative practice of child labour, and obliterate any form of discrimination in hiring and job opportunities based on race, color, sex, religion, political opinion, national extraction, and social origin. The ratified BITs of Ethiopia and Brazil contain a groundbreaking provision that addresses color,

1. Contracting Party from carrying out, supporting, or enforcing any action it deems essential to ensure that investment activities within its jurisdiction comply with the labour, environmental, and health regulations of said Party. Nonetheless, it is crucial that such actions are not implemented in a way that suggests an arbitrary or unjustifiable.⁴⁹

47. Bilateral Treaty of investment between Ethiopia and Qatar, Article 14.

48. Bilateral investment treaty between Ethiopia and Brazil, (n 32), article 12.

49. Bilateral investment treaty between Ethiopia and Brazil, (n 32), article 12(1).

2. The Contracting Parties possess the acute realization that the journey towards investment prosperity cannot be achieved by treading on the sacredness of labour, environment, and health. As a result, each party vows to shield their laws with the utmost care against any modification or revocation that endeavors to attract investment by putting these standards at risk. If one party suspects the other of colluding in such deceitful practices, the parties will partake in consultations to resolve the matter.⁵⁰

In Ethiopia, BITs frequently disregard the responsibility to enforce parallel obligations on investors to ensure adequate labour protection. The cornerstone principles and rights of labour, including freedom of association, collective bargaining, elimination of forced labour, and discrimination, are commonly omitted. This exclusion results in a dependency on domestic labour regulations that are ineffectual in addressing labour issues. The reason for this inadequacy is two-fold. Firstly, the protection granted to investors may restrict governments from regulating investments to safeguard labour, and enforcing labour protection measures may contravene BIT obligations. Secondly, the Vienna Convention on the Law of Treaties forbids states from using domestic laws to defend against treaty violations. Therefore, to validate labour measures without breaking treaties, they must be given equivalent status to the duty to promote foreign investment under the treaty.

50. Bilateral investment agreement, between Ethiopia and Brazil, (n 32), article 12(2).

2.5. Case Studies in International Arbitration Concerning Labour Rights

The fervor of investors to wield bilateral investment treaties as a weapon against unfavorable legislative and administrative measures taken by host countries to bolster labour rights is palpable. They yearn for a stable environment for their investments and refuse to bear the burden of unreasonable and excessive labour standards. While no investors have yet sought recourse under an IIA, claiming that the implementation of elevated labour rights violates investment protection provisions, there have been at least three instances where investors have initiated arbitration proceedings against host countries in response to changes in legislation governing working conditions of employees, citing breaches of specific investment contracts.

In one case, the Kyrgyz government altered its labour legislation regarding the payment of high altitude premiums to workers, and the Canadian mining company Centerra, which operates one of the biggest gold mines in the Kyrgyz Republic, reportedly instigated arbitration in 2006 based on the arbitration clause in its concession contract with the Kyrgyz government.⁵¹ The labour legislation amendments, which resulted in increased labour expenses for Centerra's workforce of \$6 million per year, were deemed to breach the contract's stability provision. However, the arbitration was ultimately resolved. The other similar case was apparently brought about in a 2012 arbitration initiated against Egypt by the French multinational Veolia.⁵² The issue arose as a result of the claimant's early cancellation of a waste management contract in the Egyptian city of Alexandria. Some of Veolia's claims are directly related to legislative changes in Egypt that resulted in an increase in minimum wages. The company suffered as a result of the changes, notwithstanding clauses in the concession contract meant to protect the concessionaire from the financial consequences of such legislative changes. The arbitration appears to have been initiated under the France-Egypt BIT (1974), on the grounds that the respondent's early termination of the contract, as well as its wider treatment of the concessionaire, violated treaty provisions.

51. Centerra Gold's Kumtor Mine recommences operations, a press release on the 22nd of December, 2006.

52. The claim between Veolia Proprete v. the Arab Republic of Egypt, ICSID case number, ARB/12/15.

The *Foresti v. South Africa* case saw the implementation of Black Economic Empowerment policies, with the aim of rectifying the country's racial disparities.⁵³ However, these policies wrought havoc on the Claimants' investments. The Mining Charter's mandate to hire historically qualified yet disadvantaged workers formed the crux of the Claimants' lament. They contended that South Africa's BITs with Italy and Luxembourg were breached, as these policies resulted in unjust and inequitable treatment of foreign investors, and wrongful seizure. This is especially troublesome as the obligation to compensate in cases of indirect expropriation can be interpreted to encompass any measures that infringe on the property rights of foreign investors. This creates a veritable imbroglio for host countries as lawful regulatory measures that serve the public interest may also fall under this obligation. The outcome of these cases is that foreign investors are utilizing arbitration as a ploy to thwart labor rights regulations, and host countries must strike a delicate balance between protecting investors' interests and safeguarding their citizens' rights.

53. Piero Foresti, Laura de Carli and others v. Republic of South Africa, ICSID Case No. ARB(AF)/07/01.

CHAPTER THREE

3.1. Ethiopian Labour Law and International Labour Standard

As one delves into the realm of labour laws, they are immediately confronted with a confounding absence of universal and consistent standards. These regulations are molded by a plethora of factors, ranging from a nation's stage of development to its political and cultural climate. Nevertheless, on the global stage, concerted efforts have been made to establish a consensus on the core principles that qualify as labour standards. These universal standards have been derived from a plentitude of international instruments, such as the ILO declaration on fundamental principles and rights at work in 1998.

International labour standards are an assortment of regulations established by member states of the ILO, with the intention of shielding the toiling populace in their respective workplaces. The ultimate goal of these conventions is to amplify the stipulations of employment on a planetary level, by imposing a uniform baseline of protection against the malevolent machinations of employers. When it comes to foreign direct investment, safeguarding labour rights becomes even more crucial. These rights encompass freedom of association and the right to collective bargaining,⁵⁴ the eradication of child labour,⁵⁵ the elimination of discrimination in employment and occupation, and the elimination of all forms of forced work,⁵⁶ occupational health hazards included.⁵⁷ These fundamental principles and rights are the bedrock of a just and equitable labour regulation.

One of the fundamental tenets of international labour law is the eradication of discrimination in employment and occupation. This principle obligates states to take measures to eliminate any form of discrimination in employment access and circumstances based on various grounds such as race, color, sex, religion, political opinion, national extraction, and social origin. This principle promotes equal opportunities for all individuals to access employment and advance in their career without facing unfair treatment or discrimination. It is an indispensable element in ensuring the protection of human rights and promoting social justice in the labour regulation.

54. International Labour Organization Conventions No. 87 of 1948 and No. 98 of 1949.

55. International Labour Organization Convention No. 29 of 1930 and No. 105 of 1957.

56. International Labour Organization Convention No. 138 of 1973 and No. 182 of 1999.

57. International Labour Organization Convention No. 100 of 1951 and No. 111 of 1958.

The ILO Declaration of Fundamental Principles and Rights at Work mandates that all ILO members must not only abide by the core labour standards, but also foster and actualize them. Meanwhile, the OECD Guidelines for Multinational Enterprises command global corporations to adhere to these principles and more. However, the lack of mechanisms to ensure compliance with these standards leaves much to be desired. Instead of rigorous monitoring, countries are subject to sporadic reports to the ILO.

3.2. Examine the Contents of FDRE Constitution, Industrial Park Proclamation, Investment Proclamation and Labour Proclamation in Light of Core Labour Standards

Delving into the fundamental tenets of the FDRE Constitution, scrutinizing the industrial park proclamation, investment proclamation, and labour proclamation with a discerning eye - these are crucial steps in unraveling the intricacies of Ethiopian BITs and their coherence with existing laws. Their compatibility hinges on a thorough analysis of the laws at play.

3.2.1. The FDRE Constitution

The Federal Democratic Republic of Ethiopia has flaunted its unwavering devotion to preserving international labour norms by approving eight of the International Labour Organization's "Core Conventions".⁵⁸ These conventions coincide with the provisions of the Ethiopian constitution, which acknowledges that all international covenants endorsed by the country are crucial constituents of its judicial framework.⁵⁹ This unwavering commitment to international labour standards is a laudable stride towards guaranteeing impartial and equitable handling of workers in Ethiopia while fostering sustainable economic growth in the region.

58. The ILO has embraced a set of eight conventions that serve as the bedrock upon which all other labour rights are built. These conventions are universally acknowledged as essential to the well-being of workers, regardless of the developmental status of member states. They provide a framework for pursuing better working conditions, both individually and collectively, and their importance cannot be overstated. They guarantee equal pay for equal work, and protect against discrimination in the workplace.

They empower workers to organize and collectively bargain for better wages and working conditions. They abolish forced labor and ensure that children are not exploited for profit. They guarantee equal pay for equal work, and protect against discrimination in the workplace.

59. The Federal Democratic Republic of Ethiopia, FDRE Constitution, Proclamation No. 1/1995, article. 9(4).

The Constitution of the Federal Democratic Republic of Ethiopia (FDRE) champions the protection of fundamental human rights and vehemently denounces all forms of inhumane treatment or coerced labour. Moreover, it champions gender parity across all facets of society, especially in the realm of work. One of the most remarkable provisions of the Constitution is the safeguarding of the right to convene for any legitimate cause or objective, including collective labour rights.⁶⁰ This encompasses the right to unionize, the right to engage in collective bargaining,⁶¹ and the freedom to strike, all of which are explicitly enshrined in the Constitution. These protections are crucial in ensuring that all individuals can express their views and advocate for their rights without dread of backlash or persecution. The FDRE Constitution serves as a robust foundation for an equitable and just community that reveres the rights and dignity of all its inhabitants.⁶² According to the International Labour Organization's jurisprudence, the right to collective bargaining and the rights to strike are usually implicit rights rather than explicitly stated ones. Nonetheless, in the Ethiopian legal context, these rights are explicitly acknowledged and entrenched in the Constitution. This guarantees that workers have the liberty to organize and engage in collective bargaining and receive equal compensation for commensurate labour, regardless of gender.

Furthermore, the Constitution demands well-defined working hours, rest periods, leisure time, paid leave, public holidays, and a secure and salubrious work environment for workers, as mandated by Article 42(2).⁶³ It also unambiguously prohibits forced or coerced labour under Article 18(3). These provisions serve to protect the rights and well-being of workers in Ethiopia and promote a just and equitable labour system. In the realm of labour, there are fundamental principles and rights that are indispensable to the protection of workers.⁶⁴ These principles comprise the freedom of association, the effective recognition of the right to collective bargaining, the abolition of forced labour, and the eradication of discrimination in employment and occupation.⁶⁵

60. The Federal Democratic Republic of Ethiopia, FDRE Constitution, Proclamation No. 1/1995, article 18.

61. The Federal Democratic Republic of Ethiopia, FDRE Constitution, Proclamation No. 1/1995, art 42.

62. *ibid.*

63. *ibid.*, Art 42(1)(a) and (3)

64. *ibid.*, Art 42(1)(d)

65. The Federal Democratic Republic of Ethiopia, FDRE Constitution, Proclamation No. 1/1995, art 42(2)

The obliteration of discrimination in employment and occupation mandates that states obliterate prejudiced practices founded on race, color, sex, religion, political opinion, national extraction, and social origin. These sacred rights are safeguarded under Article 25 of the FDRE Constitution, and it is pivotal that they are maintained to guarantee the safeguarding and unbiased treatment of laborers. Let us strive, with unyielding determination, to ensure that no one is subjected to unfair treatment based on factors beyond their control.

3.2.2. The Ethiopian Labour Law

Ethiopia has pledged allegiance to the International Labour Organization's (ILO) Core Conventions. These include the Forced Labour Convention of 1930 (No. 29), the Freedom of Association and Protection of the Right to Organize Convention of 1948 (No. 87), the Right to Organize and Collective Bargaining Convention of 1949 (No. 98), the Abolition of Forced Labour Convention of 1957 (No. 105), the Equal Remuneration Convention of 1951 (No. 100), the Worst Forms of Child Labour Convention of 1999 (No. 182), and the Discrimination (Employment and Occupation) Convention of 1958 (No. 111). These conventions are woven deeply into the Labour Proclamation,⁶⁶ which champions the fundamental principles of the 1998 ILO Declaration of Fundamental Principles and Rights at Work. The Labour Proclamation takes an unyielding stance against coerced or mandatory labour, child labour,⁶⁷ and employment and occupation discrimination, while promoting freedom of association and the right to collective bargaining. The proclamation outlines a baseline that private companies must adhere to, but also bestows upon them the freedom to offer even loftier standards. In such cases, the regulation that is more favorable to the employee takes precedence.⁶⁸ The proclamation safeguards the constitutional and statutory rights of both employers and employees,⁶⁹ allowing them to freely form unions and trade associations, as well as actively participate in organizations. The proclamation radiates with fervor as it sets forth the guidelines for the implementation of the ability to assemble trade unions, and ignite the flames of collective bargaining. The declaration is adamant about prohibition of discrimination based on race, gender, religion.

66. The Federal Democratic Republic of Ethiopia, Labour Proclamation, Proclamation No. 1156/2019,

67. *ibid*, art 14.

68. *ibid*, art 4(5) and art 134(1).

69. *ibid*,

70. The Federal Democratic Republic of Ethiopia, Labour Proclamation, Proclamation No. 1156/2019, art 14(1)(f).

In addition, the Proclamation straitjackets the exploitation of child labour, forbidding the enlistment of youngling (aged 15-18) for perilous jobs that jeopardize their safety and well-being.⁷¹ Ethiopian labour laws mirror this, criminalizing any form of compulsory servitude. The Constitution also sanctifies the right to fair working hours, leisure, entertainment, remunerated leave, compensation for public holidays, and a salubrious and secure work environment.⁷² Concerning the tenure of employment, the Labour Proclamation presupposes that every employment agreement is ad infinitum, except for specific circumstances delineated in the Proclamation for fixed-term or piecework employment. Employers must evince that the employment agreements they enter into result in fixed-term or piecework employment. Finally, the Labour Proclamation abstains from prescribing a minimum wage for Ethiopian laborers.⁷³ However, the Council of Ministers is tasked with defining the powers and responsibilities of a Wage Board, which comprises representatives from the government, employers, trade unions, and other stakeholders, all mandated to wield their influence in wage determination.⁷⁴ The Wage Board periodically conducts studies that take into account the country's economic growth, labour market, and other factors to choreograph a revision of the minimum wage. However, the specifics and implications of the proposed minimum wage remain inscrutable and need critical scrutiny.⁷⁵ The Labour Proclamation delves deep into these rights, regulating working hours, restricting daily labour to eight hours, and decreeing that workers should not be coerced into performing overtime labour except in the event of extraordinary situations.⁷⁶ Essentially, the Labour Proclamation No. 1156/2019 of Ethiopia recognizes and regulates the freedom of association, the effective recognition of the right to collective bargaining, the prohibition of all forms of forced or compulsory labour, the eradication of child labour, and the elimination of employment and occupational discrimination.⁷⁷

71. The Federal Democratic Republic of Ethiopia, Labour Proclamation, Proclamation No. 1156/2019, art 89(2).

72. *ibid*, art 89(3)

73. The Federal Democratic Republic of Ethiopia, Labour Proclamation, Proclamation No. 1156/2019, art 14

74. *ibid*, art 9

75. The Federal Democratic Republic of Ethiopia, Labour Proclamation, Proclamation No. 1156/2019, art 55(2)

76. *ibid*.

77. *ibid*.

3.2.2.1. Protection Against Discrimination

Labour laws and statutes have come to grips with the significance of equal opportunity and non-discrimination in the workplace. Consequently, workers are now fortified against unjust treatment stemming from factors such as nationality, gender, religion, political views, and race. Ethiopia's Labour Proclamation encompasses numerous clauses that strive to thwart discrimination. To be specific, Article 2(15) of the proclamation delineates "discrimination" as any act that unjustly sets apart employees by their personal traits.⁷⁷ This definition is vital in ensuring that workers are shielded from all forms of discrimination in the workplace. This article expounds on how discrimination presumes-

Any act of discrimination based on nationality, ethnicity, skin tone, gender, spiritual beliefs, political stance, ancestral lineage, social background, HIV/AIDS diagnosis, physical or mental challenges, or any other factors that hinder equal opportunities and fair treatment is deemed unacceptable. Such a discriminatory practice can nullify or impair the chance for individuals to thrive professionally, which is a grave injustice.⁷⁸

Article 14 of the Proclamation delineates an array of intolerable conducts that employers must abstain from performing.⁷⁹ These include practices of bias against subordinates grounded on factors such as nationality, gender, religion, political inclination, and other analogous aspects.⁸⁰ For instance, the act of remuneration discrimination towards female workers predicated on their gender identity is regarded as prejudiced. It is not permitted to exhibit any form of bias towards staff members based on their nationality, gender, religion, political affiliations, HIV/AIDS disability or disablement, or any other guise. Article 14 emphatically denounces this kind of behavior. Convention No. 111 reiterates the importance of equal opportunities and treatment in the labour sector to uproot discrimination, as expounded in Article 2. Additionally, Article 25 of the FDRE Constitution vouches for equal legal protection to all individuals in all walks of life. It is incumbent upon employers to abide by these regulations and ensure that the workplace is a fair and unbiased environment for all employees.

77. The Federal Democratic Republic of Ethiopia, Labour Proclamation, Proclamation No. 1156/2019, art 14(1)(f)."

78. *ibid.*

79. *ibid.*

80. The Federal Democratic Republic of Ethiopia, Labour Proclamation, Proclamation No. 1156/2019, art 14.

3.2.2.2. Abolition of Child Labour

Employers must abide by labour laws that dictate a cutoff age for job seekers. The age of majority, typically set at eighteen years old, serves as the standard threshold for contractual obligations.⁸¹ However, the Labour Proclamation presents a legal quirk that slashes this age to fifteen, prohibiting employers from hiring anyone below that age.⁸²

The eradication of child labour looms as a pivotal precept sanctified in the 1998 Declaration on Fundamental Principles and Rights at Work. Ethiopia has embraced this doctrine by formally adopting both the Minimum Age Convention (No.138) of 1973 as well as the Worst Forms of Child Labour Convention (No.182) of 1999, which mandate that the workforce must be no less than fifteen years of age. This is a monumental step towards safeguarding the welfare of child workers and upholding their inherent rights. Maintaining this minimum age standard is critical to safeguarding young workers who may be vulnerable to exploitation. Employers who comply with these conventions and labour laws can help prevent the abuse of children and foster a safer, more equitable workforce.⁸³

3.2.2.3. Abolition of forced Labour

The Ethiopian Labour Proclamation refrains from vocalizing a single syllable about forced labour. Despite the legal statutes, one can deduce that mandatory labour is strictly forbidden. The FDRE Constitution, in Article 18(3), defends against coerced labour by stating that "no one shall be compelled to undertake forced or obligatory labour." Additionally, labour relations are extracted from contractual agreements. The principle of contract law necessitates that parties must overtly or covertly manifest their agreement. In simpler terms, a legally binding employment contract must be in effect. However, one could argue that the existence of forced labour's contrariness to contract law does not necessarily eradicate such practices, as business owners may still reap profits from forced labour, breaching the contract law.⁸⁵

81. Civil Code of the Empire of Ethiopia, Proclamation No.165/1960, article 198.

82. The Federal Democratic Republic of Ethiopia, Labour Proclamation, Proclamation No. 1156/2019, art 89(1).

83. *ibid*, art 4(1)

84. The Federal Democratic Republic of Ethiopia, Labour Proclamation, Proclamation No. 1156/2019, art 89(2).

85. International Labour Organization Minimum Age Convention, 1973 (No. 138) art. 2(3).

Despite the criminal law of Ethiopia that outlaws forced labour, those who coerce people into work using treacherous tactics such as intimidation, assault, and fraud face severe consequences.⁸⁶ The constitution's definition of the elemental right to liberty includes the ban of forced labour as it deprives individuals of their physical freedom.⁸⁷ However, there is a list of works that don't fall under the category of forced labour, even if the worker didn't give their consent. These include mandatory military service; civic duties of self-governing nations, and any service done instead of obligatory military service.⁸⁸ Nevertheless, exceptions arise during emergency situations such as war, catastrophe, or any circumstance that endangers the existence or well-being of the entire or a portion of the population. Moreover, any work or service required from a person following a court conviction is also excused from the definition of forced labour.⁸⁹

3.2.2.4. Freedom of Association

Article 113(1) of the Ethiopian labour proclamation grants workers the right to forge and construct Trade Unions or employers' organizations, respectively, with the liberty to actively engage in these organizations. The formation of a trade union is a laborious undertaking, replete with numerous safeguards for trade union members and leaders. It is noteworthy that the Ethiopian government is irrevocably committed to workers' rights and the promotion of unionization, manifesting in Proclamation 1156/2019. This proclamation permits the establishment of a trade union upon reaching a headcount of ten workers, with a minimum of ten union members. Intriguingly, for enterprises boasting a meager assembly of fewer than ten workers, sub-article 2 of the aforementioned provision empowers the birth of a trade union, facilitating a symbiotic collaboration among workers in other enterprises with similar occupational circumstances. This avant-garde provision promises a megaphone to the faintest of voices and ensures the preservation of the most basic of workers' rights. A true testament to the adage that every voice matters, irrespective of the scale of one's enterprise.⁹⁰

86. The Criminal Code of the Federal Democratic Republic of Ethiopia, 2004, art. 603(1).

87. *ibid.*

88. The Federal Democratic Republic of Ethiopia, Labour Proclamation, Proclamation No. 1156/2019, art. 17.

89. *ibid.*, art 18(4)(b).

90. The Federal Democratic Republic of Ethiopia, Labour Proclamation, Proclamation No. 1156/2019, art 113.

The unions possess the power to unite in federations, and these federations possess the authority to merge into confederations, and so the saga unfolds. This exhilarating freedom extends to both workers and employers, enabling them to form national and international alliances of federations and confederations. By the sacred Covenant No. 87, Articles 3 and 6, the organizations, federations, and confederations that workers and employers form hold the sacred right to establish their own constitutions and regulations, elect their representatives, and devise their own management and operations.

3.2.2.5. Collective Bargaining

The freedom of association hinges on the crucial ability to collectively bargain and forge agreements. As we've previously highlighted, legally recognized trade unions possess the power to participate in this artful of negotiation and reach a harmonious consensus.⁹¹ According to Article 125 of the Ethiopian Labour Proclamation No. 1156/2019, collective bargaining requires finesse and mastery in order to hammer out a mutually advantageous agreement.⁹²

"Collective bargaining" is a process involves an intricate of negotiation, dialogue, and compromise, with the ultimate goal of reaching a collective agreement to renew or modify existing arrangements. It's a multifaceted endeavor that requires astute communication, strategic maneuvering, and a keen awareness of the shifting landscape of labour relations.⁹³

As per Article 131(4) of Proclamation No. 1156/2019, the law mandates that bargaining partners must engage in negotiations that are transparent and conducted with integrity. This process culminates in the creation of a collective agreement, a binding document for both the trade union and employer. However, it's worth noting that Article 134(1) of the same Proclamation frowns upon any agreement that provides working conditions or benefits that are inferior to those established by law or any other relevant legislation. The legislation's primary aim is to ensure those workers' rights and benefits are safeguarded and valued in a manner that surpasses the legal stipulations. By adhering to these standards, we can forge an impartial and unbiased working atmosphere for all workers.

91. The Federal Democratic Republic of Ethiopia, Labour Proclamation, Proclamation No. 1156/2019, art 114(3).

92. *ibid*, art 114(6)

93. *ibid*, art 125(2)

The right of collective bargaining benefitting both labourers and companies alike. It harmonizes the voices and concerns of employees, paving the way for stronger workplace protections and safeguards. Moreover, businesses can bask in the glow of a more serene and productive industrial climate. The Collective Bargaining Convention of 1981 is a roadmap of measures that can be instigated through consultation and agreement between employer and worker factions, to promote this practice. These measures should strive to establish procedural rules, facilitate the participation of all employers and employee groups, and ensure that labour disputes are resolved in a manner that cultivates collective bargaining. By adopting such measures, can tango towards positive outcomes and cultivate a more harmonious workplace culture.

3.2.3. Ethiopian Investment Proclamation NO. 1180/2020

The Ethiopian Investment Law constructs a convoluted network of regulations that intricately interweaves foreign direct investment with labour standards. As prescribed by the Investment Proclamation, foreign investors are obligated to adhere to Ethiopian customs and respect national laws while engaging in investment activities. Ethiopia fervently advocates for and preserves foreign direct investment, but it must not violate any existing legislation, such as labour laws. The proclamation aims to strike a balance between Ethiopia's objective of stimulating FDI and other public objectives, including labour protection.⁹⁴ Therefore, the Labour Proclamation ensures that working conditions are diligently and meticulously safeguarded.

Investors must prioritize social and environmental sustainability values, labour protection standards, and social inclusion goals when embarking on investment projects. Essentially, the Investment Proclamation in Ethiopia welcomes and safeguards FDI, but only if it complies with all existing regulations, including labour laws. The Ethiopian Investment Law and the Labour Proclamation are entangled, implying that the crucial labour rights enshrined in the latter are also applicable to investment. In summary, investors must be mindful of labour standards and meticulously comply with all laws to achieve successful investment outcomes in Ethiopia.⁹⁵

94. Federal Democratic Republic of Ethiopia Investment Proclamation No. 1180/2020

95. *ibid*, art 54(1).

3.2.4. **Ethiopian Industrial Park Proclamation NO. 886/2015**

The industrial park law unleashes a cunning ploy to govern the identification, development, and operation of industrial parks that fortify the country's technological and industrial infrastructure. It seeks to rev up the private sector's investment in manufacturing industries and related ventures while breathing new life into the country's economic development. The proclamation⁹⁶ is a symbol of the government's unwavering dedication to creating a bountiful pool of job opportunities, fostering long-term economic growth, and amplifying the country's competitiveness.

To safeguard labour and human well-being, the law decrees that all stakeholders within the park adhere to the terms of the labour proclamation and other applicable laws of the country during their daily business dealings.⁹⁷ This not only ensures the welfare of workers but also underscores the application of labour law to every nook and cranny of the industrial park. The legislation goes beyond the humdrum and permits negotiations on work-related predicaments within the boundaries of the labour law's permissive standard, acknowledging the singular nature of industrial parks. Overall, the industrial park law is a paramount stride towards creating a milieu conducive to industrial growth, promoting private sector investment, and unlocking job opportunities.⁹⁸ The legislation prioritizes the welfare of workers, ensuring compliance with relevant laws, and aims to achieve sustainable economic growth while uplifting the livelihoods of the country's citizens.

In essence, the proclamation serves as the guardians of workers' rights, as enshrined in the FDRE constitution and Ethiopia's labour proclamation. Ethiopia's inclusionary regime guarantees the enactment and enforcement of labour laws, with the FDRE Constitution serving as the bedrock for labour rights. To ensure uniformity in the protection of labour rights, Ethiopia incorporates international agreements ratified by the country. Knowledge of Ethiopia's labour laws is indispensable for individuals and organizations to ensure adherence and equitable treatment of workers.

96. Industrial Parks Proclamation No. 886/2015, Federal Negarit Gazeta ,21st year No.39, Addis Ababa- April 2015, art 28(1).

97. *ibid.*

98. *ibid*, art 28.

3.3. Analysis of Labour standards Application in Industrial parks of Ethiopia

Despite Ethiopia's endorsement of ILO Conventions and implementation of laws to secure labour rights, industrial parks continue to be a dismal breeding ground for worker exploitation. First-hand accounts of workers reveal gross infringements of their rights, turning legal guarantees into mere mockery. Although these parks are essential for economic growth and reshaping of the economy, they are plagued with consistent allegations of worker abuse that are more than mere hearsay.⁹⁹ Businesses operating within these parks are heavily criticized for exploiting workers through meager salaries, deplorable working conditions, and discriminatory practices. The Ethiopian Industrial Zone experience highlights the lack of proficiency or willingness to enforce labour laws, leading to numerous violations of basic labour rights.¹⁰⁰

Jetu Edosa's research exposes a troubling trend of anti-union sentiments among foreign investors in the Dukem industry zone.¹⁰¹ Specifically, a foreign company operating in the Eastern industry zone has terminated hundreds of employees who dared to establish a trade union. This is not an isolated case, as no trade unions have been reported in the Eastern Industry Zone or the Hawassa Industrial Park. Furthermore, employees in the Eastern Industry Zone are allegedly coerced into completing extra work, and failure to do so could result in disciplinary action or even dismissal.¹⁰² These practices effectively subject workers to forced labour, an unethical and illegal situation. Despite being one of Ethiopia's most pressing socio-economic issues, incidents of child labour connected with FDI in Ethiopia are rare, as these positions often require a level of maturity that children do not possess. As a result, foreign investors may deem hiring youngsters unsuitable for various reasons.

99. Paul Barrett and Dorothee Baumann Pauly, *Made in Ethiopia: The Struggles of the Garment Industry's new Expedition*, (Stern Center for Business and Human Rights).

100. *ibid.*

101. Jetu Edosa, *protection of core labour rights in the Ethiopian Industrial Zones. the curious case of the Eastern Industrial Zone.*

102. *ibid.*

The Hawassa Industry Park places a paramount importance on upholding ethical hiring practices, mandating that all new recruits must be at least 18 years of age, in adherence with legal regulations. In the Eastern Industry Zone, there have been no reports of discrimination based on age or pay, but there has been a stark inclination towards employing women over men. This preference is often attributed to a belief that women are more docile and less likely to voice their opinions about the work environment, while men may be seen as more prone to question authority.¹⁰³ However, it is incumbent upon employers to recognize that gender-based hiring practices can be detrimental to establishing a diverse and inclusive workforce.¹⁰⁴

A research conducted by the Workers Right Consortium has unearthed alarming behavior among certain firms operating in the Mekelle industrial park.¹⁰⁵ The investigation found that MAA Garment and Textiles and Kibrie Enterprise plc displayed the most egregious misconduct, including verbal castigation, sexual harassment in exchange for promotions, physical torture of pregnant women, and non-payment of employees due to poor shift management. The inquiry also uncovered that these companies imposed excessive wage deductions for minor infractions such as tardiness, drinking water during work hours, and talking loudly. Colleagues were not allowed to assist each other, and health and safety protocols were flagrantly ignored. This type of conduct is unacceptable and must be addressed to ensure that all workers are treated with fairness and dignity.

The implementation of labour practices that flout local labour laws and international conventions aimed at promoting social equity and improving working conditions is a disconcerting issue. Such practices undermine the fundamental principles of just and ethical employment and can lead to the exploitation and mistreatment of workers.¹⁰⁶ The government's apparent reluctance to tackle these issues through routine labour inspections and the Labour Proclamation is worrisome. It is possible that this reluctance is driven by a desire to incentivize foreign enterprises by reducing their operational responsibilities.¹⁰⁷

103. Jetu Edosa, protection of core labour rights in the Ethiopian Industrial Zones. The curious case of the Eastern Industrial Zone

104. *ibid.*

105. Workers Right consortium (WRC), 8 Ethiopia is a north Star 9 (2018)

106. Berket Alemayhu, Foreign Direct Investment and Labour Law in Ethiopia; Is Race to the Bottom an existing, Impeding or Illusory Menace?, Addis Ababa University.

107. Mehari Redae, Privatization in Ethiopia: the Challenge it poses to Unionization and Collective Bargaining, PhD Thesis, University of Warwick, 2015).

However, prioritizing the interests of foreign enterprises over the wellbeing of local workers is a reprehensible and unsustainable approach. It is indispensable that both local and foreign enterprises operating in the region champion equitable labour practices and comply with local labour laws and international conventions to ensure ethical and just employment practices.¹⁰⁸

The significance of government investigations into working conditions cannot be overstated, as they serve as a crucial safeguard for employees' rights. In Ethiopia, however, labour inspections face significant hurdles. Despite a surge in international investment in Ethiopian industrial parks, labour inspections in these areas frequently lack the necessary rigor.¹⁰⁹ Recent research into the Eastern Industrial Zone unveiled that the Ministry of Labour and Social Affairs, the government agency responsible for monitoring labour concerns in these parks, has not conducted an inquiry into working conditions there in years. Moreover, labour inspectors have been consistently barred from entering the Eastern Industrial Zone. The situation is further compounded by the dearth of labour specialists in the Hawassa Industrial Park, where the number of employees far outnumbers the number of experts.¹¹⁰ These impediments are in stark contrast to the objectives of Ethiopian labour laws and international conventions, which strive to enhance employee well-being and bolster social justice.

108. Jetu Edosa, protection of core labour rights in the Ethiopian Industrial Zones. the curious case of the Eastern Industrial Zone

109. Jeff Wheeler and Keith Goddard scrutinized Ethiopia's Labour Inspection System, Bureau of International Labour Affairs under the United States Department of Labour.

110. Ermias Wedajo Azmach, Regulating Industrial Parks in Ethiopia: A Critical Analysis, Beijing Law Review

CHAPTER FOUR

4.1. Bilateral investment treaty nexus Labour Laws in Ethiopia

Labour rights encompass a plethora of individual and collective entitlements that guard labourers and guarantee equitable and secure work environments. These entitlements comprise the prerogative to work without bias, confine work hours, preclude arbitrary job termination, and exercise the autonomy to form alliances and engage in collective negotiation.¹¹¹ The International Labour Organization (ILO) has instituted quintessential labour benchmarks that all nations must adhere to, championing uniform rights for labourers worldwide.¹¹²

In Ethiopia, labour proclamations govern all investment-labour associations, ensuring that foreign direct investment is both promoted and protected while upholding all relevant statutes, such as labour laws. The Labour Proclamation aims to balance Ethiopia's investment promotion with workers' rights' protection, meaning that every investor must comply with the country's regulations when conducting investment undertakings, including compliance with labour rights enshrined in various ILO legal documents, national constitutions, and ordinary laws.¹¹³

Investors must prioritize fundamental labour rights when conducting business operations, comprising the freedom to form unions, negotiate collectively, avert forced or compulsory labour, establish age restrictions for child labour, and guarantee appropriate work conditions, such as minimum wages, work hours, and occupational safety and health. By prioritizing these labour rights, investors can positively impact the sustainable and impartial development of Ethiopia's economy. Abiding by these principles not only benefits the workforce but also enhances companies' reputations and their ability to recruit and retain top-notch talent. Moreover, investing in this manner can lead to stronger and more prosperous communities and ultimately contribute to the nation's overall economic growth. The Ethiopian Industrial Parks Proclamation wields the power to safeguard the rights of workers in the industrial park realm. It mandates the strict adherence to fundamental labour principles, including the right to form associations, the right to collective bargaining, and the abolition of any forced labour practices.

111. Arch Puddington, *The Global States of Workers Rights, Free Labour in a Hostile World*, (published by Freedom House in 2010).

112. The International Labour Conference adopted the Declaration of Principles and Rights at Work of 1998.

113. The Federal Democratic republic of Ethiopia, Investment Proclamation, (n 94), art 54(1)

In addition to this, it institutes a bare minimum age for the employment of minors and establishes satisfactory working conditions, encompassing the lowest possible wages, working hours, and standards for occupational safety and health. Through these measures, it cultivates an environment that is conducive to sustainable industrial growth and development.¹¹⁴ However, Ethiopia's bilateral investment treaties with other nations fall short of expectations.¹¹⁵ Most of these treaties are traditional BITs that focus solely on ensuring the protection of investors' interests while disregarding crucial labour issues.¹¹⁶ Moreover, these treaties are woefully outdated and do not contain any provisions for safeguarding labour. They simply promote economic gain at the expense of Ethiopia's fundamental responsibility to regulate labour. Additionally, none of these treaties explicitly enshrine core labour rights such as the freedom to form associations, the ability to collectively bargain, and a total prohibition on any form of forced labour.¹¹⁵ They also neglect to establish a minimum age for the employment of minors or acceptable working conditions concerning the lowest possible wages, hours of work, and occupational safety and health. Bilateral Investment Treaties (BITs) must entrench robust measures to regulate and oversee pivotal policy areas, such as labour protection, to safeguard against exploitation. Unfortunately, Ethiopian investment treaties have failed to prioritize this fundamental principle and have disregarded labour protection issues, resulting in the prioritization of investor interests at the expense of employment and labour concerns. While foreign investors enjoy conventional standards, domestic workers are left without adequate measures to secure decent working conditions, even under these agreements, with the majority of Ethiopia's previously ratified BITs falling short of addressing labour standards. This neglect of labour protection within investment policies can have far-reaching social and economic consequences. Policymakers should consider the impact of investment policies on labour standards and work towards ensuring that domestic workers receive sufficient protection and support. Despite some BITs incorporating provisions on labour rights, little attention has been given to addressing the root causes of labour exploitation.

114. Industrial Parks Proclamation No. 886/2015, Federal Negarit Gazeta ,21st year No.39, Addis Ababa- April 2015, art 28(1).

115. *ibid.*

116. *ibid.*

BITs, like the Ethiopia-Qatar Bilateral Treaty, the UAE-Brazil Treaty, and the Belgium-Luxembourg Treaty, may contain clauses pertaining to employment, but they have been found to be woefully impotent. This underscores the glaring absence of a substantive correlation between BITs and labour obligations, which makes it quite a challenge to hold investors accountable without a nexus between the two legal regimes.¹¹⁷ Investment tribunals have a propensity to prioritize investment treaties over labour commitments, and investors often turn to BITs when embroiled in disputes with nations.¹¹⁸ Host states may find it tough to ameliorate labour conditions, since such attempts could be construed as expropriation by multinational corporations, triggering strife and compelling the investor to pay hefty compensation.¹¹⁹ To ensure that labour rights do not get jettisoned in favor of investment interests, it is imperative to address the root causes of labour exploitation comprehensively within BITs.

117. Unleashing his intellectual prowess, Asamenew Gizaw penned an unpublished LLM short thesis on Ethiopia's Bilateral Investment Treaties and their impact on the environment. This masterpiece was birthed in the prestigious Central European University in 2017.

Asamenew Gizaw, Ethiopia's Bilateral Investment Treaties and Protection of the Environment, (Unpublished LLM Short Thesis, Central European University 2017)

118. *ibid.*

119. Bilateral Investment Treaty on the Promotion and Protection of Investments 2006 between the Republic of Finland and the Government of the Federal Democratic Republic of Ethiopia.

4.2. The Impact of Ethiopian BITs on labour regulation

Ethiopia's struggle to strike a balance between attracting investments and safeguarding labour rights is a daunting task. The symbiotic relationship between governmental regulations and investments has been laid bare over the years, with investment activities exerting immense influence on labour laws. The impact of regulations on investment ventures cannot be overstated, and state authorities must carefully weigh the effects of their regulatory actions on private property, including that of foreign investors.¹²⁰ Nevertheless, such actions must not trample on the rights of workers, and labour regulations cannot be deemed as indirect expropriation.

Bilateral Investment Treaties (BITs), which corporations have increasingly relied on to challenge government-backed regulations aimed at upholding labour rights. However, Ethiopia's BITs have largely been geared towards incentivizing and safeguarding investments, with little regard for labour considerations. The common misconception that labour rights are addressed through investment protection has been debunked by several governments' actions, which prioritize the interests of investors over labour issues. If BITs fail to explicitly cover labour matters, investment tribunals could view host nations' policing powers on labour-related issues as expropriation, further jeopardizing the protection of labour rights.

Ethiopia must, therefore, re-examine and update its BITs to explicitly address labour rights while maintaining a favorable investment climate. The current omission of labour-related matters in Ethiopia's BITs not only goes against the country's constitutional aim of promoting sustainable development but also creates a chasm between labour law and bilateral investment treaties.¹²¹

These disconnect makes it challenging to enforce labour regulations on investors, who often leverage BITs to challenge state decisions in investment tribunals. By incorporating labour issues into BITs, Ethiopia can ensure that all stakeholders' interests are protected, creating a win-win scenario for investment and labour rights. Ethiopia is grappling with a conundrum when it comes to its bilateral investment treaties. These agreements are posing a challenge for the government to carry out non-economic policies, particularly with regard to sustainable development. The country has ratified these treaties, which heavily favor investors and leave no room for regulatory action at the government's end to address labour regulation and human rights issues.

120. Kyla Susanne's, *The Appropriation of Ecological Administration: Shielding Foreign Investors by Sacrificing Public Policy*, (doctoral thesis, VU University Amsterdam in 2008), 124.

121. The Constitution of the Federal Democratic Republic of Ethiopia, FDRE Constitution, (n 57), art. 43

The labour regulations in Ethiopia's BITs are insufficient for handling labour issues, leaving local labour protections high and dry. Investor protection measures can impede the government's ability to control investments for the greater good of labour safety, natural resources, and other social goods, ultimately hindering the achievement of national development goals. When the government endeavors to improve labour rights, foreign investors may level allegations of indirect expropriation of their benefits, throwing a wrench into Ethiopia's quest for sustainable development. Enforcing labour protection measures may very well breach its BIT commitments, which complicates matters further. The Vienna Convention on the Law of Treaties prohibits states from using domestic laws as a pretext for disregarding their obligations under international treaties, leaving Ethiopia in a perplexing situation.¹²⁴ States have the autonomy to determine their own means of fulfilling these obligations and must ensure that their national laws are consistent with treaty requirements. However, conflicts can arise between a state's commitments under a BIT and other obligations, such as safeguarding labour rights. Developing countries may be unwilling to bear the costs associated with a dispute resolution mechanism established under an investment treaty and may instead resort to invoking the provisions of the BIT, which can lead to an international dispute. It is imperative for states to weigh their commitments under various treaties and obligations carefully to prevent such conflicts from arising. Ethiopia's BITs have limited its ability to make its policies and protect its labour force adequately, which could have catastrophic consequences for everyone involved. However, in reality, Ethiopia bears the brunt of this technicality. The investment treaties that Ethiopia has forged are predominantly with economically advanced nations, forsaking Ethiopia as the primary hub for foreign investment with little reciprocation. Consequently, Ethiopia is at a greater peril of facing legal reprimand compared to other contracting states. These BITs have unequivocally made it clear that the fear of international tribunal litigation has left little leeway for labour regulations that might hinder foreign investment. This predicament poses a formidable challenge for Ethiopia and underscores the urgency for more equitable and judicious agreements that acknowledge the necessities and interests of all parties involved.

122. Bertram Boie, *Labour Related Provisions in International Agreements*. Employment sector expert has crafted an Employment Working Paper, numbered 126, ILO Trade and Employment Program.

123. "Wakgari Kebeta, the Adequacy of Ethiopia's bilateral investment treaties in safeguarding the environment from a Race to the Bottom in his 2017, the 6th edition of the Haramaya Law Review.

124. Vienna Convention the Law of Treaties, which came into effect on the 27th of January 1980, article 27.

4.3. The Impact of incorporating “the phrase in accordance with the laws of the host State” on Ethiopian BITs

Foreign investments must follow the laws and regulations of the host country to be considered valid. These provisions mandate contracting parties to uphold and promote foreign investments that align with domestic laws. However, Ethiopian bilateral investment treaties (BITs) disregard the country's internal legislation in their investment definition; leading to the neglect of labour protection concerns.¹²⁵ This poses a significant challenge for both foreign investors and the Ethiopian government in maintaining a conducive investment climate that fosters sustainable economic growth and development. Policymakers must review and amend these BITs to attract more foreign investments and promote a mutually beneficial partnership between foreign investors. Upon close examination, it's clear that these provisions only give the host State the power to regulate Foreign Direct Investment (FDI) in the pre-establishment phase.¹²⁶ Relying on domestic laws may not be enough for post-establishment issues. Additionally, the reference to the laws of the host state is ambiguous, creating potential confusion for foreign investors seeking clarity on their rights and obligations.¹²⁷ Moreover, it is imperative to contemplate how certain provisions enshrined in bilateral investment treaties (BITs) may inadvertently stymie foreign direct investment. These provisions may ostensibly intend to safeguard a nation's prerogative to regulate, but they could also hamper the host nation's capacity to implement measures that would bolster labour standards. This is because such provisions frequently confine labour protection standards to what is stipulated by domestic law, thereby precluding the host nation from implementing alternative measures that may be indispensable to adapt to dynamic circumstances. It is noteworthy that merely alluding to local laws may not be enough to hold foreign investors accountable, particularly if the measure in question is not explicitly recognized under the BIT. This deficiency could leave the host nation with no effective means of enforcing an obligation on foreign investors. Hence, it is essential to meticulously scrutinize the potential unintended ramifications of labour provisions in BITs to ensure that the interests of all parties involved are adequately safeguarded.

125. Gizaw AD, *Bilateral Investment Treaties and Environmental Protection in Ethiopia*, (LLM short thesis, Central European University 2017)

126. Wakgari Kebeta Djigsa, (n 12)

127. Ethiopia has inked deals with France, Germany, Malaysia, Netherlands, Switzerland, and Yemen.

4.4. The Views of Ministry of Labour and Skills Dealing with a participation in the negotiation of BITs

The Ministry of Labour and Skills (MOLS) possesses the power to safeguard the welfare of employee and employers, in accordance with the tenets of the proclamation number 1263/2021 of article 25(2)(a). However, the breadth of MOLS' purview is not limited to such a noble task. It is armed to fashion and execute a comprehensive labour administration system, synchronize and enforce labour regulations and policies, amplify labour inspection services, and promulgate regulation pertinent to occupational safety and health, the preservation of the working milieu, standards of working conditions, and work permits.¹²⁸ In an interview with a High Legal Expert of MOLS, it was divulged that MOLS and the Investment Commission have a negligible level of interaction. To wit, stakeholders from both sides did not consistently collaborate during the BIT negotiations, and as the Support and Follow up Senior Expert of MOLS confirmed. Furthermore, the Investment Commission did not liaise with MOLS' offices throughout the BIT negotiations, as the respondents attested to. In other words, MOLS and the Investment Commission are like two ships passing in the night.¹³⁰

128. The Federal Democratic Republic of Ethiopia, the powers and duties of executives Organs Proclamation number 1263/2021, wherein article 25(2)(a).

129. Interview with Shewafraw Assfaw, 'High Legal Expert of Ministry of Labour and Skills (MOLS)' (June 2, 2023).

130. Interview with Abera Lemma, 'Support and Follow up Senior Expert of Ministry of Labour and Skills (MOLS)' (June 2, 2023).

CHAPTER FIVE

5. CONCLUSION AND RECOMMENDATION

5.1. CONCLUSION

Ethiopia has ventured into 35 bilateral investment treaties (BITs) with other nations. Unfortunately, most of these agreements fail to provide adequate measures to protect labour rights. Fewer of these treaties explicitly incorporate labour regulations, leaving a void in the legal framework for enforcing labour commitments on investors. As a result, Ethiopia is facing a significant hurdle in regulating labour standards and preventing a downward spiral in the implementation of labour regulations. Policymakers and stakeholders must pay attention to this issue to ensure that Ethiopia's investment treaties are updated and integrate robust labour regulations.

Ethiopia finds itself grappling with a perplexing situation regarding its bilateral investment treaties. These agreements pose a significant challenge to the government's efforts to implement non-economic policies, particularly those relating to sustainable development. The country has ratified these treaties, which heavily favor investors and leave no room for regulatory action at the government's end to address social and human rights issues. Ethiopia's BITs also don't impose parallel labour protection duties on investors, leaving local labour regulations insufficient to handle labour issues. Investor protection measures can impede a government's ability to control investments for the greater good of labour safety, natural resources, and other social goods. This can impact the attainment of national development goals. Any attempt to enforce labour protection measures may be seen as indirectly expropriating foreign investors' benefits. This complicates Ethiopia's pursuit of sustainable development, as it may breach its BIT commitments.

The Vienna Convention on the Law of Treaties prohibits states from using domestic laws as an excuse for failing to uphold their obligations under international treaties. States have the liberty to determine their own ways of fulfilling these commitments and must ensure that their national laws are consistent with treaty requirements. However, conflicts can arise between a state's BIT commitments and other obligations, such as safeguarding labour rights. Developing countries may be unwilling to bear the costs associated with a dispute resolution mechanism established under an investment treaty and may instead resort to invoking the provisions of the BIT, which can lead to an international dispute.

States must meticulously scrutinize their commitments under various treaties and obligations to preempt the emergence of conflicts. Ethiopia's BITs have hindered its capacity to formulate policies and safeguard its workforce regulation in a comprehensive manner. Added to this, industrial parks in Ethiopia are under intense scrutiny for their oppressive labour practices. Numerous workers have been denied their fundamental right to engage in collective bargaining, organize, and form unions. These labourers are frequently subjected to meager wages and discriminatory practices, such as the preferential employment of specific individuals based on their gender or marital status. These practices flagrantly flout Ethiopian labour laws and jeopardize the well-being of the workforce in these sectors. For companies operating in these industrial parks, it is paramount to prioritize the equitable treatment of their staff and comply with existing labour laws to guarantee a secure and fair workplace.

Ethiopia, BITs must unequivocally embrace and foster sustainable development through labour protection in their preambles and substantive part. This should be pursued by explicit obligations under BITs, compelling both foreign investors and the host country to provide an unflinching commitment towards fortifying the labour regulation.

5.2. RECOMMENDATION

- The Ethiopian House of People Representative (HPR) is tasked with executing their mandate with the utmost diligence to uphold the labour laws enshrined in the constitution. This requires a thorough analysis and authentication of any proposed bilateral investment treaty to ensure its adherence to the FDRE Constitution. The weight of this responsibility is paramount, necessitating rapid intervention to rectify any incongruity and establish a cohesive legal structure that aligns with the tenets of the constitution. The HPR must execute this responsibility with expeditiousness and meticulousness to preserve the interests of labour regulation.
- The Ethiopian government must scrutinize BITs with utmost care, striking a balance between investor rights and obligations. It is crucial that any fresh BITs include a provision mandating governments to safeguard, augment, and enforce basic labour rights. Let us not forget that the welfare of the workforce is imperative for sustainable economic growth and social harmony. Hence, the government must exercise prudence in its negotiations and ensure that the terms of the BITs are equitable and just.
- To invigorate the recognition of the interwoven web between labour rights and bilateral investments treaty, it is imperative to infuse a labour clause in both the preamble and substantive part of BITs. This audacious initiative will emphasize the cardinal significance of bolstering labour rights within the overarching framework of BITs. In Ethiopia, BITs must unequivocally embrace and foster sustainable development through labour protection in their preambles and substantive part. This should be pursued by explicit obligations under BITs, compelling both foreign investors and the host country to provide an unflinching commitment towards fortifying the labour regulation.
- In the interest of harmonizing Ethiopian labour law with the bilateral investment treaty, it is imperative to scrutinize the treaty with an insightful examination, particularly with regards to labour regulations. These regulations serve as a crucial nexus for both the host country and the investor, forming an integral component of foreign investment protection standards. Hence, the task of reconciling the divergent interests of the host country's labour regulation and the investor and investment promotion and protection assumes paramount significance.

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- Interview with Shewaferaw Assfaw, ‘High Legal Expert of Ministry of Labour and Skills (MOLS)’ (2 June 2023).

ANNEX

Annex I: List of Key Informants

SN	Name of Interviewees	Title and position of interviewee’s	Place and Date of interview
1	Mr. Abera Lemma	Support and Follow up Senior Expert, MOLS	Addis Ababa, June 2, 2023
2	Mr. Shewafraw Assfaw	Legal Expert, MOLS	Addis Ababa, June 2, 2023

Annex II: Interview Questions

Below are questions designed to collect data for my research on The Implications of Bilateral Investment Treaties of Ethiopia on labour regulation -

Name of interviewee: _____

Title/ Occupation: _____

Date of Interview: _____

Place of Interview: _____

Q1. What levels of participation does the Ministry of Labour and Skills (MOLS) during the BIT negotiations?

Q2. Is there any interaction between the Ministry of Labour and Skills and the Investment Commission during the BIT negotiations?