



ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
SCHOOL OF LAW

**OCCUPATIONAL SAFETY AND HEALTH AND BENEFIT OF
EMPLOYMENT INJURY OF WORKERS IN BATU AREA
FLORICULTURE INDUSTRIES**

BY: ESHETU BEO

OCTOBER, 2015

**OCCUPATIONAL SAFETY AND HEALTH AND BENEFIT OF
EMPLOYMENT INJURY OF WORKERS IN BATU AREA
FLORICULTURE INDUSTRIES**

**A THESIS SUBMITTED TO ADDIS ABABA UNIVERSITY,
SCHOOL OF GRADUATE STUDIES IN PARTIAL
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OF LL.M IN HUMAN RIGHTS LAW**

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Declaration

I declare that this thesis, which I submit to the School of Graduate Studies of Addis Ababa University in partial fulfillment of the requirement for LL.Mdegree in human rightslawis my own personal effort. Furthermore, I took reasonable care to ensure that the work is original, and, to the best of my knowledge, does not breach copyright law, and has not been taken from other sources except where such work has been cited and acknowledged within the text.

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I could not have mustered up my courage to do this paper on this title without the continuous help of the ALMIGHTY GOD! Thank you God! Secondly, I have to express my sincere gratitude and appreciation to my advisor Mr. YonasBirmeta for the continuous support, for his patience, motivation, enthusiasm, and immense knowledge. His guidance, continues comment and criticism have helped me in all the time of research and writing of this thesis. I could not have imagined having a better advisor and mentor for my research.

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Finally, my grateful is for those who helped me in providing the necessary information starting from the federal ministry office staffs' up to those flower farm workers.

Acronyms

BoLSA- Bureau of Labour and Social Affairs

CEDAW- Convention on the Elimination of Discrimination Against Women

E.C- Ethiopian Calendar

EHDA- Ethiopian Horticulture Development Agency

EHPEA- Ethiopian Horticulture Producers and Exporters Association

EIA- Environmental Impact Assessment

FDRE- Federal Democratic Republic of Ethiopia

Ha- hectare

ICCPR- International Convention on Civil and Political Rights

ICESCR- International Convention on Economic, Social and Cultural Rights

ILO- International Labour Organization

MoLSA- Ministry of Labour and Social Affairs

MPS- Millieu Program Sierteelt (Market Label)

MPS-SQ- Millieu Program Sierteelt – Socially Qualification

NGOs- Nongovernmental Organization

OSH- Occupational Safety and Health

OSHWED- Occupational Safety and Health and Working Environment Department

PPE- Personal Protective Equipment's

SERAC- Social and Economic Rights Action Center

UN-United Nations

USD- United State Dollars

WHO- World Health Organization

Even though the emergence of floriculture industry is a recent phenomenon, it has brought many blessing to Ethiopia. It is a source of export earnings; it is a means of employment for many, especially for women; it is a cause for the expansion of infrastructure and other advantages. But there are some critiques against this sector in relation with social and environmental shortcoming of the sector. It is blamed that many workers who are employed in the sector are working in poor working conditions; in relation to environment, environmental activists argue that environmental policies or standards are not implemented by many companies within the industry as per the standards provided by the government; due to the intensive utilization of chemicals, pesticides, fungicides and fertilizers by the industry, workers are exposed for some occupational injuries.

This research examines two aspect of the working condition of workers in those floriculture industries which are found in Batu (Zuway) area. The first component of the research examines the occupational safety and health condition of the workers in those study area. The second part of the research investigates the reality of workers benefit of employment injury in those study area flower farms.

Both results of qualitative and quantitative gathered data indicate that the occupational safety and health and benefit of employment injury of workers in the study area are at risk. The research indicate that the components (elements) of occupational safety and health, like the provision of personal protective equipment's, the availability of regular medical checkups by the employers to the employees, the provision of training on occupational safety and health are not provided as required by the law.

In addition to the above serious problem, workers are not getting the required benefit of employment injury, especially cash benefit, when they encounter employment injury. There are a lot of reasons for the non realization of such benefit of employment injury, which ranges from the low bargaining power from the workers up to the complex litigation process before the court in order to secure such rights.

There are also some weakness from the government on implementing those laws which are enacted to secure the occupational safety and health and benefit of employment injury of

workers. There is a lacuna of enough budget, motivation, authority and deficiency of coordination/networking between the stake holders.

After identifying the existing loopholes on occupational safety and health and benefit of employment injury in the study area, the research has given a substantial recommendation in order to relieve the existing problems.

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CHAPTER ONE

1. Introduction

1.1. Background of the Study

Floriculture can be defined as "a discipline of horticulture concerned with the cultivation of flowering and ornamental plants for gardens and for floristry, comprising the floral industry."¹ The flower industry is currently expanding all over the world speedily. The Ethiopian floriculture industry was started in the early dates of 1980.² Ethiopia is endowed with extensive natural resources that make the country suitable for the development of varieties of flowers, vegetables, fruits and herbs.³

The flourishing of the industry, in a country where unemployment is a big problem, capital is scarce and labor is abundant, coupled with the relatively huge participation of foreign direct investors in the industry and the dramatic performance registered in foreign exchange earnings, has therefore become a significant contributor to the national economy as well as a key means of linking the poor to the global product markets.⁴ Young unemployed citizens, women in particular, have been able to take advantage of new employment opportunities arising from the introduction and growth of the cut-flower industry in Ethiopia.

Even though the floriculture industry is becoming a pillar to the development of the country economy, there are a lot of controversies and critiques in relation to labour conditions,

¹<http://www.answer.com>, visited on 10/05/14

² The Embassy of Japan in Ethiopia, A Series of Studies on Industries on Ethiopia, March 2008, p 2. See also Gudeta T. Socio-economic and Environmental Impact of Floriculture Industry in Ethiopia, 2011-2012, p 8

³ EHDA, Ethiopian Horticulture Sector Bulletin, Issue 01, 2012, p 1

⁴ Tewodros W. Promoting Workers' Right in the African Horticulture: Labour Condition in the Ethiopian Horticulture Industry. The National Federation of Farm, Plantation, Fishery & Agro-Industry Trade Unions of Ethiopia (NFFPEATU), 2010, p 2. See also EHDA, Ethiopian Horticulture Sector Statistical Bulletin, Issue 01, 2012, p 18

Occupational safety and health, environmental pollution and others. The employers argue that flower-growing enterprises fully respect international and national labour legislations and even offer conditions of labour and work much above those observed in other parts of the agricultural sector, though cases of violation of workers' rights are common.⁵

Due to this facts, this research will going to investigate workers right to health and benefit of employment injury in those flower industries that are located around Zuway, mainly based on the International Convention on Economic, Social and Cultural Rights, ILO Convention No.155, and Labour Proclamation No.377/2003.

1.2. Statement of the Problem

The floriculture industry in Ethiopia have, definitely, brought many advantages to the nation like solving the problem of unemployment, increasing the country GDP, providing some social infrastructures to the nearby community like school, road, medical services and the like. However there are some critiques on this sector in relation to environmental pollution, paving a way for land grabbing, excessive utilization of water, poor labour condition, and negative impact on the health of the workers are some of them.⁶ Floriculture industry utilizes a high amount of pesticides and chemicals, which can indirectly affect the health of the workers.⁷ These pesticides and chemicals can cause cancer, birth defect, reproductive complication, nervous system problem etc.⁸ Workers can be exposed to these chemicals, herbicides and pesticides through contact and/or inhalation while spraying, harvesting or packing. When the workers encounter an employment injury, they are entitled for some benefits like medical benefits and various kinds of

⁵See Tewodros T, *Sapra note*, p 2

⁶Malefia T. Environmental Impacts of Floriculture Industries on Lake Ziway: with Particular Reference to Water Quality. M.Sc. Degree in Environmental Science, Addis Ababa University, 2009. p 5. Also see Sepulveda O. 2008 Report on Colombian Cut-Flowers: Labour Conditions and the Crisis of the Sector. Bogota D.C., Colombia, 2009. p 5

⁷Abayneh T., Environmental Impacts of Floriculture Industry in DebreZeit Town: A Need for Strategic Environmental Assessment. Addis Ababa University, Faculty of Technology, March 2013. p 33

⁸*Ibid*, p 33

cash benefits.⁹ Due to these facts, this research will try to address or investigate those allegations that arise in relation with the effect of the sector on the health of the workers and assess the benefit of employment injury workers receive when they face employment injury.

1.3. Objective of the Study

1.3.1. General Objectives

The general objective of the study is to evaluate the right to health of the workers in floriculture industry and the provision of benefit of employment injury when workers encounter employment injury.

1.3.2 Specific Objectives

The specific objectives of this study are the following:-

- ✓ Identifying the impact of pesticides, chemicals and fertilizers on the workers,
- ✓ Pinpointing the occupational injuries that encounter workers as a result of their work in flower farms,
- ✓ Detecting the benefits that workers really get, like cash and medical benefits in case of employment injuries
- ✓ Identifying the scope of obligation on flower companies in rendering the necessary services to adequately safeguard the safety and health of their workers,
- ✓ Evaluating the knowledge of the workers in relation to those protected rights,
- ✓ Analyzing their (workers) awareness on the obligation to take the necessary precaution measures while working
- ✓ Checking whether the government is fulfilling its obligation towards the protection of safety and health of workers

⁹Labour Proclamation No.377/2003. (Art. 103-112)

- ✓ Recommending a better way if there are some difficulties on the side of the government, the companies and the workers.

1.4. The Research Method and Methodology

1.4.1. Location of the Area

Due to resource constraint it is mandatory to limit the area of the research to be conducted into a specific area. The study was conducted in East Shewa Zone, Oromiya Region, AdamiTulluJidoKombolcha Wereda, around Zuway (Batu) area. Zuway (Batu) town is found on the road Addis ababa-Modjo-Hawassa at 163km distance from the capital. Zuway has a latitude and longitude of 7°56'N38°43'E with an elevation of 1643 meters above sea level and the economy of the town is based on fishing and horticulture.¹⁰ According to the 2007 national census report, a total population for Zuway is around 43,660, of whom 22,956 were men and 20,704 were women.¹¹

There are around five flower farms in this study area, including the largest flower farm in Ethiopia. These are Sher Ethiopia Plc., Herburg Rose plc, AQ Rose plc., Zuway Rose plc., and Braam Rose Plc.

The first ground for the selection of this area is that, this area has a huge number of labors and it is the place where we can find big flower companies, which are huge in their field size and labors. This will help me to find labors with different types of attitude, age, sex and employment problems. Secondly, this area is too proximate to my residence and this will reduce my input costs which is required from me to conduct this research. I have also the knowledge of the location of this company somehow. So, the writer can gather a data without depending on another guiding person.

1.4.2. Research Method

Data relevant to the study was collected from both primary and secondary sources. These includes giving out questionnaires, documentary analyses, observations, focus group discussions, interviews, case analysis are the main one. For the most part of these methods were useful in

¹⁰<http://libpedia.org/resources/ziway> Visited on 07/3/15

¹¹*ibid*

terms of generating relevant information required by the study. The necessary primary and secondary data are collected based on the following methods;

- **Questionnaires:** - quantitative data have been collected through questionnaires. Two different types of questionnaires were distributed to ordinary workers and injured workers, respectively. 360 questionnaires were randomly distributed on five (5) flower farms that are found in the study area, in order to evaluate the occupational safety and health of the workers and 65 another different questionnaire were distributed to those workers who have encountered employment injury only in order to assess the benefit of employment injury they have been provided.
- **Interviews:** - with selected workers, the concerned company personnel's and specific government organ have been made. This has helped the researcher to get a broad and clear answer on questions which need more clarification and helped me to deeply explore and understand the experiences of the participant. *how selected?*
- **Focus Group Discussion:-** More qualitative and quantitative information were generated through focus group discussions, which were conducted during the research mini workshop with workers. This has helped the researcher to identify some relevant issue that has not been asked by him.
- **Case analysis:-** the researcher have also tried to analyze those cases that have been raised in connection with employment injury and a decision have been given by court. This has helped to measure the bargaining power of the workers in such type of legal disputes with their employers.
- **Observation (personal):-** I have managed to have a direct observation while workers are harvesting, cutting, measuring, packing flowers. I have also tried to observe the condition of those workers who have sustained grave body injury because of the employment injury.
- **Documentary analysis:-** A review of literature was conducted to understand what other researchers have said about relevant issues for the study.
- **Analysis of laws:-** the laws which have been enacted to regulate the safety, health and benefit of employment injury has been interpreted and discussed broadly.

1.5. Data Analysis

After the completion of gathering primary and secondary data, the completeness and the clearness of the collected data have been checked before anything else. Then I have analyzed and interpreted those collected data respectively. This will help my research to be more complete and accurate by avoiding vagueness and ambiguity from my data.

1.6. Research Question

At the end of the work, the research has answered the following questions;

- I. What does the working conditions look like in relation with the health and safety of workers in the research area?
- II. Are those workers who have encountered employment injury getting the proper benefit of employment injury?
- III. Is the government implementing properly those laws, regulations and policies that have been enacted to protect the safety and health and benefit of employment injury of the worker?
- IV. ^{Have} Are those flower companies, which are found in the research area, adhered themselves to those laws, standards and code of practices that have been enacted to protect the safety and health and benefit of employment injury of the worker?
- V. Are there any gaps on the protection of the health of the worker in the study area? If ^{there} ~~there~~, what are the cause of that gap and the possible solution?
- VI. Are there any challenges facing the workers on securing benefit of employment injury in the study area? If ^{there} ~~there~~, what are the main cause of that challenge and the possible solution for that challenge?

1.7. Significance of the Research

The major significance of this research is to identify the implementation of those laws, policy, standards, and code of practices that have been enacted in order to protect the right to health of the worker. It also identifies the compliance (adherence) of flower companies to the laws, code of practices, standards, and assesses the benefit they provide for their employees during employment injury. In order to enhance the productivity of any production sector it should have a healthy working man power. Such type of research will enhance the productivity and development of floriculture industry by figuring the weakness of the sector and suggesting a solution for the gap. It will also serve as a source for the country legislator and policy makers, if there is any need to enact further laws to govern the floriculture industry. By serving so it safeguards the protection of the human right to health of the workers including the benefit they should have to get in time of employment injury.

1.8. Scope of the Research

It is pretty much certain that a compressive study covering each and every single industrial relations in the cut flower sector calls for an extended deal of time and other resources beyond what is available for this piece of work. To this end, the study is restricted to focusing on core indicators of labor rights in relation to occupational safety and health and benefit of employment injury. The whole five flower farms that are found around Zuway (Batu) have been covered.

1.9. Limitation of the Study

While conducting this research, the writer has encountered a lot of challenges even starting from the beginning of the research. Some people have argued me not to do my thesis on this title since it is too much challenging to have a data on the area. After starting to conduct the research, this writer has particularly faced the following limiting factors:-

- ✓ First and most it was too much difficult to enter the premises of the flower companies and to gather the data. It can be said that those flower companies do not want to see anyone who wants to investigate such type of issues,
- ✓ Even though the researcher has managed to enter into the flowers compound, they were not willing to show him tangibly what they have said they are doing. For

How do you manage?

example, they told that they register any employment injury, but when asked to show, they were not willing.

- ✓ Since the workers are busy on working on day time, the data required from them were gathered when they get back to their home, which was tiresome and challenging.
- ✓ Some workers were suspicious about the research in fear of being fired because of the information they are giving to the researcher, even though they have been told about the objective and the confidentiality of their information. Surprisingly, there were some workers who asked for money after filling the questionnaire in return for their provision of information.
- ✓ It was difficult to get some government officials for interview by reasons of continues meeting reasons. Even when they are found they don't provide the required information properly.
- ✓ The word limitation rule that has been passed by the Office of the Associate Dean for the Graduate Program of the Law School was very challenging since this research is mainly depend on the presentation of different data sources.

Although the above ups and downs were there while gathering the data, the researcher has managed to get the required data in order to complete the research fruitfully!

1.10. Structure of the study

This research is structured into seven chapters

Chapter One: Introduction. This part of the paper includes background of the study, statement of the problem, objective of the study, research method and methodology, research question, significance of the research, scope of the research and limitation of the study.

Chapter Two: Highlights the general trend of floriculture industry in the world and in Ethiopia. It has discussed issues like the emergence of floriculture industry in the world, its advantages and critics against the sector.

Chapter Three: Deals with the human right to health and states obligation towards to that. It includes the meaning and content of the human right to health, the embodiment of the human right to health under international and regional human right instruments, states obligation towards the human right to health and the guiding principles of the human right to health has been elaborated.

Chapter Four: Discusses the meaning of occupational safety and health and then followed by a discussion about the principles (components) of occupational safety and health. It also presents some general concepts in relation with benefit of employment injury.

Chapter Five: Elaborates the legal and policy framework of workers right to occupational safety and health under Ethiopian legal system. Different regulations, directives, code of practices, and policies have been discussed.

Chapter Six: The data analysis and finding have been presented with the conclusion and recommendation.

Chapter Seven: Conclusion and recommendation

CHAPTER TWO

THE GENERAL TRENDS OF FLORICULTURE INDUSTRY IN THE WORLD AND IN ETHIOPIA

The general objective of this chapter is to discuss some major issues that arise in relation to floriculture industry in general. This includes the history, the characteristics, the pros and cons and some existing critiques on the sector will be presented briefly. This will help to highlight the present characteristics of the sector in Ethiopia and in the world.

2.1. The Emergence of Floriculture Industry in the World and its General Trends

The present day floral industry is a dynamic, global, fast-growing industry, which has achieved significant growth rates during the past few decades. Currently, the global trade volume is estimated to be worth more than \$100bn per annum and the major consumer markets are Germany (22%), the US (15%), France (10%), the UK (10%), the Netherlands (9%), Japan (6%), Switzerland (5%) and Italy (5%) in the year of 2014.¹² New production centers stretch from Africa to Asia and Australasia. East African countries like Ethiopia, Kenya and Tanzania host important floriculture industries.¹³

The Netherlands remains the center of production for the European floral market, as well as a major international supplier to other continents. The flower auction at Aalsmeer is the largest flower market in the world.¹⁴

2.2. An Overview of Ethiopian Flower Industry

The Ethiopian floriculture industry was started in the early dates of 1980.¹⁵ Others date it forward around 1997, where the first private floriculture companies, Meskel Flower and Ethio-

¹² <http://africanbusinessmagazine.com>. Visited on 10/09/15.

¹³ *Ibid*

¹⁴ *Ibid*

¹⁵ The Embassy of Japan, *supra* note 2, p 5. See also Gudeta, *supra* note 2, p 8

flora, started activities in a few hectares of land.¹⁶ But the rapid development of this sector is originally due to the attempts by several private cut flower farms which began operation in the early 1990s.¹⁷ The cut flower industry has emerged much more recently, but is now one of Ethiopia's main export sectors. Its export performance is booming from year to year. The endowment of Ethiopia with natural resources in different agro-ecological zones which are suitable for the cultivation of horticultural product is a paving factor for the rapid growth of flower industry in the country.¹⁸ In addition to this, high level of support by the government, favorable investment laws and incentives, proximity to the global market, efficiency of the transport system and availability of abundant and cheap labor are other crucial factors for the rapid development and expansion of the industry.¹⁹

The flower farms are owned by internationally well-established foreign companies, local investors and a mix of the two. Currently, the flower farms occupy 1426 hectares of land and there are around 84 (FDI 50, Joint Venture 10 and Local 24) active flower farms which makes Ethiopia the second largest flower producer and exporter next to Kenya.²⁰ The destination of the flower export of Ethiopia are Netherlands (80.3%), and the remaining goes to Germany, Saudi Arabia, Norway, Belgium, United Arab Emirates, Japan, USA, France and Italy.²¹

2.3. The Opportunities of Flower Industries

Floriculture industries have their own socio-economic benefits for any states, especially for those developing countries. The cut-flower trade is conceived to be an important means of diversifying the export regime, an additional source of export earnings in Ethiopia. The cut-flower industry in Ethiopia has emerged as one of the biggest sources of foreign exchange in recent years. The

¹⁶Mulgeta G., *Ethiopian Floriculture and its Impacts on the Environment: Regulation, Supervision and Compliance*, Mizan Law Rev, Vol. 3 No.2, Sept 2009, p 240. See also Mulu G. and Tetsushi S., *Global Value Chains and Market Formation Process in Emerging Export Activity: Evidence from Ethiopian Flower Industry*, August 2011, p 4.

¹⁷Yukichi Mano, *et al.*, *Local and Personal Networks in Employment and the Development of Labor Markets: Evidence from the Cut Flower Industry in Ethiopia*, National Graduate Institute for Policy Studies, Nov. 2010, p 8

¹⁸EHDA, *supra* note 3, p 3

¹⁹Mulgeta G., *supra* note 16, p 241. See also Gudeta T., *supra* note 2, p 8

²⁰Ethiopian Horticulture Producer and Exporter Association (EHPEA), *Export Horticulture in Ethiopia*, March 2015, Addis Ababa, pp 3-5

²¹*Ibid*, p 9

horticultural export industry has recorded increasing growth each year, both in volume and value.²² Due to this factor, the revenue secured from the industry has also increased from year to year. In 2014, flower export makes the biggest export share from fruits and vegetables by generating more than 230 mln USD and employed more than 50,000 workers.²³ Young unemployed citizens, women in particular, have been able to take advantage of new employment opportunities arising from the introduction and growth of the cut-flower industry in Ethiopia.²⁴ The flower industry has created 50 to 70 jobs per hectare and it has a big contribution on women empowerment since more than 70% of the workforces are women.²⁵ Due to the fact that women within a developing country have some difficulties of having their own job it is turn out to be an important source of income and one way escaping from being dependent on their husband or family's shoulder.²⁶ The other blessing of floriculture industry is their participation in Corporate Social Responsibility (CSR) which benefits the surrounding community, including the country. It looks a paradox to have sustainability without social responsibility and, therefore, many companies have a social conscience, and try to do the best for their community while trying to be socially responsible.²⁷ These companies are involved in construction of healthcare's, schools, clean water, afforestation and reforestation, sports and other vital activities.²⁸ In addition to the above significance, there will be a technological transfer (*endogenisation* -a process of building local capabilities) to Ethiopian flower companies since those foreign flower companies are more experienced and well equipped with latest production system.²⁹

²² See EHDA *supra* note 3, p 7

²³ See EHPEA, *supra* note 20, p 11

²⁴ Tewodros W., *supra* note 4, p 3

²⁵ Abiy T., Toxication in Beta Flower Industry Threatens Right to Water in Ethiopia Cut-Flower Production Practices, the Sector's Socio-Economic Contribution and Environmental Standards, Addis Ababa, Ethiopia, 2011, p 13

²⁶ See Gudeta T., *supra* note 2, p 14

²⁷ EHPEA, EiFresh Magazine, Volume 4 Issue 2, March 2013, p 16

²⁸ *ibid*

²⁹ Taylor B., Ethiopia's Growth Set to Bloom? A Global Production Network Analysis of an Experiment in Economic Liberalization, Thesis for Degree of Doctor of Philosophy, School of International Development, University of West East Anglia, p 192

2.4. Challenges of Floriculture Industry in Ethiopia

Floriculture industry is growing at an astonishing rate since the turn of the millennium and contributing a lot of things for the development of the nation ((job creation, foreign earnings and other economic returns). In Ethiopia the sector is growing by 20% every year making the nation the second largest African exporter of roses.³⁰ But there are some related critiques against the sector by different organs. In relation to environment, many Ethiopian environmental activists argue that environmental policies or standards, labor regulations are not implemented by many companies within the industry as per the standards provided by the government.³¹ Environmentalists are arguing that too much pesticide is getting into water bodies damaging the biodiversity and excessive chemicals are killing useful organisms in the soil, and also the waste material is getting into the soil, into water bodies or be used by people and cause serious damage.³² The sector utilize high amount of water which can decrease the content of the water and affect those who are dependent on that river or lake for their livelihood.³³ The other critique is that this investment paves a way for land grabbing. For example, since early 2008, the Ethiopian government has embarked on a process to award millions of hectares (ha) of land to foreign and national agricultural investors, in which the majority is for flower farming.³⁴ Since the production of flower requires vast and fertile areas of land, local people will be displaced from their farmlands and communal areas, which affects their right to food.

Secondly, there are a lot of controversies on the working condition of the workers. Many workers who are employed in the sector are working in poor working conditions. Low wages, employment insecurity, sexual harassment (females), difficulty on exercising freedom of association & collective bargaining, lack of access to education and training on occupational safety and health, long working hours, in adequate provision of personal protective equipment's

³⁰Malugeta G. Defiance of Environmental Governance: Environmental Impact Assessment in Ethiopian Floriculture Industry. E3 Journal of Environmental Research and Management, Vol.4(4). May, 2013. P 219

³¹See Gudeta, *supra* note 2, at 14. See also Malugeta G., *supra* note 16, p 240

³²See Malugeta G., *supra* note 16, p 242

³³Tsion T., Assessment of Soil and Water Contamination Due to Large Scale Floriculture Farming Around Lake Zeway. M.Sc. Thesis in Environmental Geology, AAU 2015. p 9

³⁴See Gudeta, *supra* note 2, at 15.

(PPE) are among those repeatedly alleged critics on floriculture industry.³⁵ The other main critics and challenge of floriculture industry is its impact on the health of the workers. Because of the intensive utilization of chemicals, pesticides, fungicides and fertilizers, workers are exposed for some occupational injuries. The most common pesticides used in flower farming are *carbamates, organophosphates and herbicides* and these pesticides are considered to be the most toxic group of pesticides causing acute and chronic poisoning to farm workers who are occupationally exposed to them.³⁶ Occupational exposure of humans to agrichemicals, especially pesticides is common and results different health effects, including cancer, skin allergy, lung damage and respiratory failure, male infertility, adverse reproductive and developmental effects, irregular menstrual flows for women, miscarriages, headache, fainting, nausea, swelling, rashes and body injury like loss of eye are some prevalent occupational injury that workers encounter.³⁷

³⁵Hassan A., Developing strategies for change women workers in Africa horticulture – The Case of Ethiopia NETFFATU/Study Report, Addis Ababa 2010. P 26-39. See also Riisgaard, L. How Market for Standards Shapes Competition in Market for Goods: Sustainability Standards in Flower Industry, DIIS Working paper, Copenhagen, 2009, p 7

³⁶Grace J.A., Occupational Pesticide Exposure among Kenyan Agricultural Workers, Utrecht Oct. 1997, pp 12-33

³⁷Daniel Hailemichael, Evaluation and Development of Floriculture Supply Chain in Ethiopia, to Attenuate Environmental Impact and Logistics Cost. AAU, 2013. p11. Also see Grace, *supra* note 36, p

make such a state of well-being physically unattainable and, moreover, health depends on many factors unrelated to direct health interventions like an individual's heredity, environment, and behavior play an important role in shaping his or her health prospects.⁴³ Some other literatures have also characterize the WHO approach as a "wish list" rather than a core human right because it does not lend itself to translation into clearly defined state responsibilities.⁴⁴

The United Nations Committee on Economic, Social, and Cultural Rights (CESCR), which monitors the implementation of the International Convention on Economic Social and Cultural Rights (hereafter, ICESCR), issued General Comment No. 14 (hereafter, GC No.14): The Right to the Highest Attainable Standard of Health.⁴⁵ The GC No.14 represents the most authoritative statement on the meaning of the right to health.⁴⁶ Under its GC No.14, the Committee on ICESCR defined 'health' as a fundamental human right indispensable for the exercise of other rights.⁴⁷

The above definitions may point policy-makers toward a worthy end, but they do not function as either a legal principle or rule capable of application to particular situations.⁴⁸ This understanding of health means that the right to health should, if possible, reflect the broader, affirmative notion of health as more than the absence of disease.⁴⁹ As will be explored below, there is more content to the right to health than these teleological definitions.

The meaning of the term "Right to Health" is somehow debatable and it is a formidable challenge. But the challenge did not impede the recognition and development of a human right to health in international, regional and domestic human rights law. However, such definitional problem is not the only problem of the right to health. It is the problem of many human right provisions, especially those of economic, social and cultural rights that have been guaranteed under ICESCR. Here, we have to know that the right to health does not mean the right to be

⁴³T. Michael Willis, *Economic Development, Environmental Protection, and the Right to Health*, *International Environmental Law Review*, Vol. 9 (1996), P 198

⁴⁴See *supra* note 38, p 19

⁴⁵ICESCR General Comment 14, *The Right to Highest Attainable Standard of Health* (Article 12) General Comment No. 14 (11/08/00) (E/C.12/2000/4)

⁴⁶Gostin, Lawrence, "The Human Right to Health: A Right to the 'Highest Attainable Standard of Health'", *Hastings Center Report* 31(2), March-April 2001, p 29.

⁴⁷See *Supra* note 45, para 1

⁴⁸See Steven D, *supra* note 38, p 11

⁴⁹*Ibid*

healthy nor does it assert an unlimited right to be treated for every medical condition.⁵⁰ The states are not obliged to protect their people against every cause of ill health or disability that can be caused by different contributing factors such as genetic diseases, individual susceptibility and the exercise of free will by individuals who voluntarily take unnecessary risks, including the adoption of unhealthy ways of lifestyles.⁵¹

A right to health, at a minimum level, could mean a right to conditions that protect health in the population, it might also include civil and political rights with respect to access to population-based and personal health care services, at most, it could also include provision of medical care for the diagnosis and treatment of disease and injury for those unable to pay.⁵² J. Asher on the other hand has defined it in a way that "...the right to health should be understood as a right to the enjoyment of a variety of facilities and conditions which the state is responsible for providing as being necessary for the attainment and maintenance of good health."⁵³ There is also another view of definition which alleges that right to health, in international human rights law, is a claim to a set of social arrangements – norms, institutions, laws, and an enabling environment – that can best secure the enjoyment of this right.⁵⁴

World Health Organization (after this, WHO) articulated the first specific international health and human rights provisions in the preamble to its Constitution. It declares that:

*"...the enjoyment of the highest attainable standard of health [right to health] is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic, or social condition."*⁵⁵

The Committee on ICESCR under its GC No.14 has elaborated Art. 12 of ICESCR and defined the right to health as not to be healthy, rather as *a right to the enjoyment of a variety of facilities,*

⁵⁰ *Supra note 45, para 8. See also Judith Asher, The Right to Health: A Resource Manual for NGOs, 2004, p 17*

⁵¹ *Ibid*

⁵² Eleanor D. Kinsey, *The International Human Right to Health: What Does This Mean for Our Nation and World?* *Indiana Law Review*, Vol. 34, (2001), p 1458

⁵³ *Judith, supra note 50, at p 17*

⁵⁴ *World Health Organization, 25 Questions and Answers on Health and Human Rights, Health and Human Right Publication Series, Issue No 1, July 2002, p 9*

⁵⁵ *The preamble of the WHO Constitution, Constitution of the World Health Organization, adopted by the International Health Conference, 22 July 1946*

goods, services and conditions necessary for the realization of the highest attainable standard of health.⁵⁴

It also says that: "... [It is] an inclusive right extending to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water, *healthy occupational and environmental conditions*, and access to health-related education and information...".⁵⁵ This shows the key aspects of the right to health. We usually associate the right to health with access to health care and the building of hospitals, while these are not the only aspect of right to health. It includes a wide range of factors that can help us lead a healthy life, as it has been listed above.⁵⁶

The right to health contains both *freedoms and entitlements*.⁵⁷ The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference.⁵⁸ The entitlements include: the right to a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health, the right to prevention, treatment and control of diseases;...⁵⁹

The ICESCR explicates the right to health in terms of broad norms, state obligations, violations, and implementation.

3.2. The Right to Health under International Human Right Instruments

Human rights are rights that everyone possesses by virtue of being human, irrespective of race, religious or political beliefs, legal status, economic status, language, colour, national origin, gender, ethnicity, etc.⁶⁰ Human rights are interdependent, indivisible and interrelated.⁶¹ The human right to health has been recognized under different international human right instruments and international bodies.

⁵⁴ General Comment No. 14, *supra* note 45, para 8, and 9

⁵⁵ General comment No. 14, *supra* note 45, para 11, (*emphasis added*)

⁵⁶ World Health Organization, Office of the United Nations High Commissioner for Human Rights, *The Right to Health*, Factsheet No.31, Geneva, 2008, p 3.

⁵⁷ General Comment No.14, *supra* note 45, para 8

⁵⁸ *ibid*

⁵⁹ General Comment No. 14, *supra* note 45, para 8. See also, *supra* note 58, at pp 3-4

⁶⁰ Paul Dubinsky, et al, *What Is a Human Right? Universals and the Challenge of Cultural Relativism*, 11 *Paese Int'l L. Rev.* 107 (1999), p 5

⁶¹ Vienna Declaration and Programme of Action (A/CONF.157/23), adopted by the World Conference on Human Rights, held in Vienna, 14-25 June 1993.

3.2.1. The United Nation Charter

The United Nations Charter⁶⁴ contains the seeds of support of human rights, including economic, social and welfare rights.⁶⁵ With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, Art. 55 (b) of the UN Charter obliges the United Nations to promote solutions of international economic, social, *health*, and related problems.

Although the UN Charter does not declare a right to health for individuals, the inclusion of the phrase "to seeking solutions to international . . . health . . . problems" in the basic document of the United Nations Charter indicates the fundamental, deeply rooted nature of this right.⁶⁶

3.2.2. The Universal Declaration of Human Rights

The greatest innovation in the Universal Declaration, which served as a substitute for the missing bill of rights in the UN Charter, was the inclusion of economic, social and cultural rights.⁶⁷

Under Art.25 (1) it provides that:-

"Everyone has the right to a standard of living adequate for the *health and well-being* of himself and of his family, including food, clothing, housing..."⁶⁸ This sub article contains two related rights. The first one is the right to certain standard of living that basic needs can be met and the second one is included as basic needs, i.e., "health and well-being." Here, health is treated as a way to measure the extent to which the right is being met (certain minimal standard of living), not to health directly.⁶⁹

3.2.3. International Convention on Civil and Political Rights

As it has been discussed above human rights are interrelated, interdependent and indivisible. The Committee on ICESCR under its General Comment No. 14 stated the interrelatedness and the interdependence of the right to health on other rights which have been contained in the International Bill of Rights.⁷⁰ ICCPR⁷¹ do not have any specific article which deals with the right

⁶⁴United Nation Charter . 26 June, San Francisco, USA.1945

⁶⁵See Straven, *supra* note 38, p 10

⁶⁶*ibid*

⁶⁷ Christine Breining-Kaufmann, *Globalisation and Labour Rights: The Conflict between Core Labour Rights and International Economic Law*, 2007. p 29

⁶⁸ Emphasis added

⁶⁹*Supra* note 38, p 11

⁷⁰General Comment 14, *supra* note 45, para 3

to health. But it has contained numerous important provisions which affect the realization of the right to health like right to life, to freedom from torture to liberty and the security of the person, to humane treatment of prisoners, etc.

3.2.4. Convention on the Elimination of All Forms of Discrimination against Women

Women are affected by many of the same health conditions as men, but women experience them differently. For example, women's, who are the majority in number in floriculture industry, are mostly affected by those pesticides and chemicals, than men.⁷²

Convention on the Elimination of All Forms of Discrimination Against Women (hereafter, CEDAW),⁷³ currently represents the most concisely articulated statement by the international community on the question of women's human rights.⁷⁴ CEDAW broke new ground by bringing together different categories of rights affecting the status of women. Under its Art.12 focuses on the provision of services and equal access to health care facilities for women. In the absence of a broader concept of health in Article 12 of the CEDAW, other articles in the Convention can be invoked with regard to women's right to health.⁷⁵ For instance, Article 11, on the right to employment, can be invoked to protect women's health by ensuring *their safe working conditions and accident prevention*. This Article recognizes "the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction."⁷⁶ Violence against women is a widespread cause of physical and psychological harm or suffering among women, as well as a *violation of their right to health*.⁷⁷ States must exercise due diligence

⁷²International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966)

⁷³Takele T. and Mengesha A. Lecture Notes on Occupational Health and Safety, Ethiopia Public Health Training Initiatives, 2006, p 9

⁷⁴Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, U.N. Doc. A/34/36 (1980) (*entered into force* Sept. 3, 1981).

⁷⁵See Lisa C. Strain, *The Right to Have Rights: Gender Discrimination in Nationality Laws*, 77 MINN. L. REV. 195-239 (1992).

⁷⁶Judith, *supra* note 50, p 26.

⁷⁷Convention on the Elimination of All Forms of Discrimination against Women, Art. 11, 1 (f)

⁷⁸See WHO, *Supra* note 58, p 13

to prevent, investigate and prosecute such violence whether it is perpetrated by State actors or private persons.⁷⁹

3.2.5. International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR⁸⁰ is the most important international human right instrument in terms of the right to health. Article 12 of ICESCR provides key provisions for the protection of the right to health in the following manner:

- 1) The States Parties to the present Covenant **recognize** the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;
- 2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (b) *The improvement of all aspects of environmental and industrial hygiene;*
 - (c) *The prevention, treatment and control of epidemic, endemic, occupational and other diseases.*⁸¹

A textual analysis of Article 12 reveals a number of important aspects of the right to health as recognized in this key document, for the right to health as a human right. First, the use of the term "recognize" under its Art. 12 (1) confirm that the right to health is not promulgated or adopted or established by the states, but *recognized*, which entails that the states parties are not creating something, but simply recognizing the existence of that thing.⁸¹ This will strengthen the consideration of a right to health as human right since it exists even without the recognition by states. The second paragraph of Article 12 identifies relatively specific fields of endeavor in which steps are to be taken to achieve health and the list helps to identify the obligations of the duty-holder, i.e., the state, toward the right holder, i.e., the individual.⁸² In relation to the improvement of all aspects of environmental and industrial hygiene, the states must, for example, prevent occupational accidents and diseases; minimize, as far as reasonably practicable, the causes of health hazards that are inherent in the working environment (industrial hygiene);

⁷⁹ See Committee on the Elimination of Discrimination against Women, general recommendations N° 19 (1992) on violence against women and N° 24 (1999) on women and health.

⁸⁰ International Covenant on Economic, Social and Cultural Rights, G.A. Res. 22001 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/8316, 993 U.N.T.S. 3 (1966).

⁸¹ Emphasis added.

⁸² See Steven, *supra* note 34, p 12.

⁸³ *ibid*, p 14.

ensure adequate housing and safe and hygienic working conditions....⁸³ Concerning the prevention, treatment and control of epidemic, endemic, occupational and other diseases, states must, for example, create a system of emergency medical care for the management of accidents, epidemics and similar health hazards.⁸⁴ States have to ensure the provision of appropriate regular screening programs; ensure diseases, illnesses, injuries and disabilities receive appropriate treatment, preferably at the community level.⁸⁵

Generally, the above discussed international human rights instruments are not the only international human right instruments that deal with the right to health. There are other instruments, like, Convention on the Elimination of All Forms of Racial Discrimination of 1965,⁸⁶ Convention on the Rights of the Child of 1989,⁸⁷ and other relevant international human right instruments establish a norm of a human right to health.

3.2.6. The ILO Occupational Safety and Health Convention

The ILO Occupational Safety and Health Convention, 1981 (No. 155), and its accompanying Recommendation (No. 164), provide for the adoption of a national occupational safety and health policy, as well as describing the actions to be taken by governments and within enterprises to promote occupational safety and health and improve the working environment. The Convention is supplemented by the Protocol of 2002 to the Occupational Safety and Health Convention (No. 155), which calls for the establishment and periodic review of requirements and procedures for the recording and notification of occupational accidents and diseases, and for the publication of related annual statistics.

Convention No. 155 covers all branches in which workers are employed, including the public service.⁸⁸ This convention define the word "health" relatively in the same way like the WHO definition of "health", but not rigid as such like WHO definition since it doesn't employed

⁸³ General Comment No. 14, *supra* note 43, para 15

⁸⁴ *Ibid*, para 16

⁸⁵ *Ibid*, para 17

⁸⁶ International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, art. 5(EEV), G.A. Res. 2106 (XX), U.N. GAOR, 20th Sess., Supp. No. 14, at 47, U.N. Doc. A/6014 (1965), 660 U.N.T.S. 195, 222 (entered into force Jan. 4, 1969).

⁸⁷ Convention on the Rights of the Child of 1989, Nov. 20, 1989, art. 24, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (entered into force Jan. 4, 1969).

⁸⁸ ILO Convention No. 155, 1981, (Art. 3 (a))

"complete". Convention No. 155 defined "health" in relation to work under Art. 3 (d) as "...not merely the absence of disease or infirmity; it also includes the physical and mental elements affecting health which are directly related to safety and hygiene at work." There is also another complementarity between this convention and Art.12 (2) (b) of the ICESCR. When the Committee on ICESCR, under GC No.14, discusses the content of "the right to healthy natural and workplace environments", it refers Art.4 (2) of the ILO Convention No. 155 of 1981.⁸⁹ This Convention is of central importance because it introduces a national policy process in relation to occupational safety and health (after this, OSH). Under its Art.4 (1) it urges each member states, the formulation, implementation and a periodically review a coherent national policy on occupational safety, occupational health and the working environment. Calling for a national policy on OSH emphasizes that, governments must consider OSH as a matter of *national concern* and be actively involved.⁹⁰ The aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment.⁹¹ Hazards are inherent in the working environment and the aim of prevention is therefore articulated as an obligation to *minimize, so far as is reasonably practicable, the causes of these hazards.*

Art.11 of Convention No.155 sets out six *functions* which the national policy shall cover progressively, among them which includes:-

- the establishment and application of procedures for the notification of occupational accidents and diseases, by employers and,
- the holding of inquiries, where cases of occupational accidents, occupational diseases or any other injuries to health arise in connection with work
- the publication, annually, of information on occupational accidents, occupational diseases and other injuries to health;

⁸⁹ See General Comment, *supra* note 45, para 15

⁹⁰ International Labour Office, *Building a Preventive Safety and Health Culture. A guide to the Occupational Safety and Health Convention, 1981 (No. 155), its 2002 Protocol and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)*, Geneva, 2008. p 7

⁹¹ Occupational Safety and Health Convention 1981 (No. 155). (Art. 4 (2))

Therefore, at the national level, governments are required to identify arrangements on the measures to be taken to: implement the policy; enforce relevant laws and regulations; and ensure the required coordination between various authorities and bodies on the manner in which the policy is to be implemented, including, for example, through a central national body.⁹²

Articles 16-18 of the Convention place obligations on employers to ensure, so far as is reasonably practicable, that the working environment is safe and without risk to health. These obligations includes, ensuring safe and healthy working place; ensuring chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken; to provide adequate protective clothing and protective equipment to prevent risk of accidents or of adverse effects on health; provide for measures to deal with emergencies and accidents, including adequate first-aid arrangements. Adequate arrangements should also be made for compensation of work-related injuries and diseases, as well as for rehabilitation and to facilitate a prompt return to work.⁹³

Generally, Convention No. 155, 1981 has a significant importance in the protection and promotion of workers safety and health.

3.3. Rights to Health under Regional Human Right System

In addition to the above discussed international human right instruments there are also some regional documents which recognize the right to health. From these, the African Charter on Human and Peoples' Rights (Banjul Charter);⁹⁴ the American Declaration of the Rights and Duties of Man⁹⁵ and the two European instruments, the European Convention for the Protection of Human Rights and Fundamental Freedoms⁹⁶ and the European Social Charter.⁹⁷

⁹²*Ibid*, p 8

⁹³ Benjamin O. ALLI, *Fundamental Principles of Occupational Health and Safety*, 2ndedn, International Labour Office, Geneva, 2008. p 21

⁹⁴The African Charter on Human and Peoples Right, Adopted in Nairobi, Kenya on 27 June 1981 and entered into force on 21 October 1986. Full text available at www.africa-union.org.

⁹⁵ American Declaration of the Rights and Duties of Man, Mar. 30-May 2, 1948, O.A.S. res. XXX, adopted by the Ninth International Conference of American States, Bogota Columbia.

⁹⁶ European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, entered into force Sept. 3, 1953

⁹⁷European Social Charter, Adopted by the Committee of Ministers of the Council of Europe on July 6, 1961.

Under the African regional human right system there are a number of Conventions, Treaties, and Protocols that deals with the right to health. For example, The Constitutive Act of the African Union⁹⁸ Art. 3 (b), Protocol to the African Charter on the Rights of Women in Africa⁹⁹, African Charter on the Rights and Welfare of the Child¹⁰⁰ are some of them.

The African Charter protects a broad range of socio-economic rights and also a number of collective rights relevant to socio-economic rights. This includes, right to work, right to education, right to self-determination, right to peace etc.¹⁰¹ The African Charter provides that "[e]very individual shall have the right to enjoy the best attainable state of physical and mental health."¹⁰² Under Art.16 (2) of the African Charter there is a more general obligation on States Parties to "take the necessary measures to protect the health of their people" and establishes a specific duty on states "to ensure that they the state's people receive medical attention when they are sick."

The African Commission on Human and Peoples Right (hereafter the Commission)¹⁰³ has given an interpretation concerning the economic, social and cultural rights that has been contained in the African Charter in the case of *The Social and Economic Rights Action Centre and the Center for Economic and Social Rights v. Nigeria (SERAC Case)*.¹⁰⁴ The complainants brought an action against the Nigerian government for violations of an array of economic, social, and cultural rights committed by the state-owned National Nigerian Petroleum Company (NNPC) and Shell Petroleum Development Corporation, in which the NNPC held a majority of shares. The complaint alleged that the companies exploited oil in Ogoni land, Nigeria without regard for the environment or health of the local communities. The resulting water, soil, and air

⁹⁸Constitutive Act of the African Union, Adopted in Lomé, Togo on 11 July 2000 and entered into force on 26 May 2001.

⁹⁹Protocol to the African Charter on the Rights of Women in Africa, Adopted in Maputo, Mozambique in July 2003 and entered into force in November 2005.

¹⁰⁰African Charter on the Rights and Welfare of the Child, Adopted in Addis Ababa, Ethiopia in 1990 and entered into force on 29 November 1999

¹⁰¹ See of African Charter on Human and Peoples' Rights (Banjul Charter), *supra* note 94, Art.15, 17, 20 and 23

¹⁰²See *supra* note 94, at Art.16 (1). Emphasis added

¹⁰³The Commission was established based on Art. 30 and 40 of ACHPR with a wide range of powers in respect of the rights in the Charter and set up on 29 July 1987, Doc.OAU AFR/COM/HPR 2(1)

¹⁰⁴ See Communication 155/96, *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria* Decided at the 30th ordinary session, Oct 2001, 15th Annual Activity Report. (2001) AHRLR 60 (ACHPR 2001).

contamination caused serious short- and long-term health problems, including skin infections, gastrointestinal and respiratory ailments, increased risk of cancer, and neurological and reproductive complications.¹⁰³ The complaint further alleged that the Nigerian government not only condoned these harmful operations but aided in their perpetration by placing the legal and military powers of the state at the disposal of the oil companies. The Commission accepted the complaint's allegation as fact and found that the Nigerian government violated the right to health and a third generation right to a clean environment by directly contaminating water, soil, and air; harming the health of the Ogoni people; and *failing to protect* them from the harm caused by the oil companies.¹⁰⁴ In reaching this conclusion, the Commission underlined that the right to a clean and safe environment is enshrined under Article 24 of the African Charter. According to the Commission, the right to a clean environment is extremely critical to the enjoyment of economic, social, and cultural rights "in so far as the environment affects the quality of life and safety of the individual."¹⁰⁵ Regarding the right to enjoy the best attainable state of physical and mental health, under Article 16(1) of the Charter, and the right to a generally satisfactory environment favorable to development, recognized under Article 24 of the Charter, the Commission held that governments are prohibited from *directly threatening* the health and environment of their citizens. The Commission found that the duty to respect these rights largely entails non-interventionist conduct from the state, such as refraining from carrying out, sponsoring, or tolerating any practice, policy, or legal measures that violate the integrity of the individual.¹⁰⁶ Like with the UN Committee on CESCR, the Commission stated that the rights 'generate at least four levels of duties, namely the duty to respect, protect, promote and fulfill'.¹⁰⁹ The decision of the Commission suggests that the right to health under the African Charter must be interpreted according to international human right instrument standards. Regarding remedies, the Commission made extensive recommendations. It recommended that investigations be conducted, those responsible for violations prosecuted and compensation paid to those who had suffered.¹⁰⁸

¹⁰³ *Ibid.*, para 2

¹⁰⁴ *Ibid.*, para 70

¹⁰⁵ *Ibid.*, para 51

¹⁰⁶ *Ibid.*, para 52

¹⁰⁷ *Ibid.*, para 44

¹⁰⁸ *Ibid.*, para 71

The decision of the Commission is a positive step in the protection and promotion of the right to health in Africa. The decision has set a precedent for the justiciability of the right to health and can be viewed as a great triumph for social and economic rights in Africa.¹¹¹

3.4. State Duties in Relation to the Right to Health

As it has been discussed earlier the basic feature of human rights is that they regulate relationships between the state and individuals or groups. This means that the rights of one party impose a corresponding duty on another party (or parties) to protect those rights. Human rights therefore create obligations, usually on governments. The state can fail to carry out its obligations by either commission or omission.

GC No.14 and other relevant documents provide a wide range of state obligations which establish a framework within which legislative, policy and administrative choices must be made at national level to realize the right to health. In the following section, it will be explained the nature and logical structure of state obligations and introduces certain key conceptual distinctions between their different aspects, particularly the distinction between *universal, progressive, core* obligations and that of between the obligations to *respect, protect and fulfill* the right to health.

3.4.1. The Quartet Layers of State Obligations

A clearer understanding of the obligations of a state party to ICESCR has increasingly crystallized over the years. Human rights experts and scholars have, by growing consensus, identified the tripartite levels at which the obligations of a state operate in regard to any human right. The right to health sets three types of obligation on states. These are an obligation to *respect, protect and fulfill*.¹¹² A violation of economic, social and cultural rights occurs when a state pursues, by action or omission, a policy or practice which deliberately contravenes or ignores obligations of the Covenant, or fails to achieve the required standard of conduct or result.

¹¹¹ D.M. Chirwa, *A Fresh Commitment To Implementing Economic, Social and Cultural Rights in Africa: The Social and Economic Rights Action Centre and the Center for Economic and Social Rights v. Nigeria*, 2002 p 35

¹¹² See General Comment No. 14, *supra* note 43, para 33

3.4.1.1. Obligation to Respect

The obligation to respect requires States to refrain from interfering directly or indirectly with the right to health.¹¹² There are some acts of a government or others which can amount a violation or a potential violation of an obligation to respect.¹¹⁴ For instance, a failure of the State to take into account its legal obligations regarding the right to health when entering into bilateral or multilateral agreements with *multinational corporations* will amount a violation of obligation to respect.¹¹³

The essence of the *respect* quotient is to negate arbitrary actions and this element certainly demands no such fiscal commitment as economic, social and cultural rights critics are wont to assume.¹¹⁴ It is therefore, an immediate obligation to all states.

3.4.1.2. Obligation to Protect

The obligation to protect requires States to prevent third parties from interfering with the right to health.¹¹⁷ This implies that states are responsible for regulating the conduct of individuals and non-state actors, through legislations and other means.¹¹⁸ For example, the government must ensure that private enterprises should comply with labour standards that protect the right to health of their employees.

Violation of an obligation to protect happens when a state fails to take all necessary measures to safeguard persons within its jurisdiction from infringements of the right to health by third parties. For example, failure to regulate the activities of individuals, groups, *organizations and corporations* so as to prevent them from violating the right to health of others will amount violation of an obligation to protect.¹¹⁹

3.4.1.3. Obligation to Fulfill

The obligation to fulfill requires that states adopt the proper legislative, administrative, fiscal, juridical, educational and other practical measures to secure the protection and promotion of

¹¹² See General Comment No. 14, *supra* note 45, para 50

¹¹³ Judith, *supra* note 50, p 39

¹¹⁴ See General Comment No. 14, *supra* note 45, para 50

¹¹⁵ Dejo Olowu, An Integrative Rights-Based Approach to Human Development in Africa, Pretoria University Law Press, 2007, p 28

¹¹⁶ General Comment No. 14, *supra* note 45, para 33

¹¹⁷ Judith, *supra* note 50, p 36. See also General Comment No. 14, *supra* note 45, para 33

¹¹⁸ Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, January 22-26, 1997, para 18. See also Judith, *supra* note 50, pp 45-46; Also *supra* note 45, para 51

socio-economic rights.¹²⁰ In case of right to health, an obligation to fulfill the right to health requires a positive measures that governments are required to take, such as providing relevant services, to enable individuals and communities to enjoy the right to health in practice.¹²¹ Here, there is an interesting reference that has been made by the ICESCR Committee in relation to workers health. It orders states to formulate, implement and periodically review a coherent national policy to minimize the risk of *occupational accidents and diseases*, as well as to provide a *coherent national policy on occupational safety and health services*.¹²² The Committee while discussing the content of "national policy on occupational safety and health services", it has made a specific reference to ILO Occupational Safety and Health Convention, 1981 (No. 155) and Occupational Health Services Convention, 1985 (No. 161).¹²³ The Committee urged that;

"Elements of such a policy are the identification, determination, authorization and control of dangerous materials, equipment, substances, agents and work processes; the provision of health information to workers and the provision, if needed, of adequate protective clothing and equipment; the enforcement of laws and regulations through adequate inspection; the requirement of notification of occupational accidents and diseases, the conduct of inquiries into serious accidents and diseases, and the production of annual statistics; the protection of workers and their representatives from disciplinary measures for actions properly taken by them in conformity with such a policy; and the provision of occupational health services with essentially preventive functions."¹²⁴ This shows the complementarity of GC No. 14 and ILO Convention on Occupational Safety and Health, 1981 (No. 155) and Occupational Health Services Convention, 1985 (No. 161).

The obligation to fulfill in relation to right to health further divided into an obligation to *facilitate*, obligation to *promote* and obligation to *provide*.¹²⁵

An obligation to facilitate requires states to take positive measures that enable and assist individuals and communities to enjoy the right to health.¹²⁶ An obligation to provide oblige states

¹²⁰ See Dejo, *supra* note 116, p 30

¹²¹ Judith, *supra* note 50, at p 36. Also see General Comment no. 14, *supra* note 45, para 36

¹²² See General Comment No. 14, *supra* note 45, para 36

¹²³ *Ibid*

¹²⁴ See *supra* note 45, foot note no.25

¹²⁵ See General Comment No. 14, *supra* note 45, para 33

to intervene when individuals or groups are unable, for reasons beyond their control, to realize the right to health themselves through the means at their disposal.¹²⁷ An obligation to promote requires states to undertake actions that create, maintain and restore the health of the population.¹²⁸

3.4.2. Types of Government Obligation towards the Right to Health

States have different obligations towards those rights that have been protected under ICESCR. In order to achieve the realization of those rights, which includes the right to health, they are tasked with different obligations in the following ways.

3.4.2.1. Universal Immediate Obligations

The ICESCR Committee adopted an 'objective' standard for measuring the minimum level of compliance of state parties and has termed the 'minimum core of each state party.'¹²⁹ Certain obligations arising from the right to health require immediate compliance in every country, regardless the level of development. Universal immediate obligations define the *bottom line* of what governments can do, cannot do, and must do.¹³⁰ With respect to the right to health, the Committee on ICESCR has underlined that States must ensure: *non-discriminatory, refrain from taking retrogressive steps ('take-backs'), ensure adequate participation, taking deliberate, concrete, positive and targeted steps towards the progressive realization of the right to health* are some of them.¹³¹

3.4.2.2. Progressive Obligation

The ESCR Committee has pointed out that, while the concept of 'progressive realization' continues a recognition of the fact that the full realization of all economic, social and cultural rights will generally not be achievable in a short period of time, the phrase must be seen in the light of the overall objective, namely, that state parties must move 'as expeditiously and effectively as possible' towards the realization of these rights.¹³² Each member state have an

¹²⁷ See General Comment No. 14, *supra* note 45, para 37

¹²⁸ *Ibid*

¹²⁹ *Ibid*

¹³⁰ See ESCR Committee 'General Comment No 3 The nature of state parties' obligations' (art 2 para 1 of the Covenant) UN Doc E/ C.12/1990/8 (E/1991/23) (GC No 3) para 10.

¹³¹ Judith, *supra* note 30, p 33

¹³² See General Comment No. 14, *supra* note 45, para 30

¹³³ See General Comment No 3, *supra* note 129, para 9

obligation to immediately begin to take steps towards the full realization of the rights in ICESCR through all appropriate means, including legislative, administrative, judicial, economic, social and educational measures which are consistent with the nature of the rights, in order to fulfill their obligations under the Covenant.¹³³ This is the basis of what the Maastricht Guidelines identify as indicating a twin obligation of *conduct* and obligation of *result*.¹³⁴ The obligation of conduct requires action reasonably calculated to realize the enjoyment of a particular right and the obligation of result requires states to achieve specific targets to satisfy a detailed substantive standard.¹³⁵

States are required to take steps 'to achieve progressively the full realization' of the right to health 'to the maximum of their available resources'.¹³⁶ Taking steps to realize the right to health requires a variety of measures and since these measures will vary from State to State, international treaties do not offer set prescriptions.

3.4.2.3. Core Minimum Obligation

Each member state to the ICESCR has an obligation to satisfy a core minimum level of each right that is contained under the ICESCR, which includes the right to health.¹³⁷ The peculiar characteristics of core minimum obligations are that they are supposed to be satisfied even in time of emergency situations and they are non derogable.¹³⁸ Minimum core obligations include the provision of minimum essential standards of health care and the underlying determinants of health, among others which includes access to shelter, housing and sanitation and adequate supply of safe drinking water; the provision of essential drugs; equitable distribution of all health facilities, goods and services.¹³⁹

¹³³See General Comment No.3, *supra* note 129, para 2.3.7. See also The Limburg Principles on the Implementation of International Covenant on Economic, Social and Cultural Rights [UN doc. E/CN.4/1987/17, Annex, and *Human Rights Quarterly*, Vol. 9 (1987), pp. 122-135], para 38.

¹³⁴Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, January 22-26, 1997, para 7.

¹³⁵See General Comment No. 14, *supra* note 45, para 33. Also Maastricht, *supra* note 134, para 6.

¹³⁶General Comment No. 14, *supra* note 45, para 31.

¹³⁷General Comment No. 3, *supra* note 133, para 10.

¹³⁸Katherine Young "The Minimum Core of Economic and Social Rights: A Concept in Search of Content" *Yale Journal of International Law*, Vol. 33, (2008), p 113.

¹³⁹*Id.*, *supra* note 30, p 23.

3.5. The Four Essential Elements (Guiding Principles) of Right to Health

The Committee on ICESCR has provided the following elements (underlying determinants) of the right to health with which states must to comply in order to make the right to health meaningful and operational. These elements are: *availability, accessibility, acceptability and quality.*¹⁴⁰

3.5.1. Availability

When we say this, the numbers, quality, and distribution of functional public health and health care facilities in the country must be adequate, taking into account its developmental and economic condition.¹⁴¹ These functional public health and health care facilities are, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs.¹⁴²

3.5.2. Accessibility

Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party.¹⁴³

Accessibility has the following important elements:

- ✓ **Non-discrimination:**- health facilities, goods and services must be accessible, both in law and in fact, to everyone, including the poorest and most vulnerable or otherwise disadvantaged groups in the population.¹⁴⁴
- ✓ **Physical accessibility:** - health facilities, goods and services must be within safe physical reach of all sections of the population, including rural communities,

¹⁴⁰ General Comment No. 14, *supra* note 43, para 12

¹⁴¹ General Comment no. 14, *supra* note 43, para 12 (a)

¹⁴² *Ibid*

¹⁴³ See *supra* note 43, General Comment No. 14, para 12 (b), any reference in this general comment to health facilities, goods and services includes the underlying determinants of health outlined in paragraphs 11 and 12 (a) of this general comment.

¹⁴⁴ General Comment No. 14, *supra* note 43, para 12 (b)

ethnic minorities, indigenous populations, women, children, adolescents, older persons, persons with disabilities, and persons living with HIV/AIDS.¹⁴⁵

- ✓ **Economic accessibility (affordability):**- health facilities, goods and services must be affordable for all and payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, whether privately or publicly provided.¹⁴⁶
- ✓ **Information accessibility:** - accessibility includes the right to seek, receive and impart information and ideas concerning health issues.¹⁴⁷

3.5.3. Acceptability

All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.¹⁴⁸

3.5.4. Quality

Health facilities, goods and services must also be scientifically and medically appropriate and of good quality, which requires skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.¹⁴⁹

¹⁴⁵ See General Comment No. 14, *supra* note 43, para 12 (b)

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ General Comment No. 14, *supra* note 43, para 12 (c)

¹⁴⁹ General Comment No. 14, *supra* note 43, para 12 (d)

CHAPTER FOUR

MEANING AND PRINCIPLES OF OCCUPATIONAL SAFETY AND HEALTH AND BENEFIT OF EMPLOYMENT INJURY

Introduction

It will be important to have a general understanding about the principles of occupational safety and health and benefit of employment injury in order to evaluate the condition of occupational safety and health and understand the benefit of employment injury of the selected flower farm workers.

The first part of this chapter deals with the meaning of occupational safety and health and then followed by a discussion about the principles (components) of occupational safety and health. The last section of this chapter will present some general concepts in relation with benefit of employment injury.

4.1. Meaning to Occupational Safety and Health

Occupational safety and health (OSH) is generally defined as the science of anticipation, recognition, evaluation and control of hazards arising in or from the workplace that could impair the health and well-being of workers, taking into account the possible impact on the surrounding communities and the general environment.¹⁰⁰ Occupational health should aim at the promotion and maintenance of the highest degree of physical, mental and social well-being of workers in all occupations.¹⁰¹ This domain is necessarily vast, encompassing a large number of disciplines and numerous workplace and environmental hazards. Occupational safety and health is a key element in achieving sustained decent working conditions and strong preventive safety cultures.

¹⁰⁰ Definition of OSH by the International Occupational Hygiene Association (IOHA): www.ioha.net. The membership of the IOHA is made up of professional associations of OSH practitioners in 25 countries. The IOHA has consultative status with both the ILO and WHO.

¹⁰¹ International Labour Conference, ILO standards-related activities in the area of occupational safety and health: An in-depth study for discussion with a view to the elaboration of a plan of action for such activities, Report VI, 91st Session, Geneva, International Labour Office, 2003. para 4.

① Does this deserve a chapter?
② Why not involving labour problems than other

OSH is an equivalent term with the human right to health.¹³² The Committee while interpreting Art. 12 of the ICESCR, provided that the right to health extends up to the underlying determinants of health, such as access to safe and potable water... *healthy occupational and environmental conditions*...¹³³ States parties are required to formulate, implement and periodically review a coherent national policy to minimize the risk of occupational accidents and diseases, as well as to provide a coherent national policy on occupational safety and health services.¹³⁴ The United Nations International Covenant on Economic, Social and Cultural Rights, also independently reaffirms safety and health at work as human right in the following terms:

"The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular: ... (b) *Safe and healthy working conditions* ... "(Art.7 of ICESCR).

The right to safety and health at work is also enshrined in the United Nations Universal Declaration of Human Rights, 1948, which states "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work... (Art.23 of UDHR).

The ILO's mandate for work in the field of occupational safety and health dates from its very foundation. It starts from ILO Constitution which reads, "And whereas conditions of labour exist involving such injustice hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of these conditions is urgently required, as, for example, ... *the protection of the worker against sickness, disease and injury arising out of his employment* ..."¹³⁵

This right to decent, safe and healthy working conditions and environment has been reaffirmed in the 1944 Declaration of Philadelphia. The Conference recognizes the solemn obligation of the International Labour Organization to further among the nations of the world programmes which

¹³² *Supra note 79*, Art. 12 (2). Also see General Comment No.14, *supra note 45*, para 11

¹³³ General Comment No.14, *supra note 45*, para 11

¹³⁴ General comment No.14, *supra note 45*, para 36

¹³⁵ Preamble of the *Constitution of the International Labour Organization*

will achieve: ... (g) adequate protection for the life and health of workers in all occupations;
...
...

Close to 80% of all ILO standards and instruments are either wholly or partly concerned with issues related to occupational safety and health.¹²⁷ ILO has enacted numerous conventions, recommendations, protocols that are relevant to the protection of workers safety and wellbeing.

The clear articulation of OSH as human right to health under different international human right instruments and numerous ILO Conventions and Declarations demonstrates the important place that has been given to it.

4.2. The Key Principles(Components) of Occupational Safety and Health

A number of key principles underpin the field of occupational safety and health. These principles and the provisions of international labour standards are all designed to achieve a vital objective: that work should take place in a safe and healthy environment.¹²⁸ While these key principles structure occupational safety and health programmes and policies, by no means the following lists are exhaustive.

4.2.1. Assessment of Risks and Hazards

This is much related with environmental impact assessment (EIA).¹²⁹ Organizations will identify hazards, assess risks, and implement control measures on a proactive basis (rather than a reactive basis). The measures will vary from simple to complex, depending on the nature of the workplace, work environment, and work processes. The issue identifying occupational safety and health impacts is a main focus of the environmental impact assessment. Because occupational hazards arise at the workplace, it is the responsibility of employers to ensure that the working environment is safe and healthy. This means that they must prevent, and protect workers from, occupational risks. The employer shall take appropriate pre-executions to insure that all the

¹²⁷Declaration of Philadelphia, adopted at the 26th session, May 10, 1944, para. III

¹²⁸Benjamin, *supra* note 93, p viii

¹²⁹*Ibid.*, p 17

¹³⁰"Environmental Impact Assessment" means the methodology of identifying and evaluating in advance any effect, be it positive or negative, which results from the implementation of a proposed project or public instrument (Art. 2(3) of Environmental Impact Assessment Proclamation No. 299/2002.)

processes of work shall not be a source or cause of physical, chemical, biological, ergonomical and psychological hazards to the health and safety of the workers.¹⁶⁰ All work in the flower farm must be organized in such a way as not to endanger the safety and health of the employees and high-risk jobs and areas (e.g. spraying and handling pesticides, construction and maintenance work) must be specially indicated and supervised.¹⁶¹

4.2.2. Education and Training

Training is an indispensable element for floriculture workers. Workers need to know not only how to do their jobs, but also how to protect their lives and health and those of their co-workers while working. Relevant Occupational safety and Health training should be provided for all workers. Employers and their organizations must be consulted, informed and trained on health and safety matters.¹⁶² Information and training courses must be held periodically. New employees, including temporary and subcontracted workers, must be specially informed and instructed on the risks at the workplace, using/handling of pesticides, how to use personal protective equipment's and others.¹⁶³ All workers must be thoroughly instructed and trained by a recognized institution or by specialists on the safe application and the risks of pesticides and chemicals. The employer has an obligation to take appropriate steps to ensure that workers are properly instructed and notified concerning the hazards of their respective occupations and the precautions necessary to avoid accident and injury to health.¹⁶⁴ In order to take care of their own safety and health, workers need to understand occupational risks and dangers. They should therefore be properly informed of hazards and adequately trained to carry out their tasks safely.

4.2.3. Provision of Personal Protective Equipment's

Personal protective equipment's (after, PPE), is the main important ingredient of OSH. Employers are required to provide workers with protective equipment, clothing and other materials and instruct them of its use.¹⁶⁵ All Personnel involved in handling pesticides should

¹⁶⁰ Labour Proclamation 377/2003. (Art.92 (7))

¹⁶¹ Flower Label Programme (FLP) Guidelines for the Socially and Environmentally Responsible Production of Cut Flowers, 1999. p 6

¹⁶² *ibid*, p 8

¹⁶³ Taylor, *supra* note 29, p 80

¹⁶⁴ Labour Proclamation 377/2003. (Art.92 (2))

¹⁶⁵ *ibid*, (Art.92 (5))

have appropriate PPE, like boots, overall, spray suit, respirator, gloves and goggles or face shield and others.¹⁶⁶ Staff must be trained to use and care for their PPE correctly and there should be facilities for cleaning and storing of those PPE.¹⁶⁷ In addition to these PPE should be replaced within a regular time of intervals and equipment's must receive regular maintenance and should be cleaned and tested after each application.¹⁶⁸

4.2.4. Medical Checkups

The employer has an obligation to arrange, according to the nature of the work, at his own expenses for the medical examination of newly employed workers and for those workers engaged in hazardous work, as may be necessary.¹⁶⁹ Personnel working in the spraying, mixing storing and handling of pesticides must be medically examined every 3 months and workers in the cultivation, harvesting and finishing sections should be medically examined once a year and at the beginning and end of their employment.¹⁷⁰ The findings must be communicated to the persons in a readily understandable form and a complete documentary record of such examinations must be kept.¹⁷¹

4.2.5. Provision of Welfare and Accommodation Facilities

The flower farm must have a suitable, clean, social and sanitary infrastructure which conforms to the requirements of its employees and is adequate to their numbers. Clean drinking water must be available during working hours, within a reachable distance from the working place; appropriate toilet, shower and hand washing facilities, should be provided and maintained in good working order; transport services and recreation areas should be provided to the workers.¹⁷²

¹⁶⁶ ERIPEA Code of Practice for Sustainable Flower Production, Version 4.0 Issue Date January 2015, p 69

¹⁶⁷ *Ibid*, p 69

¹⁶⁸ See FLP, *supra* note 161, p 9

¹⁶⁹ Labour Proclamation 377/2003, (Art.92 (3))

¹⁷⁰ FLP, *supra* note 161, p 71

¹⁷¹ *Ibid*, p 9

¹⁷² Federal Democratic Republic of Ethiopia, Occupational Safety and Health Directive, Ministry of Labour and Social Affairs, May 2008, p 105. See also *supra* note 166, p 72

4.2.6. Maintenance of Records and Statistics

Records and statistics of occupational safety and health activity will be maintained by organizations, including records of safe work procedures, safety training, inspections, and investigation reports. These records and statistics will assist in identifying trends, unusual conditions, and problem areas, and play an important role in identifying the underlying causes of workplace injuries and occupational diseases.¹⁷³ There should be a written procedure in place for recording accidents and the treatment applied and the records shall be reported to MOLSA (Wordsa Office) every 3 months.¹⁷⁴

4.2.7. First Aid

Organizations will ensure that first aid services are available and consistent with the requirements of the Occupational Health and Safety Regulation, which requires that employees be provided with prompt, easily accessible, and appropriate first aid treatment.¹⁷⁵ First aid facilities should be available at all operating sites where at least two persons trained in first aid procedure should be present. For emergencies and accidents, rapid medical attention and an appropriate first aid organization on site must be assured and the company has to arrange transport to the nearest hospital when necessary.¹⁷⁶

4.3. Definitions and Basic Concepts of Benefit of Employment Injury

In this sub-section it will be briefly discussed the meaning and some relevant issues that arise in relation with benefit of employment injury.

Injury can be comprehensive term for any wrong or harm done by one individual to another individual's body, rights, reputation, or property.¹⁷⁷ Injury also can be any damage to the body that might be caused by accidents, falls, hits...and other causes.¹⁷⁸ When we come to our point of

¹⁷³ Labour Proclamation 377/2003. (Art.92 (4))

¹⁷⁴ Version 4.0, *supra* note 166, p 72

¹⁷⁵ Global Horticultural Workers and Environmental Rights Network (GHOWERN), (2010), *Pesticides Exposure in Latin Americas Flower Export Trade, A Workers and Environmental Rights Journal*. Issue 01, Vol. 001, p 20

¹⁷⁶ See FLP, *supra* note 161, at p 9. See also version 4.0, *supra* note 166, p 7

¹⁷⁷ <http://www.thefreedictionary.com> visited on 10/17/15

¹⁷⁸ *Ibid*

discussion, employment/occupational/ injury can be defined as a damage resulting in relation with work.¹⁷⁹ Occupational /employment/ injury can be either employment accident or occupational disease.¹⁸⁰ Occupational accident is defined as "a discrete occurrence in the course of work which leads to physical or mental harm".¹⁸¹ The definition of occupational accident includes accidents occurring "while engaged in an economic activity, or at work, or carrying on the business of the employer".¹⁸² Occupational accidents arise from unsafe behavior and/or unsafe conditions of working. On the other hand, occupational disease is any pathological condition whether caused by physical, chemical or biological agents which arise because of the type of the work or the surrounding environment in which the worker is obliged to work.¹⁸³ Occupational disease shall not include endemic or epidemic diseases which are prevalent contracted in the area where the work is done.¹⁸⁴

Even though there are actions in order to prevent or avoid employment injuries, there will be an occurrence of injuries. When workers sustain employment injury, there is a remedy to redress the damage. Remedy can be understood to refer to 'the range of measures that may be taken in response to an actual or threatened violation of human rights'.¹⁸⁵ Remedy in its substantive sense, connotes the outcome of proceedings, and the relief afforded to the claimant which includes, but which is not limited to, *declarations, compensation and reparations*.¹⁸⁶ Workers compensation is a legal remedy whereby an employee who is injured on the job is automatically entitled to certain benefits.¹⁸⁷ The benefit can include medical care for the injury, indemnity wage benefits or death benefits.¹⁸⁸

¹⁷⁹ *Supra note* 177.

¹⁸⁰ Labour Proclamation No.377/2003.(Art 95(2))

¹⁸¹ European Commission, *European Statistics on Accidents at Work (ESAW) Methodology*, Doc. ESTAT/E3/45W/2001/1130,

2001, p 12

¹⁸² *Supra note* 177

¹⁸³ Labour Proclamation No.377/2003.(Art 98 (1) (a) (b))

¹⁸⁴ *ibid*, (Art 98 (2))

¹⁸⁵ Godfrey M Masika, The right to an effective remedy under the African Charter on Human and Peoples' Rights, *African Human Rights Law Journal*, vol 6,(2006) p 446

¹⁸⁶ *ibid*, p 446

¹⁸⁷ http://www.lawrefka.net/Downloads/CWC/Rights_and_Responsibilities.pdf. Visited on 10/18/2015

¹⁸⁸ *ibid*

Measures and strategies designed to prevent, control, reduce or eliminate occupational hazards and risks have been developed and applied continuously over the years to keep pace with technological and economic changes. Occupational accidents and diseases are still too frequent and their cost in terms of human suffering and economic burden continues to be significant.¹⁸⁹ ILO report estimated that 2 million occupational fatalities occur across the world every year the highest proportions of these deaths being caused by work-related cancers, circulatory and cerebrovascular diseases, and some communicable diseases.¹⁹⁰ Taking into account compensation, lost working time, interruption of production, training and retraining, medical expenses, and so on, estimates of these losses are routinely put at roughly 4% of global GNP every year, and possibly much more.¹⁹¹ The overall occupational accident and disease rates are slowly declining in most industrialized countries, but increasing in developing and industrializing countries, for example, in sub-Saharan Africa countries each year 54,000 workers die and 42 million work-related accidents take place that cause at least three days' absence from work due to employment injury.¹⁹²

¹⁸⁹ Benjamin, *supra* note 93, p 3

¹⁹⁰ *ibid.*, p 3

¹⁹¹ *ibid.*, p 4

¹⁹² *ibid.*, p 4

CHAPTER FIVE

THE LEGAL AND POLICY FRAMEWORK OF OCCUPATIONAL SAFETY AND HEALTH AND BENEFIT OF EMPLOYMENT INJURY UNDER ETHIOPIAN LEGAL SYSTEM

In this chapter different legislation, policies and codes of practices that have been enacted in Ethiopia to ensure the protection and the promotion of occupational safety and health, including benefit of employment injury will be discussed briefly.

5.1. The National Policy Framework

In policy wise the main one is the 2014 National Occupational Safety and Health Policy and Strategy (hereafter, Policy). The Council of Ministers in July 2014 by its 69th ordinary session have issued the Policy in compliance with the ILO Convention No.155 of 1981. The Policy has three chapters. Under chapter one, the vision, mission, aim, goals, principles and implementation areas of the Policy has been discussed.¹⁹³ The aim of the policy is to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment.¹⁹⁴

Under chapter two the Policy has dealt about the Policy focus area and strategies. In order to achieve the goal of the Policy, it has employed the following plans and strategy:-¹⁹⁵

- a) to develop the culture of prevention of occupational injury;
- b) to make occupational safety and health services accessible at work place;
- c) to strengthen the system of benefit/compensation of employment injury;
- d) to give technical assistance

Under chapter three it has discussed the system of implementation of the Policy, the role of stakeholders, and follow up and periodical review of the Policy.¹⁹⁶

¹⁹³Federal Democratic Republic of Ethiopia, National Occupational Safety and Health Policy and Strategy, June 2014, Addis Ababa, pp 4-5

¹⁹⁴*ibid*, p 4

¹⁹⁵*ibid*, p 7

¹⁹⁶*ibid*, pp 11-18

In addition to this policy, the Economic Policy of 1992 and the National Health Policy has clearly indicated principles that directly deal with the issues of occupational safety and health.¹⁹⁷

5.2. The Legislative Framework

We can find many proclamations, regulations, and directives that have been developed by the Ethiopian government in order to insure the good working condition of the workers in floriculture industry and therefore each employer should fulfill what the law requires.

5.2.1. The Federal Democratic Republic of Ethiopia Constitution

The FDRE Constitution is the supreme law of the land and any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect.¹⁹⁸ The FDRE Constitution has several articles pertaining to matters of Decent Work in general and of Safety, Health and Working Environment in particular. Art.15 (right to life), Art.18 (Prohibition against Inhuman Treatment), Art.25 (right to equality), Art.35 (Rights of Women), Art.36 (Rights of Children) have a substantial connection with the right to health. Article 42 (2) provides that workers have the right to reasonable limitation of working hours, to rest, leisure, to periodic leaves with pay, to remuneration for public holidays as well as *healthy and safe work environment*.¹⁹⁹ Under its Chapter Ten - National Policy Principles and Objectives, Article 89 (E) in relation to economic objectives, it states that, government shall endeavor to protect and promote the health, welfare and living standards of the working population of the country. However, it should also be noted that the provisions of Article 89 are like Directive Principles of Public Policy protecting right indirectly and cannot be invoked before courts of law. *what is your authority for this?*

Furthermore, the FDRE Constitution provides that all international agreements ratified by Ethiopia are an integral part of the law of the land.²⁰⁰ Ethiopia has ratified or accessed most of

¹⁹⁷ Dawit Seblewark, *Occupational Safety and Health Profile for Ethiopia*, October 2006, p 24

¹⁹⁸ The Federal Democratic Republic of Ethiopia Constitution, Proclamation No. 1/1995 (21st August, 1995), (Art.9 (1))

¹⁹⁹ Emphasis added

²⁰⁰ FDRE Constitution, *supra* note 198, (Art 9(4))

the international and regional human rights instruments²⁰¹ and due to this fact, all international and regional human right instruments are an integral part of the law of the land.

Therefore, we can argue that the FDRE Constitution has given a wider emphasis for the protection of workers right to health.

5.2.2. The Labour Proclamation

The Labour Proclamation No. 377/2003 is the principal national legislation on labour issues.²⁰² The Proclamation covers all establishments with one or more worker and addresses a wide range of issues such as employment relations and contracts, obligations of employers and workers, wages and working time, *working conditions and occupational safety and health, occupational injuries*, labour disputes and conciliation, labour inspection, giving inspectors wide-ranging duties and enforcement powers and prohibiting obstruction of inspectors in performing their duties.

This Proclamation has given a special attention to the safety and health of women and young workers.²⁰³ It is prohibited to employ women on type of work that may be arduous or harmful to their health (Art.87 (2)). Based on Art.170 (1) (d) of this proclamation, the Ministry of Labour and Social Affairs (hereafter MoLSA) have enacted a Directive to enlist works that are arduous or dangerous to the health and to the reproductive systems of women workers.²⁰⁴ Under Art.5 of the Directive, it has been provided that women should not be engaged in production, handling, packing or use (spraying) of pesticides or chemicals. In addition to these, a woman who works without sitting for a long time and who works in hot or cold areas shall have a special protection of safety and health (Art.6 of the Directive).

²⁰¹ Ethiopia had acceded to ICESCR in 1993 and CRC in 1991 without reservation, ratified CEDAW in 1991 with reservation to Art.29(1), and ACHPR in 1998.

²⁰² ILO, *Technical Memorandum: Ethiopia Labour Inspection Audit*, Labour Administration and Inspection Programme, Geneva, March 2009, p 2

²⁰³ See Labour Proclamation No.377/2003, (Art.87-88)

²⁰⁴ See Directive on Works that are Arduous or Dangerous to the Health and to the Reproductive Systems of Women Workers, Federal Democratic Republic of Ethiopia Ministry of Labour and Social Affairs, April 2005, Addis Ababa. (since the Directive is available in Amharic the translation is made personally)

Convention on the Rights of the Child²⁰⁵ Article 24(1), in which Ethiopia is a party, lays an obligation on States Parties to recognize the right of the child to the enjoyment of the highest attainable standard of health. In addition, Ethiopia has ratified two child right conventions issued by ILO (Minimum Age Convention, 1973 No. 138, and Worst Forms of Child Labour Convention, 1999, No.182).²⁰⁶ Under Article 36 (1e) of the FDRE Constitution, Children are entitled to be protected from social or economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health or physical, mental, spiritual, moral or social development. A child is any person who is under the age of 18.²⁰⁷ The Labour Proclamation has recognized the working capacity of young workers²⁰⁸ in activities which do not endanger the life or health of them (Art.89). MoLSA in pursuant to the duty given under Art.89 (4) of the Labour Proclamation has issued Directive on List of Activities Prohibited to Young Worker, in April 2005.²⁰⁹ Like women, young workers are not allowed to take part in works like, in rooms or stores which are too cold and in production, handling, packing or use (spraying) of pesticides or chemicals (Art.5 of the Directive).

Among other obligations, an employer shall take the following measures to safeguard adequately the health and safety of the workers:²¹⁰

- take appropriate steps to ensure that workers are properly instructed and notified concerning the hazards of their respective occupations and the precautions necessary to avoid accident and injury to health; ensure that directives are given and also assign safety officer; establish an occupational, safety and health committee;

²⁰⁵ Convention on the Rights of the Child, General Assembly, Res. 44/25, 44 U.N.GAOR, Supp. No. 49, U.N. Doc. A/44/734 (1989).

²⁰⁶ ILO Decent Country Work Programme 2014-2015, Ethiopia, p 28

²⁰⁷ *Supra note* 205, Art.1

²⁰⁸ "Young worker" means a person who has attained the age of 14 but is not over the age of 18 years. See Art.89 (1) of Labour Proclamation 377/2003

²⁰⁹ Federal Democratic Republic of Ethiopia, Directive on List of Activities Prohibited to Young Worker, Ministry of Labour and Social Affairs, April 2005, Addis Ababa. (since the Directive is available in Amharic the translation is made personally)

²¹⁰ Labour Proclamation No.377/2003. (Art.92)

- provide workers with protective equipment, clothing and other materials and instruct them of its use;
- register employment accident and occupational diseases and notify the labour inspection of same;
- arrange, according to the nature of the work, at his own expenses for the medical examination of newly employed workers and for those workers engaged in hazardous work, as may be necessary;
- ensure that the work place and premises do not cause danger to the health and safety of the workers;
- take appropriate ~~precautions~~ ^{precautions} to insure that all the processes of work shall not be a source or cause of physical, chemical, biological, ergonomical and psychological hazards to the health and safety of the workers;

In addition to taking main actions that has been listed above, the employer shall be liable for, all occupational injuries on workers and shall make a compensation, except those that are caused intentionally by workers in case of non-obedience to safety instructions, non observance of accident prevention regulation and injuries caused being intoxicated.²¹¹ It classifies "Occupational/Employment Injury" into *Occupational Accident*²¹² and *Occupational Disease*.²¹³

When an employment injury happened, then the employer will have;

- Special Obligations*: - to provide the injured works with first aid in time, to carry the injured worker by an appropriate means of transport to the nearest medical center, to notify the occurrence of the injury to the appropriate organ, the obligation to pay the funeral expenses where the worker dies as a result of an employment injury.²¹⁴

²¹¹ Labour Proclamation No.377/2003, (Art.95-112)

²¹² Means any organic injury or functional disorder sustained by a worker as a result of any cause extraneous to the injured worker or any effort he makes during or in connection with the performance of his work. See Art. 97 of Proclamation No.377/2003

²¹³ Means any pathological condition whether caused by physical, chemical or biological agents which arises as consequence of the type of work performed or the surrounding environment. See Art. 98 (1) (a) (b) of Proclamation No.377/2003

²¹⁴ Proclamation No.377/2003, (Art.104)

- ii. *Medical Benefits*: - the employer shall cover general and specialized medical and surgical care, hospital and pharmaceutical care, any necessary prosthetic or orthopedic appliances.²¹⁵
- iii. *Cash Benefits*: - Articles 107-110 has also clearly puts that the cash benefit that the worker ought to be provided i.e. periodic payment during temporarily disablement²¹⁶; disablement person (gratuity) compensation in case of permanent disablement and survivors' pension gratifyor compensation to dependant where the worker dies.

Where the injury results in temporary disability, namely, an injury that prevents the injured employee from rendering service for up to one year, the employee will be entitled to full wage for the first three months, not less than 75% of the monthly wage for the next three months; and at least 50% of the monthly wage for the remaining six months (article 108(2)); where the injury sustained by the worker is permanent total disablement, a sum equal to five times his annual wages (Art.109 (3) (a)); where the injury brings about permanent and total disability or death the employee or, as the case may be, their dependents shall be entitled to five years of the employee's wages to be covered by the employer (Art.110 (3)).

It is not only the employer that has an obligation in relation with occupational health and safety. Workers have also a duty to obey all health and safety instructions, proper use of PPE, reporting any possible hazard, inform to the employer any defect related to the appliances used. (Art.93)

There are two types of labour inspection system at Federal and Regional level. Labour inspectors at the federal level are required and empowered to supervise safety, health and working conditions at state owned enterprises operating in Dire Dawa and Addis Ababa while the regional labour inspectors have been assigned with similar tasks for private business enterprises operating in their respective regions.²¹⁷ Labour inspectors have the power to enter freely into

²¹⁵ Proclamation No.377/2003. (Art.105)

²¹⁶ The disablement (means any employment injury as a consequence of which there is a decrease or loss of capacity to work) may be categorized into four types, i.e. temporary disablement, permanent partial disablement, permanent total disablement and death.(

Proclamation No.377/2003. (Art.99)

²¹⁷ ILO, *Decent Work Country Profile Ethiopia*, 2013. p 43

work premises, powers of investigation, power of injunction and the power of instituting court proceedings against non-compliance with occupational safety and health requirements (Art.177-178).

The law as part of its implementation strategies has stipulated about the penalty which will be lodged upon the non-compliers of the law including those offenders due to violating of the provisions of the law pertaining to safety, health, working environment and fundamental rights at work places (Article 183-186).

5.2.3. The Public Health Proclamation

This Proclamation defined "Health" not only the absence of diseases but also the complete physical, mental and social wellbeing of an individual.²¹⁸ The inspector who is appointed by The Public Health Authority, has powers, without prior notice, to enter into premises to inspect matters that endanger the public health including those that affect the health of workers.²¹⁹ The other important issue which directly relate to occupational safety and health is that any employer shall ensure the availability of occupational health services to his employees (Art.11 (1) of Proc.No.200/2000).

5.2.4. Environmental Impact Assessment Proclamation

The Proclamation has set all the mechanism and steps to be taken in order to determine the project, or the would be production system can entail as a harmful effect on the entire environment in general and of the working environment in particular.²²⁰ Article 5 of this Proclamation provides for the determination of categories of projects requiring EIA. Accordingly, Directive No. 2/ 2008 was issued to determine the categories of projects subject to the Environmental Impact Assessment Proclamation No.299/ 2002. This Proclamation authorizes the Environmental Protection Authority²²¹ (now this power has been transferred to the Ministry

²¹⁸ See Proclamation No.299/2002. (Art. 2(3))

²¹⁹ Dewit, *supra note* 197, p 19

²²⁰ *Ibid*, p 20

²²¹ EPA was established pursuant to Environmental Protection Organs Establishment Proclamation No.295/2002

of Environment and Forest),²²² to issue directives that will help to select projects not likely to have negative impacts and that would not require environmental impact assessment, and projects likely to have negative impacts and requiring environmental impact assessment.²²³ Among these projects, *Horticulture and Floriculture Development for export* is the one among the 22 types of projects that require EIA.²²⁴ The directive needs any owner of project for which EIA should be done in order to identify the likely adverse impacts the project can bring to the environment, which includes the working environment.²²⁵

5.2.5. Pesticide Registration and Control Proclamation

The main objective of this Proclamation is to minimize the adverse effects of pesticides on human beings, animals, plants and the environment including the workers and occupational environment.²²⁶

On occupational safety, the proclamation provides that, no person shall require the employee to use the pesticide in a manner prescribed by this Proclamation or contrary to any condition attached to the registration of the pesticide and the employer shall provide facilities and protective clothing for the employee while he/she is handling or using the pesticide (Art.22). The employer shall provide the employee with relevant instructions which help the employee to handle or use the pesticide diligently, periodic medical checkups, expenses of medical and compensation for damage sustained (Art.22 (3)(a)(b)(c)). The proclamation also requires the assignment of Pesticide Inspector to carry different tasks in relation to the import, sale, and use ...of pesticides (Art.30 (1)).

²²² Pursuant to Definitions of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia (Amendment) Proclamation No.803/2013, (Art.2(6))

²²³ Malgout, *supra note* 16, p.255

²²⁴ See Directive No. 2/ 2008 issued to determine the Categories of projects subject to the Environmental Impact Assessment Proclamation No. 299/ 2002, item no. 6

²²⁵ E.O. Technical Memorandum Ethiopia Labour Inspection Audit, Labour Administration and Inspection Programme, 2008, p.20

²²⁶ See the Preamble of Pesticide Registration and Control Proclamation No.674/2010

5.2.6. Environmental Pollution Control Proclamation

The law deals with any pollution²²⁷ in whatever forms to be controlled if possible prevented from the source and it provides that enterprises and work places are responsible for controlling any type of pollutant generated in due course of their production services.

Based on Art.20 of this Proclamation, the Council of Ministers has issued "Council of Ministers Regulations on the Code of Practice of the Floriculture Sector No.207/2011", in order to improve the performance and market competitiveness of farms through the realization of environmental and social sustainability requirements.²²⁸ The Regulation has provided that any farm that has not obtained a certificate²²⁹ regarding its compliance with environmental and social responsibilities under these Regulations shall not engage in farming.²³⁰ Having the excellence of Bronze Level is the minimum standard for allowing production to continue under this Regulation, which implies that Silver and Gold Levels are optional to the farms (Art.5 of the Regulation). Among other requirements, assessing the risks related to environment and occupational safety, ensuring the provision of medical services at the farm place and maintaining good occupational health are the requirements in order to get the level of Bronze.²³¹ In addition to fulfilling the requirements under the Bronze Level, farms wishing to achieve compliance at the Silver Level are required to ensure to put in place an acceptable auditing system that allows periodic evaluation of its social and environmental management practices; comply with good practices on post-harvest practices and accepted pesticide residue levels (Art.6 of the Regulation). Farms wishing to achieve compliance at the Gold Level are required to demonstrate compliance with all the requirements of the Silver Level at the time of auditing for the Gold Level and have to support urban or rural local communities through financing demand driven skill enhancement programs, finance community, school environment clubs and other initiatives (Art.7 of the Regulation). Farms shall

²²⁷ Pollution is defined as "any condition which is hazardous or potentially hazardous to human health, safety, or welfare or to living things created by altering any physical, radioactive, thermal, chemical, biological or other property of any part of the environment in contravention of any condition, limitation or restriction made under this Proclamation or under any other relevant law". See Art.2(12) of Environmental Pollution Control Proclamation No. 200/2002

²²⁸ See Regulations on the Code of Practice of the Floriculture Sector No.207/2011. (Art.3)

²²⁹ "Certificate" means a document granted by the Authority attesting the level of social and environmental compliance of a farm with the Regulation and consists of a Bronze, Silver or Gold level of excellence.

²³⁰ *Supra note* 228, at Art.4 (1)

²³¹ *Ibid.*, at Art.5

There are also Codes of Practice that has been developed by the International Market Label. From these market systems, MPS (Milieu Project Sierteelt)²³⁷ is the main one and issues certificates for floriculture growers including MPS-ABC-environmental certification; *MPS-Socially Qualified*²³⁸ – for social aspects, such as safety, health and working conditions; MPS-GAP – certification for compliance with demands from the retail sector; MPS-Quality – quality care certificate; MPS-QualTree – proper quality and maximum reliability; ETI – Ethical Trading Initiative; ISO 9001:2000 – certificate in the field of quality care; and MPS-Florimark production – the TOP certificate for TOP companies with TOP products.²³⁹ These codes of practice can play a vital role in the protection of the safety and health of the workers if they are granted logically, and some Ethiopian floriculture farms have acquired these codes of practice.²⁴⁰

3.2.7. Occupational Safety and Health Directive

The mission of the Ministry of Labour and Social Affairs (hereinafter MoLSA) is to promote effective, healthy and peaceful industrial relations through promoting social dialogue and to ensure good labour administration, with occupational safety and health services at both national and regional levels.²⁴¹ MoLSA has several Departments, a broad mandates and organizational structure. Among these departments the Occupational Safety and Health and Working Environment Department (hereafter OSHWED) is the one which is entrusted with policy making functions and also responsibilities for the inspection publicly owned enterprises in Addis Ababa and Dire Dawa.²⁴² OSHWED is expected to compile national statistics from reports sent from Bureaus of Labour and Social Affairs (BOLSAAs, which is responsible for labour administration at regional level) and to hold a national register of occupational injuries and also have a duty to

²³⁷ MPS - 'Milieu Project Sierteelt' in Dutch it means 'Floriculture Environment Project'. It is a Dutch organisation that operates a suite of business to business labels, MPS ABC, MPSSQ and MPS GAP that set standards for and recognise social and Environmental performance at farm level. See www.my-mps.com. Visited on 10/09/2015.

²³⁸ This includes requirements on health, safety and terms of employment, and respect for universal human rights, the codes of conduct of local representative organizations, and International Labour Organization (ILO) agreements. See www.my-mps.com. Visited on 10/09/2015.

²³⁹ Maligeta, *supra* note 16, at p 285

²⁴⁰ EOPFA, *supra* note 234, p 166

²⁴¹ ILO, Technical Memorandum Ethiopia Labour Inspection Audit, Labour Administration and Inspection Programme, 2009, p 4

²⁴² ILO, *supra* note 225, p 9

undertake some impact assessment studies of labour policies, to help formulate better national standards and guidelines.²⁴³

MoLSA pursuant to the powers vested to it under Art.98 (3), 102 (1), 170 (1) (a-e) of Labour Proclamation No.377/2003, has issued Occupational Safety and Health Directive of 2008. This Directive lays down general duties of employers and the duties and rights of workers, and the need for certain organizational measures such as a safety and health policy and arrangements, and for personal protective equipment, measures for controlling a wide range of risks, such as those from chemicals, and the need to the recording and notifying of occupational accidents and diseases.²⁴⁴ In relation with Safety and Health in Agriculture, which includes Floriculture industry, the Directive has provided different obligations on the employer and the competent national authority, like an obligation to sound management of chemicals, the provision of welfare and accommodation facilities (safe drinking water, sanitary and washing facilities, transportation...), establishment of national system for occupational safety and health surveillance and other obligations.²⁴⁵

5.2.1. Ethiopian Horticulture Development Agency Establishment Council of Ministers Regulation

This Regulation establishes "Ethiopian Horticulture Development Agency" (hereinafter EHDA), which has an objective to ensure the fast and sustainable growth of export of horticulture²⁴⁶ industry by providing support in the area capacity building, marketing and investment promotion.²⁴⁷ EHDA have a mission to enhance the maximum contribution of horticulture exports to the rapid economic development of the country by capacity building, marketing and investment promotion with special focus on *good agricultural practices, code of conduct, social responsibility, safety, etc.*²⁴⁸

²⁴³ ILO, *supra* note 225, p 9

²⁴⁴ Federal Democratic Republic of Ethiopia, Occupational Safety and Health Directive, Ministry of Labour and Social Affairs, May 2008, Addis Ababa

²⁴⁵ *ibid*, p 102-103

²⁴⁶ "Horticulture" includes vegetables, fruits, floriculture and herbs; see Art.2 (1) of Regulation No. 132/2008

²⁴⁷ EHDA, *supra* note 3, p4

²⁴⁸ *ibid*

Here we can see that EHDA has a power to take an action on those farms that fall below the Bronze Level Certification.²⁴⁹ Since Bronze Certification requires the observance of assessing the risks related to environment and occupational safety, ensuring the provision of medical services at the farm place and maintaining good occupational health,²⁵⁰ EHDA indirectly have an obligation to ensure the protection of workers health in floriculture industry. However, based on the interview conducted with the EHDA horticulture expert, the Agency is currently focused on giving technical assistance to the farms and providing support in the area capacity building, marketing and investment promotion on horticulture.²⁵¹ According to the informant, the Agency is still reluctant on the promotion of good occupational safety and health practices in horticulture sector and needs ~~and~~ improvements.

5.2.9. A Proclamation to Provide for the Reorganization and Redefinition of the Powers and Duties of the Executive Organs of the Oromia National Regional State

Under Art.43 of the proclamation, the Region Labour and Social Affairs Agency (hereafter, the Agency) have been given so many powers and duties in relation with labour issues. The Agency have given the power to implement and cause to be implemented strategies, policies and laws issued concerning employees and employers, supervise and take corrective measures on those who violate these rules and directives cause to be taken (Art 43(1)). The Agency also undertake work condition control in public and private enterprises, take or cause to be taken corrective measures; undertake study on work condition, health, ... work environment and implement its results, cause to be implemented the same; follow up the implementation of work condition standard, control and take corrective measures(Art 43 (9), (10), (12)). The Agency has other OSH related provisions in addition to this. So the Agency is tasked with the protection and promotion of workers safety and health and it has its branch at Zonal and Wereda level.

²⁴⁹ See Art.15 (3) of Regulations on the Code of Practice of the Floriculture Sector No.207/2011

²⁵⁰ *Ibid* Art.5 .Also EHDA, *supra* note 3, at p.4

²⁵¹ Interview conducted with the horticulture expert of EHDA on 29/9/15

CHAPTER SIX

DATA ANALYSIS AND FINDINGS ON OCCUPATIONAL SAFETY AND HEALTH AND BENEFIT OF EMPLOYMENT INJURY OF FLORICULTURE WORKERS IN ZUWAY AREA

Introduction

In this final chapter the finding and analysis of the research will be revealed depending on both primary and secondary sources. The study have employed both qualitative and quantitative approach to data collection which are among giving out questionnaires, observations, interviews with farm managers and the concerned Federal and Regional organs, focus group discussions, has been utilized. Secondary source of information's has been also referred from documentary analysis, published/unpublished articles, internet sources, books.

Two different types of questionnaire have been developed in order to have a concrete and strong evidence for the research finding. To fill the first questionnaire, 360 workers were selected randomly in order to analyze the OSH condition of the workers at their respective farm. In the second questionnaire 65 workers who have encountered employment injury were sampled to learn the benefit of employment injury they have got. The respondents were from the whole farms and they have different work category, position, work experiences, educational background, age groups, marital status, and sex. Such type of diversified sampling will help to acquire different personal opinions, feelings, attitudes, unforeseen problems, and others. Interview, focus group discussion and direct personal observations have been used in order to cross check the findings that have been found through questionnaire. Analysis of court cases has been also made in order to assess the trend of benefit of employment injury.

The presentation of the finding and the data analysis of this chapter are structured into four main parts. The first section presents the general background information of sampled workers and the farm will be presented. These includes, the establishment, ownership, area of production, certification level, total number of workforce and types of products of the case study flower farms are presented. On the other hand the general background of respondents like their age, sex, marital and educational status, category of their task, work experience has been dealt. On the second section, the issue of occupational safety and health has been discussed by paying

attention to issues like regular medical check-ups, provision of training and awareness on safe use of chemical and pesticides and prevention of HIV/AIDS at work place, provision of PPE and their regular replacement, the availability of welfare and accommodation facilities. On the third section, the reality of benefit of employment injury has been presented by identifying the most common type of employment injuries, the kind of benefit of employment injury practically gained if any and discusses those impeding factors on the realization of benefit of employment injuries. At the end conclusion and recommendation has been followed.

6.1. Characteristics of the Farms and the Respondents on Occupational Safety and Health

All of the farms of the case study belong to foreigners, i.e. Holland. This is common in the Ethiopian floriculture industry in which they are mostly owned by foreigners or as joint ventures. The farms have been in the business for more than eight years. The total developed land varies from farm to farms. Shree Ethiopia Plc., which is the largest flower farm in Ethiopia, holds around 50ha of land.²⁵⁷ The type of flower they are producing is roses. The certification label which is given by the Ministry of Environment and Forest, EPHEA and International market have an important role on the protection of workers right, although there are some critiques on the certification level that farms acquire from the international market labeling system. Unfortunately, the proper authority which has been given the power to issue the labeling certification by Regulation No. 207/2011, i.e. the Ministry of Environment and Forest, haven't yet started issuing these certificate to any farms which are found in the country until this research has been finalized.²⁵⁸ The above certifications are certified by EPHEA and the international market. The case study farms have already employed more than 14,000 workers whether in temporary, casual or permanent way. (source?)

When we came to the demographic characteristics of the sampled workers they number around 30. Out of this number 66% of the total sampled workers are females while the remaining 34% of respondents are males. The sector is much related with gendered employment structure and associated with female dominance in number.²⁵⁹ The same trend has been figured on the sampled employees. The majority of respondents are found between the ages of 18-35 (73%). The

²⁵⁷ www.ephea.org, visited on 9/25/2013

²⁵⁸ An interview conducted with the legal officer of the Ministry of Environment and Forest on 7/11/15

²⁵⁹ Tewodros, *supra note* 2, p 18

remaining 25% are between 35-50 ages, 2% are greater than 50 and 0% below the age of 18 years, which is an indication of the absence of child labour in those farms. Table one also indicates that 60% of the respondents are single, 31% are married, 6% are divorced, and the 3% are widowed. From table 1, it can also be revealed that 47.5% of the respondents have attained primary level of education, while secondary level 39%, illiterate 10.5% and diploma 3%. Majority of the respondents have the working experience in their respective farms for about 1 up to 5 years (61%). This will help the outcome of this research since the respondents would hopefully have an exposure to the raised questions on the questionnaire. The remaining 35% have an experience below 1 year and the 4% have work experience more than 5 years. When we see the task of the respondents 39 % are green house workers, 29 % are packing workers, 23 % are sprayers, 6 % are cold room workers and the remaining 3 % are others which includes maintenance, security, installation workers.

6.2. Health and Safety Conditions of Workers at their Work Place

In this section the views of the workers on their occupational safety and health condition has been analyzed by taking different sub components of occupational safety and health elements.

6.2.1. Attention Given to Workers Occupational Safety and Health

In the simple study the majority of the respondents said that their employers do not pay attention to the OSH of its employees. About 157 (44%) out of the 360 respondents replied so. 28% of respondents said their farm have give an attention on its workers OSH somehow. The remaining 22% and 6% responded don't know and have given no response to the question, respectively. The interview and the focus group discussion that have been made with the workers also have strengthened these responses of the workers. They provided that most of the time their farm is concerned about the productivity and the quality of their flowers rather than the safety and the health of their workers. Even out of 101 workers who have said their farm give an attention to its workers safety and health, they have rated the attention given by their employer to workers OSH is poor (44%) and needs improvements while the remaining 37%, 8%, 7% have indicated the given attention as satisfactory, good and very good respectively.

6.2.2. Requirement for Regular Medical Checkups

The sample has revealed that 257 (71%) of the respondent replied the absence of regular medical checkups by their employer. Workers in the cultivation, harvesting and finishing sections should be medically examined once a year²⁵⁵ at the beginning and end of their employment and the findings must be communicated to the persons in a readily understandable form. A complete documentary record of such examinations must be kept. This fact is further concreted since 28% of the respondents replied as they don't know the presence of medical checkups. 18% said they had regular medical checkups and 3% have not given any response for the asked question.

On the other side employers have an obligation to conduct regular monitoring of workers' health and safety within a certain time interval. From those 64 workers who received medical checkups, 59% said they have those medical checkups with a six month of time intervals. The majority of the respondents, from the 59% who got regular medical checkups, are sprayers. The remaining 36% and 5% have indicated that they have been checked for medical every three month and every one year, respectively. Personnel working in the spraying, mixing storing and handling of pesticides must be medically examined every 3 months at least.²⁵⁶

6.2.3. Incidence of Work Related Health Problems

About 213 (59%) of respondents indicated as they experience some work related health problems like head/stomach ache, fainting, skin allergy, irregular menstrual flow, dizziness, some respiratory organ problems and others. While I was visiting the green house, it was too difficult to breath there. Since the area is found in the Great Rift Valley Region, there is the presence of a high amount of temperature even outside of the green house. Sometimes it reaches more than 38 °C during the off rain seasons. We can imagine how it will be difficult to work inside as such times. On focus group discussion some workers also indicated that the sprayed pesticides' will remain inside the green house due to the prevalence of high temperature in the area. From the total 360 respondents 13% have replied they didn't experience any work related health

²⁵⁵ See ILOPEA, supra note 234, p 9
²⁵⁶ See ILOPEA, supra note 141, p 9

problems while 16% and 12% have responded don't know and given no response to the provided question, respectively.

Case one: work related health problem

This is the case of a worker who works as a sprayer in Sher Ethiopia flower farm. He is a 33 years old who is married and has two sons. He told me that the chemical which he was going to spray was leaked on his left side of his face. Then his colleagues who were working with him noticed this and took him to the nearest Sher Hospital with ambulance. Even though he got some medical treatment from the hospital, his face was partially damaged. After having one month of sick leave he returned back to his previous working position. As he told me he couldn't resume his job because of the fact that when it approaches that working area, his injured part of his face will start itching automatically. Then the farm gave him some sick leave but when he started to discharge his task, the same type of irritation occurs again. He told me that he is in the same position and condition till now. In addition to the pain he is suffering from the burn of that chemical, he told me that he ~~was~~ ^{has} difficult to manage his family, since he is the ~~win-bread~~ ^{breadwinner} of his family.

6.2.4. Training and Awareness Creation

In developing countries, pesticides are generally applied by farm workers, many of whom have insufficient education and training in the different methods of application. The workers often lack awareness of the potential hazards and don't know how to use PPE properly. For this reason, an effective network of extension and advisory services, which provide technical advice on the safe use of pesticides, can be of great value in preventing health effects. Employees and their organizations must be consulted, informed and trained on health and safety matters. Information and training courses must be held periodically. New employees, including temporary and subcontracted workers, must be specially informed and instructed on the risks at the workplace. Especially, all spray operators must be thoroughly instructed and trained by a recognized institution or by specialists on the safe application and the risks of pesticides and chemicals.

Asked whether their employees gives and awareness on safe use and handling of chemicals, how to use PPE and awareness creation on protection of HIV/AIDS, 219 (61%) of respondents

revealed that their employers do not periodically train them on safe use /handling of chemicals, give them awareness on HIV/AIDS protection, and how to use PPE. The labeling and packaging of pesticides are often inadequate and inappropriate for the area where they are used. The advise is often written in a language that the user does not understand and the toxicity is explained poorly or not at all. As it has been indicated above, the majority of the respondents are on primary level of educational status and this implies difficulties in understanding the instruction guidelines on the safe usage of chemicals since they are written in English or other languages mostly. 67 (19%) out of the 360 respondents indicated they have been provided a training on the safe use/handling of chemicals, how to use PPE and HIV/AIDS protection training. 15% of the respondents said that they don't know about the issue and the remaining 5% of the respondents did not give their response to the presented question. On entering the service of the company and in regular intervals (at least every 6 months), all workers must be informed about the risks and safety measures relating to the pesticides and chemicals used in the farm.

6.2.5. Provision of Personal Protective Equipment's (PPE)

For the workers in the cultivation, harvesting and finishing sections the company shall provide free of charge suitable protective clothing appropriate for the task. Suitable and properly calibrated spray equipment must be used for the application of pesticides. Equipment must receive regular maintenance and should be cleaned and tested after each application. Approximately 154 (43%) from out of the total respondents reported that they were not given protective equipment, especially, those non-permanent workers are the most one. As it has been revealed by the interview, temporary workers are not given PPE like gloves and suits until they become permanent workers. In the green house I have personally observed that most harvesters use some materials like cartons and plastic as protective equipment in order to avoid a contact between the harvested flower and their skin. The workers are thus at risk of being exposed to the chemicals hence affecting their health. It is found that 136 (38%) of the respondents have reported that their employer provides them PPE. But according to the information gained from the interview and some personal observations, many pesticides are applied by people wearing inadequate or unsuitable clothing, which is frequently worn for extensive periods after being contaminated by pesticides. Moreover, in hot climates, protective clothing can seldom be used, because the temperature inside the clothing gets so high that the worker suffers. It has been also

witnessed that workers were not interested to wear the PPE due to the fact that they had not been trained in the use of PPE and its importance in protecting them from dangerous chemicals. 15 % of the respondent replied that they don't have any clue concerning PPE and their significance and 4% of the sample do not give any response to the asked question.

The other most pecuniary problem in relation to PPE is the absence of regular replacement of PPE. 42 (31%) out of 136 respondents told that the PPE (do not replaced regularly. 56 (41%) of them indicated the PPE are replaced between 3-6 month intervals. 13 % said every year and while the other 10% and 3 % told they don't know and gave no response respectively. In addition to these I have observed the less quality of those PPE that workers using while discharging their obligation. Most workers who work in packing house, for example, use medical gloves which can be out of use easily. The boots are made up of plastics and the suits which workers use while harvesting are torn apart and used on.

6.2.6. Provision of Basic Facilities

Employers shall provide to its workers those basic things like clean drinking water, toilets, sanitary and washing facilities, transportation and recreation facilities.

Clean drinking water must be available also during working hours, within a reachable distance from the working place. From out of 360 respondents 91 % of them told they are provided with clean drinking water. The remaining 5.5% said they are not provided with clean drinking water and 1% replied as they don't know about the case, 2.5% have not responded the question. What I observed here is that there is water which is available to the workers through pipe. But almost all workers brings a plastic (commonly known as "highland") in order to fetch the water from the pipe and drink. Some others use simply their mouth to drink the water, which can be suspicious for the transmission of some communicable diseases.

Concerning toilets, 78% of the respondent told that they have clean toilet while 18% said that they have no toilets and the remaining 4% told they don't know anything about the issue. It has been observed that due to the small number of the toilets, it was crowded during the lunch time and males use the female ones and vice versa.

In relation with sanitary and washing facilities 65% of them revealed that they have no this access. Personally I have observed that there are some shower rooms. But on the interview I have affirmed that those sanitary facilities like soap are mostly provided to sprayers than other workers. 30% from the total sample responded they have the provision of sanitary and washing facilities. But they told me that they are provided with soap once per month. In my opinion this is not sufficient in a work place where the temperature is high and the contact with chemical is more. The flower farm must have a suitable, clean, social and sanitary infrastructure which conforms to the requirements of its employees and is adequate to their numbers.

The other one is transportation. Transport if required to and from the farm has to be provided by the company, alternatively an allowance has to be paid. 94% of the respondents stated that they use no transport services which take them from home to farm-farm to home. Some farms have provided transport services after the workers have reached into the farm compound due to the remoteness of the working area. From the interview and focus group discussion it has been revealed that around 90 bir is paid per month as allowance of transport. 3% of respondents replied that they have transport service and also another 3% of respondents do not know the issue of transportation service.

Recreation centers are necessary for the well-being of any worker. It maintains the health and activities of the employees which indirectly enhances the productivity of the companies. 60% of out of 100 respondents said that they have no access of recreation centers. 20% of respondents told they have recreation centers while 16% and 4% filled they don't know and gave no response to the question respectively. Some workers have raised the problem in connection with recreation center that, since they are tight with their job in working days and have only one resting day, it is impossible to go there and take the advantage of recreating themselves due to lack of times.

At the end of the questionnaire, the respondents were asked to rate the working environment of their working area in relation with OSH. 40% of them rated that it is very unsafe to work in those farms. And also 42.5% of them rated their working environment as unsafe. Majority of them told that, they are working there not to die because of hunger. The wage they are getting is around 80 bir, which is around 28 bir after working for not less than 8 hour. So we can imagine how life is hard depending on such wages. Wage and health have a correlation. The more we get the more we are healthy, the less we get the less we are being healthy. 9% of them told their working

environment is safe and 2.5% of the total respondents told that they are working under a very safe working condition.

6.3. Response of Employers/Farms/ on the Occupational Safety and Health of Workers

In order to cross examine the workers response with their employer, some crossing questions have been asked and responded by the employers. Asked whether they have a direct or indirect concern for the safety and health of their employees, the employers told that they are deeply involved in the protection and promotion of their employees OSH. They said that they are taking active role for the betterment of workers safety and health by forming safety committees, which is made up of from different units. The committee meets between 15 days up to one month in order to discuss the challenge and prospect of OSH of the workers and assess the visible and imminent risks of any danger and takes immediate action. Here, I have requested the farms to meet me with their safety committee although they were not willful to meet me so. The committee also lacks well qualified personnel who are certified with health education as it has been revealed by the interview.

Regarding to programs on training and awareness raising activities which are pertaining to OSH, the employers told that they are actively engaging accordingly within the domain from 3 month up to one year. They told they are giving relevant trainings on issues like how to use PPE, how to handle/use chemicals/pesticides, prevention of HIV/AIDS, emergency issues, hygiene, and gender issues. On provision of PPE the employers responded that they are providing the necessary PPE with quality, which replaced with regular time intervals from 3-6 month. They told that they provide gloves, mask and filter, eye glass, boots, uniform and others.

On undertaking regular medical checkups for their employees, the employers replied that they give regular and scheduled medical checkups per every 3 month for sprayers and one year for the ordinary workers. Even though I have asked the farms to show me the compiled medical history sheet which shows medically checked workers, they have managed only to show me the blank form which is used to register the workers medical status.

In relation with accommodation and welfare facilities, all farms have indicated that they are providing the necessary clean drinking water, toilets, sanitary and washing facilities, transportation service and recreation areas.

In addition to the above listed measures, the employers told that they are taking actions on issues like elimination of hazardous child labour and women work, elimination of violence and sexual harassment at work place, application of ILO Code of Practice on HIV/AIDS at work place.

Generally, the employers told that they are actively engaging on the protection and promotion of the well-being of their workers. They further explained that they are working as per Ethiopian laws, regulations and international standards, which have been enacted to protect the OSH of their workers.

6.4. The Regional and Woreda Officials Response on Occupational Safety and Health of the Workers

In order to make the finding more balanced and concrete, I have made an in-depth interview with the Oromia Region Labour and Social Affairs Agency (Agency) and the Labour and Social Affairs Bureau (Bureau) of Bata town. Both organs told that they are working to safeguard the safety and health condition of the workers in the study area with the challenges. They inspect the working condition of the worker by checking the provision and quality of PPE, giving training on issues of OSH to the safety committees, labour unions, examining the weakness and the strength of the farms in connection with OSH and give recommendation if required so etc.

These two regional organs told that they depend on Labour Proclamation 377/2003, the 2008 Occupational Safety and Health Directive and Proclamation No. 163/2011 (Labsii Lak.163/2003), while discharging their responsibility.

They said that from the whole study area farms, only few of them are working by adhering themselves to the laws which have been enacted to ensure the safety and health of the workers. They have listed a lot of challenges in relation of discharging their task. The Wereda Bureau told that they haven't any legal officer who is in charge to solve some workers complaints according to the law. Especially, most members of the Bureau are qualified with unrelated educational level, like qualification in physics, mathematics or linguistics rather than the required qualification like having background on health, law and other related educational background. The farms have well qualified lawyers and easily win any court cases against the workers, the Agency or the Bureau by using this advantage. According to the view of the Wereda labour

inspector, the shortage of qualified manpower is the main challenge to train the workers on OSH and to inspect the working condition.

Both the Agency and the Bureau also indicated that there is no the required laboratory in the Woreda or regional level, which use to examine the effect of the chemical/pesticide on the working environment.

The Woreda interviewee also added that the Bureau practically lacks the budget, the motivation and the authority to supervise and control the flower farms which are found in the Woreda. They said that there is only one labour inspector in the Woreda in a condition where there is no transport facility to go and inspect the farms, scarcity of budget to give trainings on OSH to the workers. Authority wise the Bureau do not have enough power to implement the recommendation and decision it gives to the farms on OSH of the workers. The flower farms usually undermine the recommendation of the inspectors. The cumulative effect of all these challenges is killing the motivation of the Bureau workers in protecting workers health and safety. So the Agency and the Bureau are facing a problem to supervise, follow and evaluate the safety and health condition of the workers in the case study farms.

The other main loophole that has been observed on these regional organs is that they haven't a coordination/networking with themselves starting from the Woreda-zone-regional level. Even there is no as such the required cooperation between the Agency and MoLSA at the higher level. For instance, the researcher has requested the number of those workers who encountered employment injury (flower farm workers only) from the Agency and the MoLSA. Even if the law requires them to present such type of statistics they couldn't show me accordingly, whether it was denied intentionally or practically it was not available. This shows clearly the absence of coordination between the stakeholders while discharging their obligations.

6.5. The Condition on the Right to Benefit of Employment Injury

This section presents the second element of the research, i.e. the benefit of employment injury. Like the previous section, around 65 questionnaires have been developed and distributed for those workers who have encountered employment injury only. The objective that the writer selected only those workers who encountered employment injury is that it is only them who are entitled to get benefit of employment injury rather than those ordinary employees.

4.3.1. Characteristics of Respondents

The respondents used to work or are working in different farm of the case study area and they have different work category, position, work experiences, educational background, age groups, marital status, and sex. Interview with the workers and some physicians who renders medical service in the research area and direct personal observations has been used in order to cross check the findings that have been found through questionnaire. Analysis of court cases has been also made in order to assess the trend of benefit of employment injury before courts.

The main focus of this section is to assess the benefit of employment injury workers get when work injury happens on them. The section is divided into main part. The first part of this section describes the general background of the respondents and the second section will include different issues like the type of employment injury the respondents encountered, the availability of first aid of medical when those employment injury happens, the type benefit of employment the respondents got from their employer, if they didn't get the benefit- reasons why the respondents could not to have those benefit of employment injury will be presented briefly.

Almost the numbers of male and female respondents were equal out of the 65 sampled workers (51% male and 49 % female). The majority (88%) of the respondents were found between the ages of 18-35. The remaining domain is those workers between the ages of 35-50 (12%). From the sampled workers there was no any worker who is below 18 years of age and above 50 years of age. When we see the marital status of the sampled workers 57% are married, 34% are single, 6% are widower/ed, and the remaining 3% are divorced one. The educational structure of the respondent also found in three different variations. Among the sampled injured workers, 62% of them have attended the primary level, 20% of them have never gone to formal schooling (illiterate), and the remaining 18% of them were completed the secondary level. There is no any sampled respondent who have been certified with diploma or degree of educational background. The higher number (38%), are/were working as sprayers, chemical mixers, store keepers and supervisors of sprayers. Green house workers, which include harvesters, irrigation workers, seeders, are account 33% of the respondents. Packing (including grading and arranging) and cold room workers hold 20% and 6% of the respondents, respectively. The remaining 2% are different working departments, like maintenance, construction and installation workers. Regarding the work experience of the sampled groups, about 60% of them had work experience between 1-5

years. About 22% of them had more than 5 year of work experience while the remaining 18% of them had less than 1 year work experience in their respective flower farm. Concerning the wage they earn, 60% of them paid between 500 and 1000 birr per month. In all farms I have tried to witness that the majority of the ordinary (non staff) workers earn around 850 birr per month. The most wondering and paradox nature of the salary payment among those flower farm workers is that there are some staffs who are paid up to 54,000 birr per month. Also from the interview, it has been revealed that there are some employees who earn up to 25,000 birr per month by simply working as public relation officer. We can say this safeguarding the few by suffering the mass! 34% of the respondents were paid between 1000-2000 birr, which most of them are sprayers. Unfortunately, there was no any respondent who were paid above 3000 birr per month. This is, even, true for the whole ordinary workers who work there whether as permanent, temporary or casual. When we see the duration of the working hours, 40% of them work for 8 hours. 35% of respondents work for less than 8 hours per day, in which the majority of them are sprayers since they finish their task between 3-4 hours. 23% of the sampled workers are working or used to work for more than 8 hours, especially Sher Ethiopia farm workers. They are required to avail themselves for work at 12:00 in the early morning and finish their task around 9 o'clock in the afternoon, which is more than the legally required 8 hours. Some interviewed workers told that this over load working time is hindering them from taking enough rest, which directly affect their health by being more stressed. Some women also told me that this is preventing them from feeding properly their sons and even themselves since they are required to enter for the job in the early time.

6.5.2. Benefit of Employment Injury

In this subsection it will be discussed those factors which have a direct correlation with the issue of benefit of employment injury. It starts from identifying the most common type of employment injury that respondents faced and ends with identifying those impeding factors which blocked the respondents to realize their benefit of employment injury.

6.5.2.1. Type of Employment Injury

As it has been discussed in Chapter Two, the floriculture sector is blamed for its negative impact on the workers' health. Because of the intensive utilization of chemicals, pesticides, fungicides

and fertilizers, workers are exposed for some occupational injuries. In the sample study, over 22% of respondents indicated that they have faced a respiratory problem due to their job. In the interview they told me that those respiratory problems are associated with their lung, throat and nose problems. They have revealed that they are in difficulties to breathe most of the time and get themselves in critical condition. They unable to inhale and exhale when they feel a little odor/mist of the chemical at work place and because of this fact they are obliged to make an absent from work most of the time. The effect of the chemical and the pesticide further worsened by making workers to faint/unconscious for certain period of time. 12% of the respondents have such type of health problems while they are working or at home. The majority of the respondents revealed that they have encountered skin allergy/infection because of their daily contact with chemicals and due to the absence of provision or regular replacement of PPE. Through observation of those respondents I have learnt that they have faced skin related health problems on their body parts like elbow, face and neck region. As it has been identified by other countries research, example in Kenya floriculture workers, 7% of female respondents told that they have experienced miscarriage of pregnancy. 14% of the respondents have lost either one or two of their eyes. Most of them were from spray units. The remaining 15% of respondents have encountered different type of work injuries like loss of fingers, being broken their hand or leg and those workers were from the section of maintenance, construction and installation of green house. In an interview conducted with some physicians who run their own clinics in the area, they told me that sometimes workers of flower farms visit their clinics for treatment. The majority of the workers as the researcher ascertained from focus group discussion do not have a trust on the medical services that have been being provided by the farms. They said that "...the farm clinics/hospitals rather than conducting the proper medical investigation/examination they make the case very simple and gave us anti pains or paracetamols and tell us to return back to work!" That's why workers are persuaded to visit private clinics at their own cost. Those private clinic physicians told me that the flower farm workers, who usually came, are mostly affected with respiratory disease, skin allergy. They told that such type of health problem is prevalent on flower workers than the surrounding community. They strongly believe that the disease and the working environment have a direct cause-effect relationship.

In connection with those employment injuries, asked whether they have got first aid, 42% of them responded positively. The writer personally observed that all farms have mini clinic to

handle if any employment injury happens. Sher Ethiopia Farm, for example, have its own hospital which renders a medical service to its (also other farm) workers and to the surrounding community at large. Such type of activity can be an exemplary to other farms even which are found outside of the study area. 18% of respondents indicated they didn't got any medical first aid when they encountered the employment injury. This can be from the negligence of the concerned organ not to act accordingly or the failure of the worker to report the case to the concerned one. The remaining 26% didn't have given any response to the provided question and 14% of respondents don't know the issue of first aid. From the respondents evidence, the type of employment injuries that immediately happened at work place are respiratory problems, fainting, loss of eye, and other body injuries.

Case two: The Story of a Respondent Who Lost his Eyes by Chemical

The story is about a 32 year old sprayer from Sher Ethiopia Farm Plc. He is married and has one daughter. The employment injury ^{occurred} ~~was happened~~ three years ago while he was mixing a chemical in order to spray on the flowers. He said that while he was mixing a chemical, a tiny amount of chemical accidentally poured around his eyes. He started yelling for help to his colleagues who were working with him. He remembered that he couldn't see anything at that moment and he ~~As~~ burnt his eyes like in a way he never experienced before. Then he said that they brought him to Sher Ethiopia Hospital. After having a first aid there, he was transferred ^{to} ~~in~~ Betezata Hospital in Addis Ababa and then referred to Minilik Hospital. Unfortunately, the diagnosis he took couldn't restore his eye sight. He lost both of his eyes and currently he is led by his younger brother. Asked why he didn't wore a face mask at that time, he told me that they were provided with only respirator, boots and spray suits in the time of injury. He said that "...my employer after treating me in those hospitals, they get rid of me as a trash. They have tried a lot to convince me as the injury is not related with employment injury. They even don't want to see me around Zeway in fear of losing their good name!" Right now he is trying to reach the Human Right Commission of Ethiopia and the office of Ombuduman in seeking of any legal assistance from the organs.

4.5.2.2. The Kind of Benefit of Employment Injury Gained

When the workers faced any employment injury, they are entitled to the following benefits based on the degree of their disablement: - medical benefits, cash benefits, both medical and cash benefits, or even to cover the funeral expenses of the worker die.

From the sampled injured workers 41 (63%) of them indicated that they haven't got any benefit either medical or cash benefits. 33% (23) of the respondents told they have received either medical/cash or both medical/cash benefits. Only 2% of the respondents said don't know about the concepts of employment injury benefits. From the total number i.e.23, who replied as they have received benefit of employment injury, 18 (78%) of them said they received only medical benefit, 2 (9%) of them said they received only cash benefits and 3 (13%) of them told they got both medical and cash benefits. The data infers that majority of the farms are willing to give only medical benefit which mostly rendered by their clinic or Sher Ethiopia Hospital. As some workers pointed the employers are not willing to pay cash benefits. They said that the employers are mostly obliged to pay cash benefits only after they are sued before the court and if the decision is in favor of the worker, which is a rare case.

From the 65 respondents, 41 (63%) of them told that they haven't got any benefit of employment injury. Asked whether they have sued their employer for not fulfilling those benefits, 21 (52%) of them responded negatively. On the focus group discussion they have raised so many grounds for not suing their employer before the Wereda Court. First they told that they don't have a trust on the judiciary of the Wereda since it was Sher Ethiopia Farm which built the court building freely. Personally I have observed and confirmed that the court was built by Sher Farm. It was built in a better way than most Wereda courts of Oromia Region. This researcher doesn't criticize such type of positive activities by corporates since it benefits the majority. But, in unforeseen way it has eroded peoples trust over the judiciary. Secondly, the respondents mention that the legal procedures to prove the employment injury, degree of disablement and others are very cumbersome and complex. For example, they told that they are required to bring evidence like witness or medical evidence. The witnesses most of the time are those colleagues who work with the injured at the same firms. If they give their testimony against the farms, they fear that they will be fired automatically from their job. In fear of this it is difficult to produce witnesses before the court. 16 (39%) out of the 41 said they have tried to sue their employer before the

court. The main problem here the respondent raised is that the farms have well competent attorneys which can win the case against them easily. I have the chance to study some employment injury cases that has been raised between the flower farms and their employees. As respondents said the attorneys of the farms come from Adama, who are more experienced and easily win the cases. Most of the files which I have studied are decided in favor of the farms. Even the workers are required to refund the loss the farm sustained in the course of the litigation. Secondly, the respondents told that it was impossible to produce medical evidence, including degree of disablement since they are attended from Adama Hospital or Black Lion Referral Hospital. They said that it needs a lot of transportation cost to visit those hospitals so many times and also the hospitals have a complex bureaucracy to give the medical evidence. 4 (10%) of the respondent don't know the existence of such type of remedy for them.

Case Three: A Scenario of the One Who Lost his Three Fingers

This is a worker from Harburg Flower Plc., who is aged around 26. As he told me he was plowing a land using tractors in order to seed flower. He was an assistant to the driver of the tractor. In the middle of plowing the tractor stalled and the driver ordered him to check the material which used to plow. While he was checking that, the sharp metals which were he was chucking fell on the ground cutting his three fingers. After given first aid the employer took him to Sher Hospital. After having the medical aid they managed to stop the bleeding even though it was painful. After he recovered from the injury the employer told him to return ~~back~~ to the work unless, they are going to replace another person on behalf of him. He opted to work on his previous position by remaining silently rather than losing his job. Asked why he don't tried to secure his benefit of cash by suing the employer before the court, he said he don't have any idea about the cash benefit he is entitled by the law.

6.5.3. Employers Response on Benefit of Employment Injury

Some relevant questions that used to assess the condition of benefit of employment injury in were asked to the employers.

Asked whether their employees have ever experienced any employment injury, the employers told that their employees have faced some minor and/or major employment injuries while discharging their obligations. They told that they have a system of reporting and notification of

any employment injury and the injury will be collected, recorded, organized and utilized for different purpose.

All employers indicated that they are providing/ will provide compensation for workers who have sustained employment injury. The writer have requested the employers to bring me the statistics of those compensated workers in order to cross-check what they have been said and to learn the provision of benefit for those injured workers. Unfortunately, none of the employers could provide the statistics due to, whether intentional refusal or they may not have such type of record keeping system.

Asked whether they have been sued by their employees for lack of compensation for work related injuries, most of the employers replied that they were not before any court for litigation for such type of cases. They said that most of the time they have been sued on the issue of termination of employment contract, rather than benefit of employment injury. The employers presented that they provide/ are providing medical assistance or compensation, or both to their employees based on the injury happened.

Generally, the employers have indicated that they are much concerned about the health and safety condition of their workers, primarily. They told if there is any employment injury happens, they are ready to assist the injured one as they used to do. They explained that they are accepting, the view, suggestions, and comments of their employees in relation with how to promote and develop OSH of the workers. They further indicated that they are open to accept the complaint or dissatisfaction of any workers view on the benefit he/she have received because of the employment injury he/she has suffered.

CHAPTER SEVEN

CONCLUSION AND RECOMMENDATION

7.1. Conclusion

Although floriculture sector is one of the newly emerging industries of Ethiopia, it has booming from time to time and ranked Ethiopia the second largest rose producer in Africa. The industry has a vital role in generating employment opportunities, generating foreign currency, expansion of infrastructures and others.

Despite these advantages, there are some concerns in relation to the industry effect on the working condition of the workers and its environmental pollution. This study was aimed to investigate the occupational health condition of the floriculture workers and the benefit that they get when the workers encounter any employment injury at the case study farms.

In relation with workers health and safety, the high chance of workers exposure to chemicals and pesticides were observed. Most of the time workers do not follow safety instructions because of lack of instruction from their employers and also they are not regularly informed about health risks and the necessary precautionary measures they need to take as a result of coming into contact with chemicals and pesticides. The inadequacy and sometimes lack of PPE with their non regular replacement is also another key problem of the workers. Workers do not usually use PPE even if they are provided sometimes, due to the presence of high temperature in the area and the lack of the knowledge on the effect of not using the PPE on their health. The absence of regular and proper medical checkups for employees were habitual behavior of employers in the case study area. Lack of trainings on using/handling of chemicals/pesticides, awareness on prevention HIV/AIDS protection, proper utilization of PPE were revealed by the study. The cumulative effect of all these have made workers to expose themselves to different kind of health problems as it has been discussed above.

When we come to entitlement of benefit of employment injury, the study has indicated that it was challenging for the workers to guarantee their right. The unproportional bargaining power between the employer and the workers were the main reason which hinders workers from securing their benefit of employment injury. The employers were empowered with well qualified

layers, which can win any case easily. In addition to this, loss of confidence over the judiciary by the workers was another challenge in realizing benefit of employment injury.

Institutionally, the labour and social affair officers that have been found in Federal, Regional and Woreda level have tremendous loopholes. First of all they haven't the required coordination among themselves. Secondly, especially the regional and the Wereda labour offices, do not have the necessary budget, motivation and authority to discharge their obligation. There is a logistic and expert lacuna in those offices and also the flower companies do not implement the recommendation they have been given by those organs.

The employers are not concerned about the safety and health of the workers and do not adhere themselves to the laws and code of practices that has been enacted to safeguard the right of the workers. Employers seldom report the occurrence of employment injury to the concerned organ and they are not working as the law required. The government is violating its obligation to protect its citizen from the infringement of the right to health by the third party since it is not taking the required action against those flower farms.

Due to all the above facts, we can strongly argue that the worker's safety and health, which equate with their human right to health and benefit of employment injury is in danger, and needs to be given a due attention.

Methodological gap
① Trade union leaders view
and Ministry of Agriculture's view
is not included!!

7.2. Recommendations

Any development or civilization cannot be attained at the cost of or by sacrificing the human right of the citizens. Even, these weaknesses might hamper the future growth of the sector if they are not quickly addressed. Because of the prevalence of wide range of deficits, no single initiative may effectively and efficiently resolve the problems workers experienced in the floriculture sector in relation with condition of their right to health and benefit of employment injury. Based on the findings of the study, the following actions should be taken in order to promote and enhance the right to health of the workers and to safeguard the benefit of employment injury :

- As a matter of urgency, the government shall intervene and investigate the working condition of those flower workers through inspection and investigation and shall enforce those relevant international, regional and domestic laws in order to enhance the right to health and benefit of employment injury of the workers;
- The provision of PPE with the necessary quality and its regular replacement should be provided by the employers to the employees;
- The proper training on how to use/handle pesticides/chemicals, awareness on the protection of HIV/AIDS, how to use PPE shall be addressed to the workers; *- is this a problem in your study?*
- Regular medical checkups shall be conducted to the employees with in the required period of time in order to maintain the wellbeing of the workers;
- Workers shall be granted an awareness or should be made to know their fundamental right in relation to the working condition, which help them to exercise their right without depending on external bodies;
- The strengthening and enhancing of implementation capacity of the labour and social affair organs shall be made soon with the allocation of enough budget, qualified experts, and the required authority;
- There should be a good networking/coordination among the Federal-Region-Zone-Wards labour and social affair officers while discharging their task;
- Regulations on the Code of Practice of the Floriculture Sector No.207/2011 shall be awaken from the edge of death and should implemented soon;

- Non-Governmental Organizations (NGOs) should take an active role ⁱⁿ ~~at~~ creating awareness on OSH to the workers and further shall advocate for those who have suffered employment injury.

Further research on the occupational health condition of workers and benefit of employment injury on these flower farms which are found in other areas shall be made in order to have general and uniform information about the issue.

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Copy Cases?

Appendices

I. Appendix 1- Questionnaire to Collect the Necessary Information on Occupational Safety and Health

Good morning/Good afternoon! My name is Esbetaltes, I am from Addis Ababa University who is an LL.M candidate. The main objective of this study is to evaluate **workers condition of occupational safety and health and to examine the benefit that the workers really receive when they have sustained employment injury**. The collected information will also help to cross check the adherence of government and flower farms to the laws that have been enacted or unified in order to protect and promote workers right to health and benefit of employment injury, in case employment injury happens. By providing me reliable information you will significantly contribute to the betterment of the protection of your occupational safety and health and can advance your right access to benefit of employment injury! PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE. IT IS NOT MANDATORY TO WRITE YOUR NAME. The information is for research purposes only and I assure you that none of it will be passed on to employers or to anyone else for the sake of confidentiality. We cordially request you to answer the below questions related to you or which concerns you! Thank you in advance for your cooperation!

Section one: - General Information

1. Name: _____
2. Sex: 1) Female _____, 2) Male _____
3. Age _____
4. Marital status:
1) Single _____, 2) Married _____, 3) Divorced _____,
4) Widow/Widower _____

5. Educational status

- 1) Illiterate _____, 2) Primary _____, 3) Secondary _____,
4) Diploma _____, 5) Degree _____ 6) Other (Please

specify) _____

6. Home area _____

7. Area of job/ job title _____

8. Date of first employment by your current employer _____

Section Two: - Questionnaire on Conditions of Occupational Safety and Health

9. Does your current employer give attention in the area of safety, health and working conditions of workers?

- 1) Yes _____ 2) No _____ 3) Don't know _____

4) No response _____

10. If Yes for question no 9, how do you rate it?

- 1) very good _____ 2) Good _____ 3) Satisfactory _____

4) Poor _____ 5) No Response _____

11. Do you have a regular medical checkup which is rendered by your current employer?

- 1) Yes _____, 2) No _____, 3) Don't know _____ 4) No response _____

12. If your answer is Yes for question no 11, in what time of intervals it is given?

- 1) Every One Month _____ 2) Every three month _____ 3) Every six month _____ 4) Every one year _____

13. Have you ever experienced any work related health problems after you have started working for your current employer?

Yes _____ 2) No _____ 3) Don't know _____ 4) No response _____

14. If your answer for question number 13 is Yes, can you list below the type of work related health problem's /disease that you have encountered?

- i) _____
- ii) _____
- iii) _____

15. Does your current employer provide you a training, awareness creation and capacity building on occupational health and safety programs such as training on general health and safety, safe use/handling of chemicals/pesticides, awareness on protection of HIV/AIDS, how to use PPE, first aid etc.?

1) Yes _____ 2) No _____ 3) Don't know _____ 4) No response _____

16. If Yes for question number 15, can you list me the type of issues that were covered during the training?

- i) _____
- ii) _____
- iii) _____

17. Does your current employer provide you with personal protective equipment tools like spray suit, gloves, boots, respirator, face shield and others?

1) Yes _____ 2) No _____ 3) Don't know _____ 4) No response _____

18. If your answer is Yes for question number 17, how often are they replaced?

- 1) Every 3-6 month _____
- 2) Every one year _____
- 3) Not replaced regularly _____

4) Don't know _____

5) No response _____

14. Does your current employer provide you the following welfare and accommodation facilities like:-

1) Clean drinking water? 1) Yes _____ 2) No _____ 3) Don't know _____

4) No response _____

2) Toilet? 1) Yes _____ 2) No _____ 3) Don't know _____ 4) No response _____

3) Sanitary and washing facilities? 1) Yes _____ 2) No _____ 3) Don't know _____

4) No response _____

4) Transportation? 1) Yes _____ 2) No _____ 3) Don't know _____ 4) No response _____

5) Recreation facilities? 1) Yes _____ 2) No _____ 3) Don't know _____ 4) No response _____

18. How do you rate the safety and health condition of your current farm place?

1) Very safe _____ 2) Safe _____ 3) Unsafe _____ 4) Very unsafe _____

20. Do you have any suggestions or comment that you want to add or to tell concerning occupational safety and health at your current work place?

B. Appendix 2- Questionnaire to Collect the Necessary Information on Benefit of employment Injury

Good morning/Good afternoon! My name is Esbetulko. I am from Addis Ababa University who is an LL.M candidate. The main objective of this study is to assess workers condition of occupational safety and health and to examine the benefit that the workers really receive when they have sustained employment injury. The collected information will also help to cross check the adherence of government and flower firms to the laws that have been enacted or ratified in order to protect and promote workers right to health and benefit of employment. By providing me reliable information you will significantly contribute to the betterment of the protection of your occupational safety and health and can advance your right access to benefit of employment injury! PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE. IT IS NOT MANDATORY TO WRITE YOUR NAME. The information is for research purposes only and I assure you that none of it will be passed on to employers or to anyone else for the sake of confidentiality. We cordially request you to answer the below questions related to you or which concerns you! Thank you in advance for your cooperation!

Section one: - General Information

1. Name: _____
2. Sex:- 1) Female _____, 2) Male _____
3. Age _____
4. Marital status: 1) Single _____, 2) Married _____, 3) Divorced _____,
4) Widow/Widower _____
5. Educational status
1) Illiterate _____ 2) Primary _____ 3) Secondary _____ 4) Diploma _____
5) Degree _____ Other (Please specify) _____
6. Home area _____

7. Area of job/ job title _____
8. Date of employment for your current/employer _____
9. How much hier you earn/were earning from your current employer per month?

10. How many hours do you have to work per day to receive the daily wage you have answered in question 9 above? _____ hours.

Section Two: - Questionnaire on Benefit of Employment injury

11. When did you got or sustained employment injury?

12. What type of employment injury you were encountered?
1) Skin allergies _____, 2) Respiratory problems _____,
3) Unconsciousness/Fainting _____, 4) Miscarriage _____,
5) Loss of eye _____, 6) Others (please specify) _____
13. If the injury was happened at work place, have you been provided or assisted with the first aid while you got sick or injured?
1) Yes _____ 2) No _____ 3) Don't know _____ 4) No response _____
14. Have you got any benefit of employment injury after you encountered the employment injury?
1) Yes _____ 2) No _____ 3) Don't know _____ 4) No response _____
15. If "Yes" for question no.14, what type of benefit you got from your employer?
1) Medical Benefit _____ 2) Cash Benefit _____
3) Medical and cash benefit _____, 4) Other benefits if any _____

16. If your answer for question "No".14, have you tried to sue the firm in front of legal court to secure your benefits of employment injury?

1) Yes _____, 2) No _____, 3) Don't know _____,

4) No response _____

17. If your answer for question no.16 is "No", can you tell me the reason/s that hindered/blocked you from doing so?

1) _____

2) _____

3) _____

18. Do you have any suggestions or comment that you want to add or to tell to this researcher?

III. Appendix 3- Interview Questions for Farm Managers/ Key Informant Interview Guideline

Good morning/Good afternoon! My name is Eibetelbeo. I am from Addis Ababa University who is an LL.M candidate. Right now I am gathering a data for a study to assess the workers condition of occupational safety and health and to know the benefit that the workers really get when they have sustained employment injury. The purpose of this research is to check the adherence of government and flower farms to the laws that have been enacted or ratified by Ethiopia in order to protect and promote workers right to health and benefit of employment injury, in case employment injury happens. By providing me reliable information you will significantly contribute a lot for the protection your labour force wellbeing, which indirectly enhances the productivity and efficiency of your farm! We cordially request you to answer the below questions related to your or which concerns you! Thank you in advance for your cooperation!

Name of the Farm/ Association _____

Position/ Job title/ Responsibility of the data source in the farm _____

Address: Region _____, Zone _____, Wereda _____

Tel _____, e-mail/website _____

Issues to be discussed in Relation to Occupational Safety and Health and Benefit of Employment Injury

1. When was your farm established?
2. What is the total number of your employees?
3. Does your farm have direct or indirect concern in the area of safety, health and working conditions of its workers?
4. If Yes for question no.3, how do you involved in the area of safety and health of the workers? And how far is your coverage of area in this regard?

5. Do you have programs regarding training, information and awareness services pertaining to occupational safety and health of your workers? If yes, how often you hold those trainings and awareness sessions?
6. Does your farm provide the necessary personal protective equipment's (PPEs) for the workers and are they replaced regularly? How often are they replaced regularly?
7. If Yes for question no.6, can you please mention some of these PPEs that have been provided by your farm?
8. Does your farm provide for the workers welfare and accommodation facilities like toilets, clean drinking water, sanitary and washing facility, transportation?
9. Does your farm regularly undergo medical check-ups for the workers? If yes, in what way?
10. Does your farm have a criteria or systems used for reporting and notification of employment injury? If yes, could you provide me the system please?
11. your employees experienced occupational injury? Does your farm involve in collecting, recording, organizing and utilize information in regards to occupational injuries (occupational accidents and diseases)?
12. Does your farm involve in any aspect of workmen's compensation, for those workers who have sustained employment injury? If yes, could you provide me the statistics of those recent years of record of compensated workers?
13. Does your farm have safety and health unit/officer to promote safety, health and working conditions? If yes, do you have trained manpower to be responsible for the units activities?
14. Does the workers association have OSH programs? If yes, could you describe the programs objective and the coverage of implementation and the result gained from implementing it?

15. Does your company ever sued by its workers for lack of compensation of work related injury?
16. Does your farm have any certificate (bronze, silver, or gold) which attests the farm compliance with environmental and social responsibilities under the regulation or EPIEA Code of Practice? If your farm have any of them, are you in compliance with the requirements there and could you show this researcher any tangible things?
17. Does your farm take views, suggestions, and comments of the workers on how the OSH services could be promoted and developed?

IV. Appendix 4- Interview guidelines for the Concerned Woreda Officials

Good morning/Good afternoon! My name is Eshetu/Bea, I am from Addis Ababa University who is an LL.M candidate. Right now I am gathering a data for a study to identify the **workers condition of occupational safety and health and to know the benefit that the workers really get when they have sustained employment injury**. The purpose of this research is to cross check the adherence of government and flower farms to the laws that have been enacted or ratified by Ethiopia in order to protect and promote workers right to health and benefit of employment injury, in case employment injury happens. By providing me reliable information you will significantly contribute a lot for the protection your labour force wellbeing, which indirectly enhances the productivity and efficiency of your farm! We cordially request you to answer the below questions related to your or which concerns you! Thank you in advance for your cooperation!

Name of the Bureau _____

Position/ Job title/Responsibility of the data source in the Bureau _____

Address: Region _____, Zone _____

Woreda _____, Tel _____

1. How many flower companies are currently operating in this Woreda?
2. Could you tell me please about the social and economic benefits that the flower companies provide to the local communities in your Woreda?
3. Does your bureau have direct or indirect concern in the area of safety, health and working conditions of flower farm workers? If yes, how? If not why?
4. Do you believe that those workers who work in the flower farms in your Woreda are working under safe and healthy working environment? If No, what are your main concerns regarding the health and safety of flower company workers?

5. Does your bureau aware of those domestic, regional and international laws, policies, code of practices which are enacted to ensure the safety and health of the workers? If yes, are you supervising the farms accordingly?
6. If yes for question no.5, do you believe that those flower farms are adhered themselves to those laws, policies, standards or code of conducts?
7. Can you tell me please those measures that have been taken on those flower farms that do not adhere themselves with the standards laid down by the law or the code of practices?
8. Do you have any grievance hearing mechanisms to hear those workers who come to your bureau to complain the working condition of their farm, including the condition of occupational safety and health?
9. Do you believe that there is adequately trained human power within your bureau to supervise, follow up, evaluate, etc., the issue of occupational safety and health of the workers? If yes, would you provide me their qualification and numbers please?
10. Do you think that your bureau has enough budget, motivation/willingness/, authority to supervise, follow up and evaluate your Woreda flower farms on occupational safety and health?
11. Do you have any coordination/networking with the concerned regional and federal bureau/ministries in discharging your obligation? If yes, how? If no, why?
12. Do you think that the existing laws, policies, standards and code of conducts have limitations in protecting workers safety and health?
13. What do you think are the major problems or felt gaps that are hindering your bureau on its functioning?
14. Is there something important missing point which I didn't asked you with respect to occupational safety and health?

F. Appendix 5- Interview Guidelines to the Oromia Labour and Social Affairs Agency

Good morning/Good afternoon! My name is Eshetalko. I am from Addis Ababa University who is an LL.M candidate. Right now I am gathering a data for a study to identify the **workers condition of occupational safety and health and to know the benefit that the workers really get when they have sustained employment injury**. The purpose of this research is to cross check the adherence of government and flower farms to the laws that have been enacted or ratified by Ethiopia in order to protect and promote workers right to health and benefit of employment injury, in case employment injury happens. By providing me reliable information you will significantly contribute a lot for the protection your labour force wellbeing, which indirectly enhances the productivity and efficiency of your farm! We cordially request you to answer the below questions related to your or which concerns you! Thank you in advance for your cooperation!

Name of the Agency _____

Position/ Job title-Responsibility of the Data Source in the Agency _____

1. How many flower companies are currently operating in Oromia Region currently?
2. Could you tell me please about the social and economic benefits that the flower companies provide to the surrounding community there and also to the whole country?
3. Does the Agency have direct or indirect concern in the area of safety, health and working conditions of flower farm workers? If yes, how? If not why?
4. Do you believe that those workers who work in the flower farms in Oromia Region are working under safe and healthy working environment? If No, what are your main concerns regarding the health and safety of flower company workers?
5. Does the Agency aware of those domestic, regional and international laws, policies, code of practices which are enacted to ensure the safety and health of the workers? If yes, are you supervising the farms accordingly?
6. If yes for question no.5, do you believe that those flower farms are adhered themselves to those laws, policies, standards or code of conducts?

7. Can you tell me please those measures that have been taken on those flower farms that do not adhere themselves with the standards laid down by the law or the code of practices?
8. Do you have any grievance hearing mechanisms to hear those workers who come to your bureau to complain the working condition of their farm, including the condition of occupational safety and health?
9. Do you believe that there is adequately trained human power within your bureau to supervise, follow up, evaluate, etc., the issue of occupational safety and health of the workers in the region? If yes, would you provide me their qualification and numbers please?
10. Do you think that your Agency has enough budget, motivation/willingness/, authority to supervise, follow up and evaluate your Woreda flower farms on occupational safety and health?
11. Do you have any coordination/networking with the concerned federal, zonal and Woreda bureaus in discharging your obligation? If yes, how? If no, why?
12. Do you think that the existing laws, policies, standards and code of conducts have limitations in protecting workers safety and health?
13. What do you think are the major problems or felt gaps that are hindering your bureau on its functioning?
14. Is there something important missing point which I didn't asked you with respect to occupational safety and health?

VI. Appendix 4- Focus Group Discussion

1. What does it mean occupational safety and health to you?
2. Do you know what your rights and obligations are in connection with occupational safety and health? If yes, what are those rights and obligations?
3. How do you explain your employer's involvement on Occupational safety and health of the workers?
4. What are your main occupational safety and health concerns in relation to your current work?
5. Does your current employer provide you PPE, regular medical checkups, work facilities, training on OSH etc?
6. Do you think that you have any benefit right if you encounter any employment injury? If yes, what are those benefiting rights?
7. Have you ever encountered any employment injury while you are working for your current employer? If yes, what are those injuries?
8. Have you been compensated for the employment injury that you have sustained? If yes, what type of benefit you have been provided by the firm?
9. Do you have workers association in your firm? If yes, do you think that your workers association is well competent to ensure the protection of workers safety and health in your firm? If not, why?
10. Do you have a trust on the judiciary impartiality if you have court litigation with your current employer? If not, why?
11. What are the core problems or challenges faced by you in exercising your rights?
12. What needs to be improved in the future for the good implementation of occupational safety and health of the workers and to ensure the implementation of benefit of employment injury?

List of Tables

Table 1:- The Characteristics of the Farms and Respondents on Occupational Safety and Health

No	General characteristics of the Farms and Respondents	Description	Name of the Farms					Remarks
			Shar Ethiopi & Plc.	Harbar g Roses Plc.	AQ Roses Plc.	Zurway Roses Plc.	Braam Flowers Plc.	
1.	Year of establishment		2006	2006	2006	2006	2006	
2.	Production Area (ha)		500ha	40 ha	40 ha	40 ha	40 ha	This production area is until October, 2015.
3.	Types of Products		Rose	Rose	Rose	Rose	Rose	These items of production is until October, 2015
4.	Certification		EHPEA GOLD, and MPS SQ,FAI RTRA DE,ETI MPS ABC	EPHEA SILVE R, Fair made,M Pseq,M P,ABC MPS SQ	EHPEA SILVER and MPS- SQ, MPS- A,ETL FFP, ABC	EHPEA SILVER and MPS ABC SQ,	EHPEA SILVER and MPS ABC	Can be varied from year to years. These certifications are taken on October 2015
5.	Ownership		Holland	Holland	Holland	Holland	Holland	

6.	Total no. of workers		>10,000 0	1000	1200	1000	1000	Since the sector is known by its temporary and casual workers it can vary even from day to days. This is on October 2015. The statistics for Sher Ethiopia Plc. includes the new farm site in Adamitulu	
		Female	>7000	>650	>800	>700	>700		
		Male	>3000	>350	>400	>300	>300		
7.	No. of Respondents	Total	360	120	60	60	60	60	Out of 360 respondents 66% are females while 34% are males
		Female	70 (34%)	43 (72%)	45 (75%)	32 (53%)	47 (78%)		
		Male	30 (42%)	17 (28%)	15 (25%)	28 (47%)	13 (22%)		
8.	Age of Respondents	<18	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)		
		18-35	83 (80%)	43 (72%)	47 (78%)	41 (68%)	49 (82%)		
		35-50	34 (28%)	15 (25%)	13 (22%)	18 (30%)	11 (18%)		
		>50	3 (3%)	2 (3%)	0 (0%)	1 (2%)	0 (0%)		
9.	Marital status of Respondents	Single	77	34	38	34	32		
		Married	36	19	11	20	25		
		Divorced	5	3	7	4	2		

		Widowed	2	4	4	2	1	
10.	Educational Status of the Respondents	No formal schooling	17	8	4	6	3	
		Primary level	53	29	31	31	27	
		Secondary level	45	23	24	21	29	
		Diploma	5	0	1	2	1	
		Degree	0	0	0	0	0	
11.	Task (job title) of the Respondents	Sprayer	37	11	12	15	8	Includes chemical store keepers, mixers, spray supervisors
		Green house	41	22	19	20	37	Includes harvesters, cultivators, seeders...
		Packing	31	21	26	17	11	Includes packing, grading, arranging flowers
		Cold room	6	4	2	5	4	
		Others	5	2	1	3	0	Includes maintenance, securities, construction and infrastructure

								installation workers
12.	Work experience of Respondents	<1 year	43	18	23	15	27	
		1-5 year	69	38	35	44	33	
		>5 year	8	4	2	1	0	

Sources: data collected from the Farms, respondents, EPHEA

Table 2: Response of Workers on the Condition of Occupational Safety and Health

No.	Questions	Possible Responses	Number of Respondents	%	Total
1.	Does your current employer give attention in the area of safety, health and working conditions of workers?	Yes	101	28%	360
		No	157	44%	
		Don't know	79	22%	
		No response	23	6%	
2.	If "yes" for question no.1, how do you rate it?	Very good	7	7%	101
		Good	8	8%	
		Satisfactory	37	37%	
		Poor	49	48%	
		No response	0	0%	
3.	Do you have a regular medical checkup by your employer?	Yes	64	18%	360
		No	257	71%	
		No response	11	3%	
		Don't know	28	8%	
4.	If "yes" for question no.4, in what time of intervals do you have the checkups?	Every month	0	0%	64
		Every three month	23	36%	
		Every six month	38	59%	
		Every 1 year	3	5%	
5.	Have you ever experienced any work related health problems after you have started working for your current employer?	Yes	213	59%	360.
		No	45	13%	
		Don't know	59	16%	
		No response	43	12%	

6.	Does your current employer provide you training, awareness creation and capacity building on safe use/handling of chemicals/pesticides, HIV/AIDS protection, how to use PPE, first aid?	Yes	67	19%	360
		No	219	61%	
		Don't know	56	15%	
		No response	18	5%	
7.	Does your employer provide you with PPE like spray suits, gloves, boots, respirator, face shield, and others?	Yes	136	38%	360
		No	154	43%	
		Don't know	53	15%	
		No response	17	4%	
8.	If "yes" for question no.7, how often are they replaced?	Every 3-6 month	56	41%	136
		Every year	18	13%	
		Not replaced regularly	42	31%	
		Don't know	13	10%	
		No response	7	5%	
9.	Does your employer provide you the following welfare and accommodation facilities?				
a.	Clean drinking water?	Yes	328	91%	360.

		No	20	5.5%	
		Don't know	3	1%	
		No response	9	2.5%	
b.	Toilet?	Yes	282	78%	360
		No	63	18%	
		Don't know	15	4%	
		No response	0	0%	
c.	Sanitary and washing facilities?	Yes	109	30%	360.
		No	233	65%	
		Don't know	10	3%	
		No response	7	2%	
d.	Transportation?	Yes	11	3%	360.
		No	340	94%	
		No response	0	0%	
		Don't know	9	3%	
e.	Recreation centers?	Yes	74	20%	360.
		No	215	60%	
		Don't know	57	16%	
		No response	14	4%	
10.	How do you rate the working environment of your current working area?	Very safe	9	2.5%	360
		Safe	31	9%	
		Unsafe	153	42.5%	
		Very unsafe	167	46%	

Source: Data collected from the Respondents

Table 3:- The Characteristics of Respondents on Benefit of Employment Injury and the Response

No	General Information about Respondents	Description	Total no. with Percent (%)	Remarks
1	No. of respondents	Male	33 (51%)	
		Female	32 (49%)	
2	Age of Respondents	<18	0 (0%)	
		18-35	57 (88%)	
		35-50	8 (12%)	
		>50	0 (0%)	
3	Marital status	Single	22 (34%)	
		Married	37 (57%)	
		Divorced	2 (3%)	
		Widowed/er	4 (6%)	
4	Educational status of respondents	No formal schooling	14 (22%)	
		Primary level	41 (63%)	
		Secondary level	10 (15%)	
		Diploma	0 (0%)	
		Degree	0 (0%)	
5	Task (job title)	Sprayer	25 (38%)	Includes sprayers, mixers, controllers of chemicals
		Green house	21 (33%)	Includes harvesters, seeders, sowers and others
		Packing	13 (20%)	Includes packers,

				graders, arrangers and others
		Cold room	4 (6%)	
		others	2 (3%)	Includes maintenance, construction, installation workers
6	Work experience	< 1 year	12 (18%)	
		1-5 year	39 (60%)	
		>5 year	14 (22%)	
7	How much you earn/you were earning from your current employer per month?	500-1000 birr	39 (60%)	
		1001-2000 birr	22 (34%)	
		>2000 birr	4 (6%)	
8	How many hours do you have to work/used to work per day?	<8 hrs	23 (35%)	
		8 hrs	26 (40%)	
		>8 hrs	16 (25%)	
9	What type of employment injury you were encountered?	Skin allergy	17 (26%)	Others include those like who lost fingers, body injuries like broken legs, hands, others
		Respiratory	14 (22%)	
		Fainting	8 (12%)	
		Miscarriage	7 (11%)	
		Loss of eye	9 (14%)	
		Others	10 (15%)	
10	If the injury was happened at work place have you been provided with first aid medical service?	Yes	27 (42%)	
		No	12 (18%)	
		Don't know	9 (14%)	
		No response	17 (26%)	
11	Have you got any benefit of employment injury for that	Yes	23 (35%)	
		No	41 (63%)	

	work injury?	Don't know	1 (2%)	
		No response	0 (0%)	
12	If yes for question no. 11, what type of benefit that you got from your employer?	Medical benefit only	18 (78%)	The total no. of respondents are 23
		Cash benefit only	2 (9%)	
		Both cash & medical benefit	3 (13%)	
		other	0 (0%)	
13	If your answer is no for question no 11, have you tried to sue your employer in front of any legal court in order to secure your benefit of employment injury?	Yes	16 (39%)	Total no of respondents are 41
		No	21 (52%)	
		Don't know	4 (10%)	
		No response	0 (0%)	

Source- from injured workers response