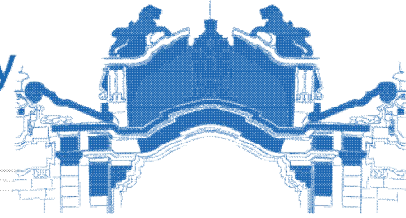




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ADDIS ABABA UNIVERSITY
SCHOOL OF LAW
BUSINESS LAW (LL.M PROGRAM)

Corporate Human Rights Abuse and the Accountability Gap in Ethiopia

By

Alemayehu Begna Hordofa

**A thesis submitted to the School of Law of Addis Ababa University in Partial
Fulfilment of the Requirements of the Degree of Masters in Business Law
(LL.M)**

Adviser

Solomon Abay (PhD)

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S/Alemayehu Begna

Declaration

I, Alemayehu Begna Hordofa, do hereby declare that this work that is submitted for assessment is my own and that due credit has been given to all sources of information contained herein according to the Addis Ababa University School of Law LL.M Thesis Guidelines. I acknowledge that I have read and understood the Guidelines and the Addis Ababa University Senate Legislation provisions applicable to Graduate Thesis/Dissertation and that I am bound by them.

Signature: *S/Alemayehu Begna Hordofa*

Date: December 2020

Advisor: Solomon Abay (PhD)

Signature: _____

Date: _____

Approval Sheet by Board of Examiners

Alemayehu Begna Hordofa's thesis, entitled as "**Corporate Human Rights Abuse and the Accountability Gap in Ethiopia**" is approved by the undersigned members of the examining board.

Examiner Name	Signature	Date

Acronyms

BHR-	Business and Human Rights.
ESC-	Ethiopian Sugar Corporation.
EU-	European Union.
FDI-	Foreign Direct Investment
GoE-	The Government of Ethiopia.
GTP I-	Growth and Transformation Plan One.
ICT-	Information Communication Technology.
MNE-	Multinational Enterprises.
MSI-	Multi-stakeholder Initiative.
NCP-	National Contact Point.
OECD-	Organization for Economic Cooperation and Development
OLGM-	Operational Level Grievance Mechanism
PIL-	Public Interest Litigation
SOE-	State Owned Enterprises
TNC-	Transnational Corporations.
UN-	United Nations.
UNCTAD-	The UN Conference on Trade and Development.
WWII-	The Second World War.

Abstract

The issue of imposing human rights obligations on business organizations started to be at the center of the international community agenda as a direct response to the high profile companies' human rights violations in various corners of the world. National, regional, transnational and international institutions are taking various initiatives to address this corporate human rights abuse. Ethiopia has recently witnessed an increase in the number of domestic and transnational corporations doing business in Ethiopia in diversified business sectors. Besides, Ethiopia has been undertaking many development projects owned, financed or run by state-owned enterprises, and the names of these domestic, foreign and state-owned enterprises have already been linked with human rights abuses in Ethiopia. This thesis analyses whether Ethiopia has progressive policy and legal frameworks to protect persons within its jurisdiction from corporate human rights abuses, and that would enable it to ensure accountability for corporate human rights violations.

CHAPTER ONE

INTRODUCTION

1.1. Research Background

Economic actors play a pivotal role in realizing national and international development by creating wealth, reducing unemployment, and accelerating economic advancement.¹ Particularly, they have a vital role in the eradication of poverty “by investing in local and global communities on a long-term basis.”² However, their operation may also cause adverse impact against human life, health and environment. These adverse impacts may range from causing an environmental disaster and labor abuse to engaging in gross human rights violations such as a crime against humanity, torture and war crimes.³ Maximizing the benefits of businesses and harnessing their positive contributions by minimizing their adverse impacts on human rights, labor and environment require the wisdom of policymakers, legislators and regulators.

Even though the concern for human rights protection has been an agenda for the international community since the aftermath of the Second World War (WWII), binding human rights treaties have long been restricted to regulating states human rights obligations. International regulation of business organizations’ human rights performance has been dominated by non-binding soft law standards. At the United Nations (UN, hereinafter) level, for example, the UN Guiding Principles on Business and Human Rights (the UN Guiding Principles, hereinafter) is the current

¹Connie De La Vega, Amol Mehra and Alexandra Wong, *Holding Businesses Accountable for Human Rights Violations Recent Developments and Next Steps* (Friedrich Ebert Stiftung, International Policy Analysis Section 2011) available <https://library.fes.de/pdf-files/iez/08264.pdf> accessed [23 November 2020].

² John Browne, ‘The Role of Multinational Corporations in Economic and Social Development of Poor Countries: Leading Toward a Better World?’ (2002) 9 (3) *Corporate Environmental Strategy* 217.

³ Anita Ramasastry and Robert C. Thompson, ‘Commerce, Crime and Conflict: Legal Remedies for Private Sector Liability for Grave Breaches of International Law (A Survey of Sixteen Countries)’ (2006) 536 *FAFO Report* available at <https://www.biicl.org/files/4364_536.pdf> accessed [23 March 2020].

soft law mechanism unanimously endorsed by the UN Human Rights Council in 2011.⁴ The UN Guiding Principles applies to all UN member states and all business organizations operating in member states irrespective of their size, ownership structure, country of origin, or their sectors of operation.⁵

This UN initiative rely on three pillars requiring states to protect human rights from being violated by economic actors, corporations to respect internationally proclaimed rights and realizing greater access to a remedy for victims of corporate human rights abuse.⁶ This comprehensive document, however, lacks an effective implementation mechanism and non-observance of the Guiding Principles is not followed by a sanction.⁷ Besides, it is criticized for lack of creating institutional accessibility and the absence of mandated access to a remedy.⁸ There is no institution mandated by the instrument to adjudicate cases of Business and Human Rights (BHR, hereinafter), and victims of corporate crimes have no recourse where domestic judicial or non-judicial mechanisms are insufficient or non-existent.

The UN Guiding Principles on BHR, though not legally binding, has tremendously contributed to norm development in the area of BHR. It provides evidence for “state practice that may evolve

⁴UN Human Rights Council, *Protect, Respect and Remedy : A Framework for Business and Human Rights: Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, John Ruggie, 7 April 2008, A/HRC/8/5, available at:

<https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf> accessed [23 May 2020].

⁵ Id., General Principles.

⁶Anita Ramasastry, ‘Closing the Governance Gap in the Business and Human Rights Arena: Lessons from the Anti-corruption Movement in Surya Deva and David Bilchitz (eds), *Human Rights Obligations of Business : Beyond the Corporate Responsibility to Respect?* (Cambridge University Press, 2013) 162.

⁷ Ignazio Corrao, ‘Report on Corporate Liability for Serious Human Rights Abuses in Third Countries’ (European Parliament, A8-0243/2016) available at <https://www.europarl.europa.eu/doceo/document/A-8-2016-0243_EN.pdf> accessed [21 March 2020].

⁸ M.K Addo, ‘Human Rights and Transnational Corporations: An Introduction’ in M.K Addo, *Human Rights and Transnational Corporations* (The Hague: Kluwer Law International, 2001) 11.

into customary international law.”⁹ Moreover, countries are encouraged by the UN to give full effect to the Guiding Principles through the adoption of the National Action Plan at the domestic level and thus the guideline may help domestic courts as guidance to adjudicate cases of BHR.

Another soft standard is the Global Compact, the largest global private sustainability initiative where companies voluntarily join and commit to ten non-binding principles.¹⁰ It is an initiative launched in 1999 by the then UN Secretary-General Kofi Annan. It encompasses ten principles in the area of human rights (first and second principle), labor (third, fourth, fifth and sixth principles), environment (seventh, eighth and ninth principles), and corruption (tenth principle).¹¹

The first principle requires businesses “to support and respect the protection of internationally proclaimed human rights.”¹² According to this principle, it is not enough for businesses to comply with local rules and it subjects them to higher standards by requiring them to comply with internationally bargained rights including the “nine core international human rights instruments.”¹³ The second principle is the standard that prohibits corporate complicity in human

⁹Alex Batesmith, ‘Corporate Criminal Responsibility for War Crimes and Other Violations of International Humanitarian Law: The Impact of Business and Human Rights Movement’ in C. Harvey, J. Summers, and N. White (Eds.), *Contemporary Challenges to the Laws of War: Essays in Honour of Professor Peter Rowe* (Cambridge University Press 2014)285, 304.

¹⁰ The UN Global Compact Website available at <<https://www.unglobalcompact.org/what-is-gc/mission/principles>> last checked [23 May 2020].

¹¹ Ibid.

¹² Ibid.

¹³According to the UN Office of the High Commissioner for Human Rights, the nine core international human rights instrument comprises: International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Convention on the Rights of the Child (CRC), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), International Convention for the Protection of All Persons from Enforced Disappearance (CPED), Convention on the Rights of Persons with Disabilities (CRPD). See the UN Office of High Commissioner for Human Rights available at <

rights violations. This principle prevents corporations from assisting, facilitating or contributing to human rights violations perpetrated by other actors. However, human rights organizations have been criticizing the Global Compact for not creating binding obligations and its principles as too generic.¹⁴ Further, it is not a tool to hold corporations accountable for human rights violations and received criticism for not “moving corporations beyond their comfort zones.”¹⁵

Another soft law mechanism that regulates businesses’ human rights performance, in transnational context, is the 2011 updated Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises (OECD Guidelines for MNE, hereinafter).¹⁶ The OECD Guidelines for MNE applies to all MNE from adhering states to the OECD irrespective of their size, sector and country in which they operate. This OECD system of corporate human rights regulation obliges MNEs to comply with a set of human rights, environmental protection, labor relations and financial accountability standards.¹⁷

The main advantage of the OECD system is that it has articulated the human rights obligations of corporations and provided a mechanism for their enforcement. The system has also provided for a dispute resolution mechanism and established forums for the vindication of human rights disputes associated with MNEs’ operation. The Guidelines established National Contact Points (NCPs, hereinafter) in each adhering country to serve as a forum to vindicate human rights disputes associated with a business entity operating within or from their jurisdiction. However, these NCPs have been criticized for being unequally developed and for inconsistently applying

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>> last accessed [23 May 2020].

¹⁴ Oliver F. Williams, ‘The UN Global Compact: The Challenges and the Promise’(2004) 14 (4) *Business Ethics Quarterly* 755, 758.

¹⁵ Justine Nolan, ‘Mapping the Movement: The Business and Human Rights Regulatory Framework’ in Dorothee Baumann-Pauly and Justine Nolan (Eds.), *Business and Human Rights; From Principles to Practice* (Routledge, 2016) 32, 40.

¹⁶ Organization for Economic Cooperation and Development (OECD), *OECD Guidelines for Multinational Enterprises*, (2011) available at <<http://dx.doi.org/10.1787/9789264115415-en>> accessed [23 April 2020].

¹⁷ *Ibid.*

the guidelines.¹⁸ Besides, NCPs can assume jurisdiction only when a business organization alleged to have been involved in human rights violations is a MNE. Further, the decisions of NCPs are declaratory and not judicially enforceable.

Ethiopia is not a party to the OECD and it could only use the NCP forums when MNEs from the OECD adhering countries perpetrate human rights violations in Ethiopia. So far, only one case has been brought to Italian NCP against Salini Impregilo for human rights violations perpetrated against members of the Lower Omo indigenous people in connection with the construction of the Gibe III dam.¹⁹ Thus, the OECD NCP forums may not help victims in Ethiopia when human rights violations are committed by local business organizations or when MNEs that are not from OECD adhering countries commit human rights violations in Ethiopia.

1.2.The Statement of Problem

The 2019 World Investment Report of the UN Conference on Trade and Development (UNCTAD, hereinafter) reported that Ethiopia received the biggest Foreign Direct Investment (FDI, hereinafter) from Eastern African states in the year that ended December 2018.²⁰ In this report, UNCTAD cherished the diversification of FDI both in terms of the country of origin of companies and areas of their investment.²¹ This acknowledgment is a result of vigorous efforts made by the Government of Ethiopia (the GoE, hereinafter) over the past years to attract FDI into its jurisdiction by increasing its competitiveness.

Ethiopia has been undertaking various policy, legislative and institutional reforms to create a conducive environment for FDI.²² The country has recently adopted a new investment

¹⁸ Nolan (n 15) 39.

¹⁹ The full case is published at OECD Watch website, ‘Survival International vs. Salini Impregilo, Italian NCP’ (2016) available at https://complaints.oecdwatch.org/cases/Case_459 accessed [14 May 2020].

²⁰ United Nation Conference on Trade and Development (UNCTAD), *World Investment Report 2019: Special Economic Zones* (2019) 37 available at < https://unctad.org/en/PublicationsLibrary/wir2019_en.pdf> accessed [22 May 2020].

²¹ Ibid.

²² Mizanie Abate, ‘Transnational Corporate Liability for Human Rights Abuses: A cursory Review of the Ethiopian Legal Framework’ (2016) 4Mekelle University Law Journal 34, 35.

proclamation with the stated objective of increasing and diversifying ‘foreign investment inflow.’²³ Further, Ethiopia is liberalizing its market and opening various sectors of its economy to foreign investors, and areas of economy reserved for unilateral state investment has been continuously shrinking. Due to this reasons, several MNEs are investing in economic sectors like petroleum refining, mining, real estate, large-scale commercial farming, apparel industries, manufacturing and renewable energy.²⁴ The names of some of these corporations have been linked with human rights violations.²⁵

Further, the Ethiopia Industrial Development Policy considers the private sector as an engine for national development.²⁶ Local business organizations have exhibited an unprecedented increase in recent years and domestic investors are investing their capital in various sectors like financial, service, manufacturing and other sectors. Besides, increasing private sector involvement in development is considered as a priority agenda for the current GoE. Following the political reform that occurred in Ethiopia in 2018, the GoE announced that the administration of Prime Minister Abiy Ahmed is working to fully or partially privatize major state-owned enterprises (SOE, hereinafter).²⁷ It is essential to adopt effective legal and policy frameworks concerning human rights protection from abuse by corporations before making this call. The involvement of local private businesses in diversified economic sectors is essential for facilitating economic

²³ Investment Proclamation [Proclamation Number 1180/2020, Federal Negarit Gazette] adopted 02 April 2020, Preambular Paragraph Three.

²⁴ _____, ‘Ethiopia: Latest Apparel and Textile News and Analysis’ (Just-Style) available at <https://www.just-style.com/regions/ethiopia_cid72> accessed [21 November 2020].

²⁵ Amy Woodyatt, ‘Tommy Hilfiger and Calvin Klein probe 'labor abuses' in Ethiopian factories’ (16 April 2019, Reuters) available at <<https://www.reuters.com/article/us-ethiopia-labour-abuse/tommy-hilfiger-and-calvin-klein-probe-labor-abuses-in-ethiopian-factories-idUSKCN1RS1U9>>accessed [23 January 2020].

²⁶ Ethiopian Industrial Development Strategy (FDRE Communication Minister, 1994 E.C) available at <<http://www.ethiopia.gov.et/documents/20181/30302/Industrial+Development+Strategy/2a787c57-a912-49f1-8275-4021953b7ecb>>accessed [24 January 2020].

²⁷ US Department of State, ‘Investment Climate Statements: Ethiopia’ (2019) available at <<https://www.state.gov/reports/2019-investment-climate-statements/ethiopia/>>accessed [12 November 2020].

development. However, unregulated operations of business organizations may result in detrimental effect on human welfare and they could expose their employees, clients and local communities in which they operate to various human rights abuses.²⁸

Further, due to a level of the State participation in the economy during the imperial regime and a socialist rule during Dergue regime, the state owns hundreds of enterprises in Ethiopia. Even though free-market economy characterizes the post-1991 Ethiopia's political economy, the GoE still owns big and productive Ethiopian firms. These enterprises are currently running development projects that the GoE is undertaking as owner or financier. The names of some of these SOEs have been linked with human rights abuses. These abuses include grand corruption and jeopardizing the enjoyment of social, cultural and economic rights,²⁹ encroaching upon the right to freedom of information and expression,³⁰ and threatening the very existence of indigenous people by intervening with their livelihood and exposing them to ethnic and cultural extinction.³¹

Due to these reasons, the need arises to examine whether Ethiopia has robust and effective legislative and policy frameworks that would enable it to protect human rights from corporate abuses. Besides, this thesis examines gaps in Ethiopian legal frameworks that accord corporate

²⁸ See, for example, a report of labor abuse to which Ethiopian private employment agencies are linked at 'ILO Report: Assessment of Private Employment Agency Service Provision in Ethiopia' (2019) available at https://www.ilo.org/wcmsp5/groups/public/---africa/documents/publication/wcms_728256.pdf accessed [23 March 2020].

²⁹ Following the 2018 reform in the governing party, various criminal files have been filed at the Federal High Court against top leadership of state run Metal and Engineering Corporations (METEC), Ethiopian Sugar Corporation, Ethiopian Electric Power Corporation and other state owned enterprises.

³⁰ Human Rights Watch, 'Ethiopia: Communications Shutdown Takes Heavy Toll, Restore Internet, Phone Services in Oromia' (2020) available at <https://www.hrw.org/news/2020/03/09/ethiopia-communications-shutdown-takes-heavy-toll> accessed [13 May 2020].

³¹ Elizabeth Fraser and Frédéric Mousseau (eds.) How They Tricked Us: Living with the Gibe II Dam and Sugarcane Plantations in Southwest Ethiopia (Oakland Institute 2019) 12 available at <https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/ethiopia-tricked-gibe-dam-sugarcane-plantations.pdf> accessed [05 December 2020].

impunity, and the existence and adequacy of legislative frameworks to ensure the right to a remedy for victims of corporate human rights violations.

1.3.The Research Objective

The main objective of the research is to examine the existence and adequacy of legal and policy frameworks governing corporate accountability for human rights violations in Ethiopia.

Particularly, the thesis aims to examine whether Ethiopian laws oblige business organizations to undertake human rights due diligence with the view to prevent, mitigate, or redress adverse human rights impact of their business operation in Ethiopia. The study aims to recommend legal norms and policy frameworks that Ethiopia should adopt to prevent, mitigate, and redress adverse human rights impacts of business organizations that operate in Ethiopia.

1.4.The Research Question

1.4.1. The General Research Question

The general research question that this thesis aspires to address is, “Are there adequate and effective policy and legal frameworks concerning corporate accountability for human rights violations under the Ethiopian legal system?”

1.4.2. The Specific Research Question

In addition to the general question stated above, the thesis addresses the following specific questions.

- a. Do business organizations operating in Ethiopia have legal obligations to respect human rights?
- b. What are the gaps and obstacles, under the laws of Ethiopia, that prevent victims of corporate human rights violations from fully exercising their rights to a remedy?
- c. Has Ethiopia adopted policy frameworks that effectively protect persons in its jurisdiction from adverse human rights impact of business organizations’ operation in Ethiopia?

1.5.Methodology

This research is conducted based on doctrinal research methodology. Besides, the study draws lessons from international and transnational experience. Accordingly, the UN system of BHR focusing on the Guiding Principles on BHR and the OECD system of BHR due diligence systems are referred for analysis and comparison purposes. The OECD system is selected because of its standard-setting experience, its robust case law jurisprudence in which it examined violations of human rights by corporations through its NCPs and its special relation with Ethiopia, as its members are the major trading partners of Ethiopia. The UN system is selected because of its wider geographical coverage and its direct application to Ethiopia as the latter is one of the states parties to the UN.

1.6.Data Collection and Analysis

This thesis relies on desk research of relevant resources on the subject. Qualitative analysis is employed to analyze data gathered from primary and secondary sources. The FDRE Constitution, domestic laws and international treaties ratified by Ethiopia are used as primary sources whereas books, chapters in edited books, journals, newspapers, websites, internet articles and databases are utilized as secondary sources. Particularly, journals such as the BHR Journal of the Cambridge University Press, and other books with a special focus on BHR issues are extensively utilized to properly examine the development of the topic under investigation and academic debate on it.

Some issues of human rights violations by corporations are purposively selected to examine whether corporate human rights violations is a real problem for Ethiopia. Accordingly, issues of human rights violations by MIDROC Gold in relation to its gold mining operation in Guji, the Ethio-telecom operation viz a viz the right to freedom of expression and economic rights, and the companies operating in Ethiopia's industrial parks in relation to social, economic and cultural rights are considered for analysis. These issues are purposively selected because of their capacity to capture business, cultural, ethical, and legal issues associated with the corporate accountability gap in Ethiopia.

1.7.Literature Review

There is a paucity of literatures on the theme of corporate human rights responsibility under the Ethiopian legal system. Mizanie Abate, in his article published in Mekele University Law Journal, has researched the accountability of TNCs for human rights abuses.³² Since the focus of his article is on TNCs he extensively examined the country's investment laws and bilateral investment treaties and documented the progress that Ethiopia has made to increase its competitiveness for FDI.³³ He analyzed BITs that Ethiopia signed with other states and found that specific reference to human rights issue has been missing in the agreements and TNCs investing in Ethiopia acquired no human rights obligations to respect based on BITs that Ethiopia has signed with their respective states.³⁴ He also reviewed major substantive laws of the country and analyzed their application to TNCs human rights obligations. From literatures written on corporate accountability under Ethiopian legal system, Mizanie's article is the most related article to the topic under investigation by this thesis. This thesis would contribute to the body of knowledge on the theme under investigation by going beyond Mizanie's article in analyzing the policy frameworks for corporate human rights accountability in Ethiopia. This thesis would also conceptualise how corporations should move to effectively vindicate their obligation to respect human rights. Besides, this thesis would analyses the legal and policy frameworks of Ethiopia in light with current developments in the field of BHR.

Megnot Tatek also conducted an LLM thesis under the title "The World Bank and its Development operations in Africa: A Critical assessment of its Human Right Accountability."³⁵ Megnot's thesis examined the impact of the World Bank's policies and development projects on the realization and advancement of socio-economic rights in Africa.³⁶ After analyzing several World Bank Projects in the continent of Africa, Megnot concluded that

³² Abate (n 22) 34

³³ Id., 35-38

³⁴ Id., 48

³⁵ Megnot Tatek, 'The World Bank and its Development operations in Africa: A Critical assessment of its Human Right Accountability (Unpublished, LLM Thesis AAU 2013) available at <http://etd.aau.edu.et/handle/123456789/17580> accessed [02 December 2020].

³⁶ Ibid

some of the private projects funded by the World Bank had caused negative consequences on the enjoyment of crucial social, economic and cultural rights in Africa. Concerning the institutional level human rights accountability mechanisms, Megnot found that the institutional based accountability mechanism within the World Bank fails to be transparent to external body, and the “World Bank safeguard policies do not incorporate a wide range of human rights principles in their provisions.”³⁷ Geographically, his thesis covered the whole continent of Africa, institutionally it is totally focused on the World Bank accountability mechanisms and national accountability mechanisms remains unexamined by his thesis.

In general, the focus of academic literature in Ethiopia had been on the issue of corporate social responsibility, human rights issue in a given sector of economy, corporations’ performance in relation to specific right, the impact of FDI on environment or human rights impacts of impact of some categories of corporations such as the TNCs.³⁸

However, the issue and complexity of corporate human rights accountability goes beyond specific institutional or sectoral analysis and requires the human rights based approach towards addressing corporate accountability gap by devising accountability mechanisms that transcends across sectoral and institutional spheres. In order to maximize their benefits and minimize their risks, corporations are increasingly arranging and re-arranging their corporate structures and governance. Corporations could easily evade legal accountability unless there exists a human rights based mechanism devised at national level to address accountability gap. Further, corporate human rights accountability is beyond specific industry and/or types of business organizations.

Thus, human rights based approach should be pursued to protect human rights from being violated by corporations in Ethiopia. This necessitated the investigations of the legal and policy

³⁷ Id., 125

³⁸Yohannes Workeferahu, ‘The Corporate Social Responsibility Practices and Concerns of Addis Ababa University: Implications for Higher Learning Institutions in Ethiopia (2014) 4 (2) EJBE 310. See also Elias N. Stebek, ‘Between ‘Land Grabs’ and Agricultural Investment: Land Rent Contracts with Foreign Investors and Ethiopia’s Normative Setting in Focus, (2011) 5(2) Mizan Law Review 175, Abate (n 22)

frameworks in Ethiopia to understand whether they contain adequate safeguards for the effective protection of human rights from corporate abuse, to identify loopholes or gaps that exist in various relevant pieces of legislations, and to make evidence based contribution towards the norm development in the area of BHR in Ethiopia.

1.8.Limitations

Most business organizations in Ethiopia do not publicize their corporate governance and their sustainability reports, and most of them do not have a website and those that have a website do not update it timely. Besides, the current global public health emergency due to the novel Corona Virus (COVID-19) has made fieldwork impossible.

1.9. Significance

Despite the above limitations, this research highlights the major gaps in policy and law concerning the human rights obligations of business organizations in Ethiopia. Thus, it contributes to the development of norms on the theme of BHR from Ethiopian perspective. Besides, the analysis of some issues of corporate human rights violations that are followed by an analysis of international experience, would inform policymaking in the subject of business and human rights in Ethiopia. This thesis may inspire future researchers and serve as a basis for future study by government agencies, civil societies, or business communities in Ethiopia.

1.10. Ethics and Citation Style

This thesis is conducted in full compliance with Addis Ababa University School of Law LLM Thesis Guidelines and Addis Ababa University Senate Legislation's provisions dealing with graduate thesis/dissertation. The fourth edition of OSCOLA (Oxford University Standard for the Citation of Legal Authorities) is consistently used for citation throughout the thesis.

1.11. Thesis Organization

This thesis comprises four chapters. The second chapter shows the challenge and extent of corporate human rights abuse situation in Ethiopia. The third chapter analyses legal frameworks on business and human rights in Ethiopia in the context of the current legal developments within the UN human rights project, and the OECD business and human rights project. The fourth chapter is reserved for the conclusion and recommendations.

CHAPTER TWO

THE CORPORATE HUMAN RIGHTS ABUSE SITUATION IN ETHIOPIA

Accountability presuppose a precise understanding of standards or requirements based on which corporations are to be hold accountable. According to Zadek, “accountability requires that we can know and decide on certain things, and act accordingly.”³⁹ According to this statement, it is not enough to know the identity of a person or a body who must assume accountability for a given action. Rather, accountability requires to precisely ascertaining “the action that needs to be accounted for.”⁴⁰ These actions, against which corporate actions should be evaluated, has been rigorously debated among governments, civil societies, businesses and researchers in the academia.⁴¹

The UN Guiding Principles introduced what Nadia Bernaz called “Progressive Model”, a model requiring corporations to respect human rights and state to respect, protect and fulfill them.⁴² Even though voluntary standards, the issue concerning what constitute ‘corporate duty to respect’ human rights comes to a partial fruition and comprehensively conceptualized by the UN Guiding Principles and OECD Guidelines for MNE an international and transnational level respectively.

Accordingly, the UN Guiding Principles and the OECD Guidelines for MNE business organizations (MNE in the case of the OECD Guidelines) have responsibility to adopt

³⁹ Simon Zadek, ‘The Meaning of Accountability’ in Baumann-Pauly and Nolan (Eds.) (n 15) 240, 241.

⁴⁰Ibid.

⁴¹MelikÖzden, ‘Transnational Corporations and Human Rights: What is at Stake in the United Nations Debate over “The Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights’ (Part of a series of the Human Rights Programme of the Europe-Third World Centre-CETIM, 2005) available at <<https://www.cetim.ch/wp-content/uploads/Transnational-corporation-and-human-rights.pdf>> accessed [24 May 2020] See also Amnesty International website available at <<https://www.amnesty.org/en/what-we-do/corporate-accountability/>> accessed [24 May 2020].

⁴²Nadia Bernaz, ‘Enhancing Corporate Accountability for Human Rights Violations: Is Extraterritoriality the Magic Potion?’ (2013) 117 (3) Journal of Business Ethics 493-511.

policy commitment to respect human rights and respect internationally proclaimed human rights.⁴³ These responsibilities imply a duty to avoid causing or contributing to human rights violations and a responsibility to address human rights violations linked to their operation either through their “business operations, products or services by a business relationship, even if they do not contribute to those impacts.”⁴⁴ Duty to exercise due diligence, and responsibility to adopt mechanisms that would enable them to prevent, mitigate or remediate adverse human rights impact of their own operation and in their supply chains are the other responsibilities imposed on corporations by both UN Guiding Principles and the OECD Guidelines for MNE.

Human rights scandals caused by adverse impacts of business organizations’ operation in Ethiopia cannot be underestimated. Over the past years, there are credible reports that business organizations operating in various sectors of economy have caused, contributed or linked in human rights violations in Ethiopia.⁴⁵ Local population living in areas where business organizations conduct their business activities, workers of business organizations and their customers have been victimized by business organizations’ injustices. This chapter examines the reality of corporate human rights violations by purposively selected companies in light of selected internationally proclaimed human rights. Then, the chapter will proceed evaluating the companies’ human rights performance in light of the UN Guiding Principles and the OECD Guidelines for MNE.

⁴³UN Guiding Principles (n 4) Principle No 11 and 12 See also OECD Guidelines for MNE (n 16) Chapter IV

⁴⁴ Ibid

⁴⁵Roc Morin, ‘Kidnapping, Torture, and Stolen Land: The Brutal Reality of Ethiopia's New Sugar Wars’ (Vice, 27 March 2020) available at <https://www.vice.com/en_us/article/bvgag4/kidnapping-torture-and-stolen-land-the-brutal-reality-of-ethiopias-new-sugar-wars> accessed [03 May 2020] See also Tom Gardner, ‘State Projects Leave Tens of Thousands of Lives in the Balance in Ethiopia – Study’ (The Guardian, 13 June 2019) available at

<<https://www.theguardian.com/globaldevelopment/2019/jun/13/state-projects-leave-tens-of-thousands-of-lives-in-the-balance-in-ethiopia-study>>accessed [01 May 2020].

2.1.Human Rights Abuse by State-Owned Enterprises in Ethiopia

The obligation of states to protect human rights in the context of state involvement in economic activity has been distinctly stipulated under Guiding Principle four, five and six of the UN Guiding Principles on BHR.⁴⁶ According to Guiding Principle Number Four:

“States should take *additional steps* to protect against human rights abuses *by business enterprises that are owned or controlled by the State*, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, *by requiring human rights due diligence.*”⁴⁷ (Emphasis is mine)

According to this principle, when state is a final owner of a given economic enterprise, it should take “*additional*” measures to address human rights violations by SOE as it has wider discretion to control the policies, procedures, guidelines and management system of the SOE.⁴⁸ The “duty to respect” is one of the three elements of the UN ‘protect, respect and remedy’ framework and it has a dual expression when it comes to SOE. In connection to other private corporations, the state duty is to protect human rights from being breached by private companies and adopt effective remedy mechanisms to remediate harms that may materializes from corporate actions. However, when the state is a final owner of a business as an economic actor, its obligation is not restricted to “the duty to protect” like in other privately owned economic actors and it has “the duty to respect” as SOE are “quasi-State organs or agents.”⁴⁹

⁴⁶ UN Guiding Principle (n 4) Principles 4, 5 and 6

⁴⁷ Id., Principle 4

⁴⁸ Id., Principle 4: Commentary

⁴⁹ UN Human Rights Council, ‘Report of the Working Group on the issue of Human Rights and Transnational Corporations and other Business Enterprises’ A/HRC/32/45, (2016) 32 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/091/71/PDF/G1609171.pdf?OpenElement> accessed [03 December 2020]

The state duty to respect human rights from being violated by a SOE it establishes is further echoed by the CESCR in its multiple General Comments.⁵⁰ In its General Comment Number Twenty Four, the CESCR expounded State obligations in the context of business activities and authoritatively interpreted that business activities have responsible to respect covenant rights irrespective of their ownership structure.⁵¹

When state engages in economic activities by establishing corporations, it is not the only actor with an obligation to respect human rights and a SOE has distinct obligation to respect human rights by themselves as a commercial actors.⁵² This position is reflected in both the UN Guiding Principles and the OECD Guideline for MNE. According to Guiding Principle Fourteen of the UN Guiding Principles, *all business organizations* (SOEs included) have responsibility to respect human rights “regardless of their size, sector, operational context, *ownership and structure*.”⁵³ Besides, the 2011 updated OECD Guidelines for MNE states that “State-owned multinational enterprises are subject to *the same recommendations as privately-owned enterprises*, but public

⁵⁰See the UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4, available at: <https://www.refworld.org/docid/4538838d0.html> [accessed 7 December 2020] 34, UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, 20 January 2003, E/C.12/2002/11, available at: <https://www.refworld.org/docid/4538838d11.html> [accessed 7 December 2020] 21 and UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)*, 7 April 2016, E/C.12/GC/23, available at: <https://www.refworld.org/docid/5550a0b14.html> [accessed 7 December 2020] 58.

⁵¹The UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 24 (2017) on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, 10 August 2017, E/C.12/GC/24, Para. 3 and 5 available at: <https://www.refworld.org/docid/5beacba4.html> accessed [23 May 2020].

⁵² UN Guiding Principle (n 4) Principle 4: Commentary, See also Report of the Working Group on the Issue of Human Rights and TNCs (n 49) 35

⁵³ UN Guiding Principle (n 4) Principle. 14

scrutiny is often magnified when a State is the final owner.”⁵⁴(Emphasis is mine). The OECD Guidelines for MNE further compounded SOE responsibility to respect human rights stating that public scrutiny is magnified when a state is the final owner.⁵⁵ The SOEs shall ‘led by example’ by effectively adhering to accepted human rights standards. Therefore, the responsibility of SOE to respect human rights distinctively and independently from state is recognized under both frameworks.

Despite the waves of privatization at international level in 1980s and 1990s, many states still “manage large state-owned enterprises portfolios.”⁵⁶ Similarly, Ethiopian Privatization Agency, established by the 'Privatization of Public Enterprises Proclamation No. 146/1998'⁵⁷ has implemented a privatization program and transferred some of the SOEs into private sectors. However, dozens of enterprises are still owned by the GoE and one of such SOEs is Ethio Telecom. The House of Peoples Representatives adopted a groundbreaking statute liberalizing the telecom sector in 2019.⁵⁸ According to Article 19 of the Proclamation, telecom service operators and ownership is fully liberalized, and the sector is now open for domestic and foreign private investors. Before the adoption of this Proclamation, however, Ethio Telecom, the SOE established by the Council of Minister Regulation No. 197/2010,⁵⁹ has been the sole telecommunications services provider in Ethiopia. However, both the Proclamation and the Regulation do not impose any obligation on Ethio Telecom or other future company that may engage in telecom services provision to identify, assess, prevent, mitigate and remediate adverse impact of its operation on human rights.

⁵⁴OECD Guidelines for MNE (n 16) Para. 10

⁵⁵ Id., Chapter 2: Commentary Para 10

⁵⁶Report of the Working Group on the Issue of Human Rights and Transnational Corporations (n 49) Par. 12

⁵⁷ Privatization of Public Enterprises [Proclamation No. 1461998, Federal Negarit Gazette] adopted 29 December 1998.

⁵⁸ Communications Service Proclamation [Proclamation Number 1148/2019, Federal Negarit Gazette] adopted 12 August 2019.

⁵⁹EthioTelecom Establishment Council of Ministers Regulation [Regulation Number 197/2010, Federal Negarit Gazette] adopted 28 January 2011.

2.1.1. Telecommunication Services and Internet Shutdowns By Ethio Telecom: The Factual Ground

Information Technology (IT) companies have recently been under fire for their submission to subsequent requests of authoritarian regimes to restrict the right of access to information.⁶⁰ Telecom operators usually encounter with broad ranges of human rights issues such as surveilling or monitoring of their customers activities, blocking or filtering contents, network shutdowns, providing a platform for fake news or hate speech etc.⁶¹ The name of Ethio Telecom has been linked with all of these abuses or intrusions into individuals' private lives.⁶²

Even after the political reform carried out in Ethiopia in 2018, Ethiopia has experienced a number of blanket telecommunications and internet blackout. Sometimes the GoE as owner and Ethio Telecom as operator imposes a complete blackout of all telecommunication services such as access to internet, landline and mobile services. For example, this blanket communication blackout had been imposed in the Western part of Ethiopia continuously for over three months in the year 2020.⁶³ According to the reports from the government authorities, the blackout was imposed on security grounds to suppress the Oromo Liberation Army, an insurgent group fighting the GoE for wider regional autonomy and self-rule for the Oromo people.⁶⁴ This blanket and blatant communication blackout was made without declaration of state of emergency.

⁶⁰Antoine Bernard (Ed.), *Corporate Accountability for Human Rights Abuses: A Guide for Victims and NGOs on Recourse Mechanisms* (International Federation for Human Rights 2010) 14

⁶¹_____, 'Telecommunications and Human Rights: An Export Credit Perspective' (Institute for Human Rights and Business, 2017) 18-20

⁶² For a general reports on internet censorship in Ethiopia see Amnesty International, 'Ethiopia Offline: Evidence of Social Media Blocking and Internet Censorship in Ethiopia' (2016) available at <<https://www.amnesty.org/download/Documents/AFR2553122016ENGLISH.pdf>> accessed [14 May 2020]

⁶³ Human Rights Watch 'Ethiopia: Communications Shutdown Takes Heavy Toll: Restore Internet, Phone Services in Oromia'(n 30)

⁶⁴Mahlet Fasil, " News: Ethiopian authorities crack down on opposition supporters with mass arrests: Amnesty Addis Standard, 27 January 2020 <https://addisstandard.com/news-ethiopian-authorities-crack-down-on-opposition-supporters-with-mass-arrests-amnesty/> accessed [30 November 2020]

Ethio Telecom admitted that the blanket internet and telecommunications blackout was deliberately made by the GoE and morally apologized on behalf of the company.⁶⁵ Public apology is a first step towards recognizing the existence of the problem. However, identifying or recognizing the problem was not enough and the company should have gone beyond the recognition stage and was required to take tangible measures to mitigate and remediate harms realized from the blackout.

Further, NetBlocks, an NGO monitoring internet censorship, reported twenty-three whole days (552 hours) nationwide internet blackout in 2020 following the assassination of renowned Oromo singer and human rights activist Haacaaluu Hundeessaa.⁶⁶ This internet shutdown was made without a declaration of state of emergency to crackdown the protest that was emerged in the capital and throughout the state of Oromia following Haacaaluu's assassination. From the track record of the GoE and Ethio-telecom and the absence of any reported technical outage or cyber-attack, one can safely conclude that the blackout was deliberately made by the GoE and the company.

Besides, Ethiopia had experienced days of internet blackout in 2019 following the assassinations of members of Amhara regional state senior leadership including the regional state President and the assassination of the FDRE Chief of Army.⁶⁷ Further, intermittent internet shut down had been registered more than eight times in 2019.⁶⁸ Ethio Telecom provided no acceptable justifications for these entire internet blackouts and they were made without declaration of state of emergency.

⁶⁵ Ibid

⁶⁶ _____, 'Internet Cut in Ethiopia amid Unrest Following Killing of Singer (NetBlock 30 June 2020) available at <https://netblocks.org/reports/internet-cut-in-ethiopia-amid-unrest-following-killing-of-singer-pA25Z28b> accessed [30 November 2020]

⁶⁷ _____ 'Internet Shutdown in Ethiopia amid Reports of Attempted Coup (NetBlock 22 June 2019) available at <https://netblocks.org/reports/internet-shutdown-in-ethiopia-amid-reports-of-attempted-coup-pA5KvNy7> accessed [30 November 2020]

⁶⁸ Ibid

2.1.2. A Threat to Internationally Proclaimed Rights: The Right to [Access] the Internet?

Access to internet plays an instrumental role in increasing the enjoyment of numerous rights. For example, social media played crucial role in amplifying the voices of youths during the Oromo Protest (2014 to 2018) that resulted in the 2018 political reform in Ethiopia. It also has significant contribution to national GDP by generating funds that could be used for furtherance of nations' development. According to the NetBlocks projection, Ethiopia loses "at least \$4.5m each day the internet is cut."⁶⁹

In addition to contributing to the realization of other human rights, the internet "constitutes a value in itself and should therefore receive legal protection."⁷⁰ The right to [access] internet was not initially recognized under international human rights frameworks. International norms are still developing to catch up with technological advancements and the issue as to the characterization of internet as 'human rights' or as 'privilege' is still ongoing.⁷¹ There is no internationally negotiated binding international treaty that acknowledges access to internet as human rights.

The absence of clear provision recognizing the right to the internet may not imply the absence of the right. The right to [access] the internet can be deduced or derived from other rights by employing evolutionary treaty interpretation technique. The European Court of Human Rights is credited for introducing and extensively using the evolutionary interpretation technique, This technique values the "judicial activist" model considering the European Convention on Human

⁶⁹ Fidelis Mbah, 'Outrage over Ethiopia's Continuing Internet Blackout (Aljazeera, 25 Jun 2019) available at <https://www.aljazeera.com/economy/2019/06/25/outrage-over-ethiopias-continuing-internet-blackout/> accessed [30 November 2020]

⁷⁰ Paul de Hert and Dariusz Kloza, 'Internet (Access) as a New Fundamental Right. Inflating the Current Rights Framework?' (2012) 3 EJLT available at <http://ejlt.org/index.php/ejlt/article/view/123/268> accessed [01 December 2020]

⁷¹ Artem Sergeev, 'The right to Internet Access: Assessing the Impact and the Merits of Compliance through an example of Modern China (2017) 25 International Journal of Law and Information Technology 309, 311

Rights as a living document that should be interpreted innovatively taking in to consideration the present day situations or contexts at the time of the interpretation.⁷²

To begin with, the right to have access to telecommunication services including internet is an integral component of the right to freedom of expression. Freedom of expression is recognized under Article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).⁷³ Further, it is recognized under Article 29 of the FDRE Constitution.⁷⁴ Our world has witnessed a dramatic technological advancement and the “internet and mobile based electronic information dissemination systems, have substantially changed communication practices around the world,” beyond what was envisioned by the UDHR and ICCPR.⁷⁵ Thus, the field of human rights should evolve to effectively address ever-growing challenges with the advancement of technology.

All the UDHR, ICCPR and the FDRE Constitution provide for freedom to “seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or *through any media of his choice*.”⁷⁶ The content imparted and received over the internet may not have different implication if other platforms had been used.⁷⁷ The wording ‘any other media of his choice’ suggests that it can include the internet in general and the social medias in particular.⁷⁸

⁷²Maša Marochini and Pravnog Fakulteta, ‘The Interpretation of the European Convention on Human Rights’ (2014) 51ZbornikRadovaPravnogFakulteta U Splitu 63, 65

⁷³ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Article 19 available at: <https://www.refworld.org/docid/3ae6b3aa0.html> accessed [7 December 2020], UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Article 19 available at: <https://www.refworld.org/docid/3ae6b3712c.html> accessed [7 December 2020]

⁷⁴ The Constitution of the Federal Democratic Republic of Ethiopia [Proclamation Number 01/1995, Federal NegaritGazeta] 21 August 1995, Article 29

⁷⁵ UN Human Rights Committee (HRC), *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34 , Para 15 available at: <https://www.refworld.org/docid/4ed34b562.html> accessed [7 December 2020]

⁷⁶ ICCPR, UDHR (n 73) FDRE Constitution (n 74)

⁷⁷ De Hert and Kloza (n 70)

The UN organs and treaty bodies echoed the argument that derive the right to [access] internet from the freedom of expression. The Human Rights Council, for example, adopted a resolution in 2016 that makes “the promotion, protection and enjoyment of human rights on the internet” human rights.⁷⁹ According to this resolution, “rights that people have offline must also be protected online.”⁸⁰ Further, the CCPR authoritatively interpreted; in its General Comment Number thirty four that ways of dissemination protected under Article 19 (2) of the ICCPR include “audio-visual as well as electronic and *internet-based modes* of expression.”⁸¹ (Emphasis is mine)

Further, the right to [access] the internet can be deduced from the right to assemblies recognized under Article 21 of the ICCPR and Article 30 of the FDRE Constitution. Due to technological advancement and current global public health emergency owing to COVID-19 pandemic, it is difficult to convene large number of persons in-person and conducting public gatherings become difficult. Peaceful assemblies could be made indoors, outdoors or online and all these should be respected by the application of the Articles.⁸² In its recent General Comment Number 37, the CCPR stated that “[A]lthough the exercise of the right of peaceful assembly is normally understood to pertain to the physical gathering of persons, article 21 protection also extends to remote participation in, and organization of, assemblies, *forexample online*.”⁸³ Thus, effective protection of the right to assemblies require the recognition of the right to [access] the internet

⁷⁸Sergeev (n 71) 309, 312

⁷⁹ UN Human Rights Council (HRC), The Promotion, Protection and Enjoyment of Human Rights on the Internet, 27 June 2016, A/HRC/32/L.20, available at https://www.article19.org/data/files/Internet_Statement_Adopted.pdf accessed [30 November 2020]

⁸⁰ Id., Para. 1

⁸¹ CCPR General Comment no. 34 (n 75) Para.12

⁸² UN Human Rights Committee, General Comment No. 37 Article 21, on the Right of Peaceful Assembly, 17 September 2020, CCPR/C/G/C/37, Para 06 available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fG%2f37&Lang=en accessed [7 December 2020]

⁸³ Id., par.13

andas many assemblies rely on digital services “States parties must not, for example, block or hinder Internet connectivity in relation to peaceful assemblies.”⁸⁴

2.2.Human Rights Abuse by Private Business Enterprises

2.2.1. The Right to a Living Wage

Low labor, electricity and water cost have been raised as some of the reason explaining the rise of Ethiopia’s as an apparel exporter.⁸⁵ In his article titled the “Protection of Core Labour Rights in Ethiopian Industrial Development Zones: The Case of Eastern Industrial Zone,” Jetu Edosa noted the intellectual battles among legal and human rights researchers to characterize labour rights as human rights.⁸⁶ The debate partly arises from the characterization of human rights as the rights possessed by all human beings by virtue of their humanity that the labor rights are argued to fail to satisfy as they are the right accorded to employees by virtue of their status as workers.⁸⁷ The ILO also widened the scope of the debate by categorizing four categories of rights⁸⁸ as core labor rights, which is called by Jetu a “minimalist approach”, leaving other plethora of important labor rights out of the set of ‘core labor rights.’⁸⁹

Despite the debate in the academia, international community consider the right to a living wage as human rights and recognized it in multiple binding and declaratory instruments.⁹⁰ According

⁸⁴ Id., Par. 34

⁸⁵ Cornelia Staritz and Lindsay Whitfield, ‘*Made in Ethiopia: The Emergence and Evolution of the Ethiopian Apparel Export Sector*’ (2017) 3 CAE Working Paper 1

⁸⁶Jetu Edosa Chewaka, ‘Protection of Core Labour Rights in Ethiopian Industrial Development Zones: The Case of Eastern Industrial Zone’ in GetachewAssefa, YonasBirmeta and MuraduAbdo (Eds.), *Economic, Social and Cultural Rights in Ethiopia (Addis Ababa 2016)* 101, 108

⁸⁷ Ibid

⁸⁸ Freedom from forced labour, freedom from child labour, Freedom from discrimination at work, and Freedom to form and join a union, and to bargain collectively are the four rights recognized as “core labour rights”

⁸⁹Chewaka (n 86)109

⁹⁰Richard Anker, ‘Estimating a living Wage: A Methodological Review’ (2011) 29 Conditions of Work and Employment Series 3 available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_162117.pdf accessed [01 December 2020]

to Article 23 (3) of the UDHR, workers have the right to “just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity.”⁹¹ Further, Article 7 of the ICESR recognizes the right to “fair wages and equal remuneration for work of equal value” as a fundamental component of the right to “just and favourable conditions of work.”⁹² Besides, the right to fair wage is recognized as human rights in the ILO system.⁹³ *The* second preambular paragraph of the ILO Constitution *recognizes* “the provision of an adequate living wage” as one of the justifications for the main objectives that the ILO aims to attain.⁹⁴ Besides, corporations’ responsibility to secure fair wage to their workers is recognized in a number of soft or voluntary standards in the area of BHR. The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy imposes a responsibility on businesses to adopt policy to realize decent work for their workers.⁹⁵ According to this ILO standard, “wages, benefits and conditions of work offered by multinational enterprises across their operations should be not less favourable to the workers than those offered by comparable employers in the host country.”⁹⁶ In the absence of comparable wage, both the ILO standard and the OECD Guidelines for MNE stipulate that businesses should provide “best possible wages, benefits and conditions of work” that adequately satisfy the needs of employees and that of their parents based on the relevant economic situation in the region.⁹⁷

⁹¹ The UDHR (n 73) Article 23 (3)

⁹² UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, Article 7 (a) available at: <https://www.refworld.org/docid/3ae6b36c0.html> [accessed 7 December 2020]

⁹³ Anker (n 90) 4

⁹⁴ International Labour Organization (ILO), *Constitution of the International Labour Organization (ILO)*, 1 April 1919, Preamble Par. 2 available at: <https://www.refworld.org/docid/3ddb5391a.html> [accessed 7 December 2020]

⁹⁵ ILO, Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (Fifth Edition - March 2017) available at https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf accessed [05 December 2020] Principle 41ff

⁹⁶ *Ibid*

⁹⁷ *Ibid*

While analyzing why the principle of a living wage is recognized in principle and barely implemented in practice, Richard Anker noted that there is no uniformity on what constitute a living wage and methodology concerning its evaluation.⁹⁸ The lack of specificity of the provisions of international treaties on the method of evaluating fair wage and its definition is expected as the criteria are changing over years and places. The CESCR noted this in its General Comment Number Twenty-three and stated, “the notion of a fair wage is not static.”⁹⁹ According to the Committee, fair wage should reflect the output of the work, “the responsibilities of the worker, the level of skill and education required to perform the work, the impact of the work on the health and safety of the worker, specific hardships related to the work and the impact on the worker’s personal and family life.”¹⁰⁰ Further, the right to favorable conditions of work in general and right to a living wage should be evaluated by taking into consideration conditions that would enable workers to live a decent living taking into account “the cost of living and other prevailing economic and social conditions.”¹⁰¹ Thus, to be fair and fulfil the criteria of a ‘living wage’, a remuneration that a worker receive from their employers should enable them to afford decent life style for themselves and their families based on the current state of economic development in the society where they live.¹⁰²

The name of world-leading brands and companies in the apparel sector like H&M, PVH, Walmart, Children's Place, and Gerber Children wear has been linked with human rights violations in Ethiopia.¹⁰³ The names of these foreign firms have been associated with labor abuse, near to slavery payment system.¹⁰⁴ According to a report by the ‘New York University Stern Center for Business and Human Rights,’ Ethiopian workers serving in the garment sector,

⁹⁸ Anker (n 90) 1

⁹⁹CESCR General Comment 23 (n 50) Par. 10

¹⁰⁰ Ibid

¹⁰¹ Id., Par.18

¹⁰² Anker (n 90) 5

¹⁰³Woodyatt (n 25)

¹⁰⁴Ibid

in companies based in state-constructed industrial parks, are one of the “lowest-paid employees” working in garment sectors worldwide.¹⁰⁵

The recent ILO report titled “Improving Worker Wellbeing in Ethiopia’s Garment Industry through the Model of Shared Responsibility Advancing Decent Work and Inclusive Industrialization in Ethiopia” considered low wage as a structural issue for workers.¹⁰⁶

According to the study, “the monthly basic average salary of the sampled workers surveys was 1,789 Ethiopian Birr (ETB) per month, before tax.”¹⁰⁷ This monthly salary (before tax) is an equivalent of 46.79 USD per month or 0.265 USD per hour.¹⁰⁸ The same report demonstrated the wage difference and female workers get lower wage compared to their male colleagues.¹⁰⁹

Besides, empirical studies conducted in the industrial parks have found that the wage of the worker is usually subjected to deductions based on “many frivolous grounds” included in the company bylaws.¹¹⁰ The grounds of salary deductions included in the companies’ bylaws are usually less favorable to workers than the labor laws of the country. Empirical studies conducted on the subject have found that the wage paid to employees working in Ethiopian industrial parks is well below the living coast and insufficient to secure decent life for employees and may not adequately satisfy their needs.¹¹¹ In numerous empirical studies conducted in Ethiopian industrial

¹⁰⁵ Paul M. Barrett and Dorothee Bauman-Pauly, *Made in Ethiopia: Challenges in the Garment Industry’s New Frontier* (NewYork University STERN Center for Business and Human Rights, May 2019) 18 available at https://issuu.com/nyusterncenterforbusinessandhumanri/docs/nyu_ethiopia_final_online?e=31640827/69644612 accessed [03 December 2020]

¹⁰⁶ ILO, ‘Improving Worker Wellbeing in Ethiopia’s Garment Industry through the Model of Shared Responsibility’ available at https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/---sro-addis_ababa/documents/publication/wcms_737627.pdf accessed [04 December 2020]

¹⁰⁷ Ibid

¹⁰⁸ The calculation is made on the exchange rate on 04 December 2020 which is 1 USD= 38.2372 ETB. The worker is expected to work 22 days/month and eight hours/day.

¹⁰⁹ ILO (n 106)

¹¹⁰ Chewaka (n 86) 125

¹¹¹ Barrett and Baumann-Pauly (n 105)

zones, local workers condemned the companies for paying low wage compared to “rising living costs in Ethiopia, as well as their need to support unemployed family members.”¹¹²

2.2.2. The Right to Health

Another business sector in which the issue of corporate human rights violation is rampant is the mining sector. Unless thoughtfully and skillfully regulated, mining companies have the potential to cause great atrocity on human and animal lives.¹¹³ In Ethiopia, Laga Dambii Gold Mine, a large-scale open-pit gold mine owned by MIDROC Gold PLC, one of the subsidiaries of MIDROC Ethiopia Technologies, has been reported to have been involved in human rights violations against Oromo People living in Guji province.¹¹⁴

Article 12 of the ICESCR, Article 25 of the UDHR and Article 44 of the FDRE Constitution recognizes the right to health. Ethiopia has ratified ICESCR and it forms an integral part of the law of the land by the application of Article 9 (4) of the FDRE Constitution. In its operation at Laga Dambii Gold Mine, MIDROC Gold has been criticized for violating the right to health of its neighbors by polluting water sources, causing humans and animals’ respiratory illnesses, miscarriages, birth defects and disabilities.¹¹⁵ In its 2019 concluding observation on Ethiopia the

¹¹² Ding Fei and Chuan Liao, Chinese Eastern Industrial Zone in Ethiopia: Unpacking the Enclave (2020) 41 (4) Third World Quarterly 623, .635

¹¹³ Richard, ‘Rio Tinto: A Shameful History of Human and Labor Rights Abuses and Environmental Degradation around the Globe’ (Mining Network, 20 April 2010) available at <https://londonminingnetwork.org/2010/04/rio-tinto-a-shameful-history-of-human-and-labour-rights-abuses-and-environmental-degradation-around-the-globe/> accessed [14 May 2020]

¹¹⁴ Coalition Of NGOs For UPR– Ethiopia, ‘In Support Of Health-Focused, Effective Environmental Regulation Of Mining (CHEERM)’ (Joint Submission No 3, for 3rd Cycle UPR Review Of Ethiopia) Para 2 available at <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRETStakeholdersInfoS33.aspx> accessed [05 December 2020]

¹¹⁵ _____, ‘Renewed Protests in Oromia Region around Mining Project’ (Ethiopian observer, 02 May 2018) available at <https://www.ethiopiaobserver.com/2018/05/02/renewed-protests-in-oromia-region-around-mining-project/> accessed [03 May 2020] See also _____, ‘Laga Dambii’ (OBN, 12 December 2017) available at

<https://www.facebook.com/OBNafaanoromo/videos/vb.1440206995991463/1833399360005556/?type=2&theater> accessed 23 April 2020

Committee on Elimination of All Forms of Discrimination against Women noted that it is concerned by “the grave health, environmental and socioeconomic impact of the operations of the mine [Laga Dambii Gold Mine] on Guji rural women and their families.”¹¹⁶

The causal link between the MIDROC’s operation in the province and the stated violations to the right to health is well established by numerous credible reports. According to the report prepared by the Oromia Broadcasting Network by interviewing medical professionals, local affected communities and the MIDROC administration, the birth defects and physical disabilities witnessed in the place where MIDROC mine gold is due to a toxic chemical called Hydrogen Cyanide, which the company uses in a mining process.¹¹⁷ In addition, the medical registry of Adola Hospital, the nearest hospital to the mine, discloses that the illnesses such as birth defects has been recorded in hospital registries.¹¹⁸ Dr. Busha Balako, the Medical Director of Adola Hospital, stated that Adola Hospital registered the death of 159 infants, in their mother’s womb, due to an exposure to chemical disposed from the mine in a single year (2017).¹¹⁹

MIDROC acknowledged that it uses Hydrogen Cyanide in the mining process.¹²⁰ However, MIDROC has not signed the International Cyanide Management Code for the Manufacture, Transport, and Use of Cyanide in the Production of Gold that is a voluntary industry standard for the safe management of cyanide for gold and silver mining companies.¹²¹

¹¹⁶ Committee on the Elimination of Discrimination Against Women: Concluding Observations on the Eighth Periodic Report of Ethiopia, CEDAW/C/ETH/CO/8, (14 March 2019) Par. 45 available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/ETH/CO/8&Lang=En accessed [05 December 2020]

¹¹⁷ LagaDambii (n 115)

¹¹⁸ Ibid

¹¹⁹ Ibid

¹²⁰ _____ ‘MIDROC Asks for Community Environmental Impact Study to Assess Cyanide Risk’ (The Capital, 21 May 2018) available at <https://www.capitalethiopia.com/featured/midroc-asks-community-environmental-impact-study-assess-cyanide-risk/> accessed [24 March 2020]

¹²¹ Directory of Signatory Companies, ‘International Cyanide Management Code’ <https://www.cyanidecode.org/signatory-companies/directory-of-signatory-companies> accessed [05 December 2020]

Moreover, an urgent appeal submitted to UN Special Procedures by two NGOs indicated that heavy metals such as Arsenic and Lead were found near to the place of the mine.¹²² The fact that Hydrogen Cyanide causes these types of illnesses if mismanaged has been authenticated by scientific studies and published in peer-reviewed medical journals.¹²³



Figure 1: The photos of Victims (Image taken from https://file.ejAtlas.org/img/Conflict/3573/1_Children.jpg)

MIDROC has indicated in its subsequent publications that it has adopted various policies and procedures to prevent adverse impacts of its operation on the local communities.¹²⁴ Nevertheless,

¹²² Center for International Human Rights of Northwestern University: Urgent Appeal (Submitted to five UN Special Rapporteurs and the UN Working Group on the issue of Human Rights and Transnational Corporations and other Business Enterprises) available at

<http://www.law.northwestern.edu/legalclinic/humanrights/documents/urgent-appeal-to-special-procedures-regarding-ethiopia-lega-dembi-gold-mine2.pdf> accessed [05 December 2020] 4-5

¹²³ WHO, 'Hydrogen Cyanide and Cyanides: Human Health Impact' (Concise International Chemical Assessment, Document 61) 51

¹²⁴ See MIDROC website available at http://www.midroc-ceo.com/midrocetg/?q=mgold_mgmt accessed [27 March 2020] The policy adopted by the company so far include Human Resources Services Policy and Procedure Manual (HRSPM), Financial Services Policy and Procedure Manual (FSPM), Attest Plan, Materials Management Services Policy and Procedure manual (MMSPM), Organizational Structure Manual (OSM), Collective Agreement, Protection Services Policy and Procedure Manual (PSPM), Educational Policy, HIV/AIDS Policy Manual

close observation of its magazines, website, and publications discloses that MIDROC has no effective human rights policy commitment in place. Adoption of human rights policy at the company senior management level and mainstreaming it within its structures is vital to address human rights violation in its operation and in its dealings with other enterprises linked to its operations, products, or services through its business relationships. Due to the absence of public and effective human rights policy commitment, a respect for human rights is excluded from MIDROC Gold PLC's decision-making process and prevented it from effectively addressing human rights violations emanated from its activities.

Further, MIDROC Gold PLC has failed to set in place a company level risk-based human rights due diligence mechanism. This human rights due diligence could be adopted as a separate policy within MIDROC or can be made a part of general risk management strategies. Risk-based human rights due diligence play a vital role in preventing, mitigating or remediating risks to employees, neighbors, or the environment. There has been no transparent reporting mechanism in MIDROC Gold PLC's structure as to measures the company is taking to address adverse human rights and environmental impact associated with its operation or business relation.

Further, MIDROC has contravened the rights to remedy of local population victimized by its operation. MIDROC has been alerted by various media reports that it has caused human rights violations. These media reports have arrived on a deaf ear and there has been no redress provided by MIDROC for the victims. According to John Ruggie, companies need to acquire both legal and social license to function properly in their area of operation.¹²⁵ The first one is a legal license, which mining companies should acquire from government agencies, from the Ministry of Mine and Petroleum in the case of Ethiopia, according to Article 9 of the Mining Operation Proclamation No. 678/2010.¹²⁶ The second one is a social license, which companies should strive to secure from the local affected communities. For Ruggie, companies disregard and poorly consider the need for the second license.

¹²⁵ John Ruggie, *Just Business: Multinational Corporations and Human Rights*, (W.W. Norton & Company, 2013) 10

¹²⁶ Mining Operation Proclamation [Proclamation No. 678/2010, Federal Negarit Gazette,] 4 August 2010, Article 9^{ff}

There are some indications that MIDROC Gold has already lost its social license. Following the renewal of MIDROC Gold PLC's Laga Dambii Gold Mine for the next ten years and as MIDROC failed to remediate the harms it has caused, a popular protest against the mine mounted. This protest throughout the region demanded MIDROC Gold to stop violating the basic human rights of the local Guji indigenous people, stop contaminating soil and water sources and contribute to the development of the local community. The loss of social license in long run may result in a loss of legal license.¹²⁷ Following a popular uprising triggered by the renewal of the Laga Dambii concession, the GoE suspended MIDROC Gold Laga Dambii Gold Mine license until further investigation concerning environmental abuse is being conducted.

The violations of human rights by MIDROC is transnational in its character. Apart from MIDROC Gold, two foreign-based corporations are participating in corporate human rights violations by their business relation with MIDROC through their supply chain. According to its website, MIDROC Gold PLC produces gold for a foreign market shipping its products to the Argor Heraus refinery in Switzerland where it is refined and sold to Commerzbank in Zurich Switzerland.¹²⁸ MIDROC Gold PLC is a business organization that is directly causing human rights violations on the ground. The second entity is Argor Heraus refinery in Switzerland that is contributing to the human rights violations in Laga Dambii by receiving the gold from MIDROC to refine and then to sell to the third actor, Commerzbank in Zurich Switzerland. This third entity is linked to the human rights violations in Guji through its supply chain. These three entities have a human rights obligation to respect. The second and third entities are duty-bound to know from where their product is coming, how it is mined, and the situation of human rights in their supply chain. The GoE is also complicit in MIDROC's human rights violations. The complicity of the state in these injustices is reflected in its aggressive response to protests, criminalizing dissent, and sending riot police to break up demonstrations and detain community leaders. However, the persistent disregard for international human rights law by all these actors have been evidenced by their silence on the cry of the Guji people.

¹²⁷Ruggie (n 125)

¹²⁸See MIDROC (n 124)

CHAPTER THREE

THE ETHIOPIAN CORPORATE ACCOUNTABILITY LAW AND GAP

Protecting its inhabitants or individuals within its jurisdiction from human rights violations is a primary duty of the GoE. This includes the duty to protect individuals from abuse by business organizations. To carry out this duty, the State shall adopt effective policy and legal frameworks to prevent, mitigate, and remediate the adverse human rights impact of business operations. The goal of this policy and law is preventing abuse, mitigating risk to human rights and redressing the adverse human rights impact. Under this chapter, relevant policies and legislations are analyzed to examine the gaps that may give rise to corporate human rights violations and inadequacies to realize accountability for causing, contributing or being linked in the violations.

3.1.Gaps in the Relevant policies

3.1.1. Absence of National Action Plan on Business and Human Rights

Strong policy frameworks are required to maximize the benefits of businesses and minimize the adverse impact of their operations on human rights. A failure to adopt correct policy instruments can negatively affect their employees, customers, neighbors, and other peoples to whom they are related through their supply chain. The UN Guiding Principles on BHR urges member states to tailor principles included in the Guiding Principles into their domestic systems by considering their national practical realities.

Even though countries enjoy a margin of appreciation on how to enforce their international commitments in their respective countries, the UN pushes for the adoption of a national plan of action on BHR.¹²⁹ Concerning the nature of the national action plan for BHR, it can be developed in a policy framework solely dedicated to BHR. It is also possible to incorporate it into a policy document dealing with other broader issues. According to the Guidance on National Action Plan on BHR developed by the UN Working Group on BHR, an action plan for BHR can be integrated into “development plans, national action plans on human rights, labor rights, or

¹²⁹ UN Office of the High Commissioner for Human Rights, ‘State National Action Plans on Business and Human Rights’ available

at <<https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>> accessed [23 March 2020]

corporate social responsibility strategies.”¹³⁰ Ethiopia was not a member of the Human Rights Council during the time the UN Guiding Principles On BHR was endorsed (June 2011) and an Ethiopian has never been elected to the members of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises.¹³¹ Ethiopia has not yet adopted a national plan of action on BHR to implement the UN Guiding Principles in its domestic system. In the next sub section, relevant policies that Ethiopia has adopted so far will be analyzed to examine whether they have provisions to enforce the UN Guiding Principles for BHR.

3.1.2. The National Human Rights Action Plans (I and II)

Ethiopia adopted the first National Human Rights Action Plan (2013-2015) and the second National Human Rights Action Plan (2016-2020) as the crucial mechanisms to ensure effective protection of human rights at the national level.¹³² The private commercial entities has neither effectively participated in developing of the action plan nor in its implementation. The instrument has some progressive realization to protect violations of human rights by private actors particularly when they engage in delivering public services. For example, the action plan encourages private actors’ involvement in delivering health services and capitalizes on the monitoring and control mechanism by the state to ensure “health service is all-inclusive, non-

¹³⁰ ‘Guidance on National Action Plans on Business and Human Rights’ (UN Working Group on Business and Human Rights, 2016) 3 available at https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf accessed [06 December 2020]

¹³¹ ‘Overview: Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises’ available at <https://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx> accessed [06 December 2020] See also The UN Human Rights Council: Membership of the Human Rights Council 19 June 2010 - 18 June 2011 by Regional Groups available at <https://www.ohchr.org/EN/HRBodies/HRC/Pages/Group20102011.aspx> accessed [06 December 2020]

¹³² The Federal Democratic Republic of Ethiopia National Human Rights Action Plan (2013-2015) (June 2013 Addis Ababa) see also the Second National Human Rights Action Plan (2016-2020) (September 2016, Addis Ababa)

discriminatory, and up to professional and ethical standards.”¹³³ The action plan took similar stand concerning private actors’ involvement in delivery of education and housing.¹³⁴ It has noted the impact of development projects on the right to clean environment.¹³⁵ Particularly, it stated that private sector’s investment’s and development activities should be preceded by environmental impact assessment.¹³⁶ However, the action plan failed to mention the duty of the private actors to conduct human rights impact assessment before the initiation of the project and during their operation.

Further, the action plan stipulated that a bill with a nation-wide scope of application would be adopted and it would “define the socio-economic responsibilities of corporations.”¹³⁷ This policy instrument did not contain details of what ‘the would-be law’ would regulate, and elements it should comprise. More than six years have passed since the coming into force of the first National Human Rights Action Plan, and there is no such a law adopted so far. The second National Human Rights Action Plan (2016-2020) fails to rectify the shortcomings of the first National Action Plan concerning the responsibility of private actors in upholding human rights in their operation. The second action plan was also criticized for inadequate civil society participation in its implementation and thus, the CSO played no role to hold corporations accountable under this plan of action.¹³⁸ The focus of both action plans in relation to private actors’ involvement in the delivery of social services is extending incentives to private actors to engage in the delivery of these services and on the state duty to regulate their operation. They do not hint on the private actors’ responsibility to respect human rights while delivering services.

¹³³ Id., 91

¹³⁴ Id., 104, 118

¹³⁵ Id., 171

¹³⁶ Ibid

¹³⁷ Id., 172

¹³⁸ National Report Submitted in accordance with Paragraph 5 of the annex to Human Rights Council Resolution 16/21, A/HRC/WG.6/33/ETH/1, (Human Rights Council Working Group on the Universal Periodic Review Thirty-third session, 25 February 2019) available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/053/56/PDF/G1905356.pdf?OpenElement> accessed [05 December 2020]

3.1.3. The Second Growth and Transformation Plan (GTP II)

The impact of the Second Growth and Development Plan (GTP II), the Ethiopian main policy document (2015-2020), on human rights is not empirically studied. However, owing to the broad human development the plan projected to realize, it can be safely concluded that the successful implementation of the plan would have tremendous benefits to the realization of human rights. The main objectives and pillars of the GTP II, as illustrated under part two of the document, was accelerating economic growth and realizing national development.¹³⁹ Particularly, the plan had a capacity to increase the enjoyment of socio-economic rights by creating jobs, creating wealth and poverty reduction. Besides, GTP II give emphasis to “labor intensive large scale manufacturing industries” to create employment opportunities for greater number of Ethiopians through enhanced focus on private sector development.¹⁴⁰

However, the GTP II did not set in place a policy direction for addressing the corporate accountability gap. Its total focus was harnessing the positive contributions that the private sectors could make to the national development and it did not effectively deal with how to minimize the spillover effect of industrial development or the adverse impact of business organizations on human rights.

3.1.4. National Employment Policy and Labor Law

Enhancing social welfare, accelerating economic growth, and achieving political stability are considered as the main objectives of the National employment policy and strategy.¹⁴¹ The policy is aimed at creating employment opportunity to eradicate poverty and reduce political instability that may be resulted from increased unemployment rate. The policy clearly stipulate that the “future of employment expansion in Ethiopia is with the private sector’ and generally aimed at

¹³⁹ The FDRE Growth and Transformation Plan II (GTP II), (2015/16-2019/20) 80-82 available at <https://www.greengrowthknowledge.org/sites/default/files/downloads/policy-database/ETHIOPIA%20Growth%20and%20Transformation%20Plan%20II%2C%20Vol%20I.%20%20%282015%2C16-2019%2C20%29.pdf>> accessed [23 April 2020]

¹⁴⁰ Id. 82

¹⁴¹ National Employment Policy and Strategy of Ethiopia (November 2009, Addis Ababa) Section 2.2

“enhancing private sector productivity” to create decent life for workers in Ethiopia.¹⁴² The policy aspire to set a general guidance for both the demand and supply side by creating conducive environment for business to flourish and for the labor market to supply skilled labor force to businesses.

The policy capitalizes on the positive correlation among employment, growth and poverty reduction with the general aim of ensuring “growth is shared and pro-poor.”¹⁴³ The policy aims at guiding the contribution of employment to growth through “strategic intervention to maneuver the linkage between economic growth, employment, and poverty.”¹⁴⁴ The policy is adopted with three independent but interrelated strategic objectives to enhance social welfare, accelerate economic growth and achieve political stability. All these three objectives play instrumental role in advancing the enjoyment of not only socio-economic rights but also civil and political rights. Like the other policies and strategies of the country, the national employment policy and strategy also capitalize on the private sector development through creating conducive environment for the businesses to flourish, and providing an incentive mechanisms in a coordinated and strategic manner.

Other strategic themes that the policy focuses on to enhance private sectors involvement in labor intensive business activities is through that arresting corrupt business practices, enhancing infrastructure development, ensuring macroeconomic stability and by enhancing competitiveness and productivity. Besides, the document provide a policy guidance for the establishments of employee associations, assurance of labor protection and provisions of decent working conditions. These have positive contribution to the realization of employment rights and other crucial rights such as the right to health, education and housing through economic incomes generated from employment. Diligent law on employment and industrial relations should provide for mandatory due-diligence to corroborate this policy ground.

Ethiopia fully amended its labor proclamation in 2019 with the stated objectives of creating “favorable environment for investment and achievement of national economic goals” without

¹⁴² Id., Section 2.3.1

¹⁴³ Id., Section 2.1

¹⁴⁴ Ibid

compromising “workplace rights.”¹⁴⁵ Progressive labor laws play pivotal role in advancing workers’ labor rights. However, no matter how progressive a given labor law is, a labor law alone is insufficient to fill the human rights accountability issues that may arise in connection with work unless corroborated by other legal provision that place a due diligence duty on corporations. The basic essence of labor law and employment contract is regulating the relationship between employer and employee or regulating a tripartite relationship between employees, employers and the government.

For example, labor exploitation in Ethiopian industrial parks is transnational in its character and other business entities with no physical presence in Ethiopia are linked to these human rights abuses through their supply chain. Renowned brands in the USA and Europe source their products and they buy clothing and finished products from manufacturers in Ethiopia.¹⁴⁶ Companies are increasingly outsourcing their works and activities and ignoring direct contact with the labor force. Suppliers are in Ethiopia and companies that operate in a foreign jurisdiction are linked to violations indirectly through their business relationship. Further, MNCs are implementing complex corporate governance rules and structures concealing their liability by creating subsidiaries and operating through them. The labor laws govern relationship between the employee and the immediate employers, and companies that have no employment contract with workers but linked to the abuse through its supply chain is beyond the ambit of the labor law.

The inadequacy of labor law was better uncovered during the devastating cases of corporate human rights violations in India where ‘Union Carbide Pesticide Plant’ in Bhopal leaked over forty tons of poisonous Methyl Isocyanate gas into its workers and neighbors.¹⁴⁷ According to

¹⁴⁵ Proclamation No.1156/2019 [Labour Proclamation, 25th Year No. 89, Addis Ababa] 3rd Preambular paragraph

¹⁴⁶ Gifawosen Markos, ‘Labor Rights, Working Conditions, and Workers’ Power in the Emerging Textile and Apparel Industries in Ethiopia: The Case of Hawassa Industrial Park’ p.34 (New Research in GPE Working Paper No. 01/2019, Department of Social Sciences “Globalization and Politics) available at https://www.unikassel.de/fb05/fileadmin/datas/fb05/FG_Politikwissenschaften/GlobPolitik/GPE_Working_Papers/New_Research_in_GPED-Mitta_2019-01.pdf accessed [04 December 2020]

¹⁴⁷ Edward Broughton, ‘The Bhopal Disaster and its Aftermath: a Review (2005) 4(6) Environmental Health: A Global Access Science Source available

the ‘Business and Human Rights Resource Center’, this corporate crime has immediately claimed the life of 3000 individuals, left 50,000 persons to permanent disability and 15,000 individuals have died because of subsequent exposure to the poisonous gas.¹⁴⁸ It is very difficult to address the workers (victims) right to a remedy by the application of the labor law in such transnational and grave cases of human rights violations. The immediate employers may have no means to satisfy compensation claims and in such cases, there should exist a legal mechanism that would enable victims to have a recourse against those companies that have contributed or linked in the rights violations.

The current model of business human rights responsibility mechanism is to hold businesses responsible when they cause, contribute to or linked in human rights violations through their business relationship such as in their supply chain. The labor law framework may assist to ensure the accountability of the corporations that directly cause human rights violations against their workers. However, it is inadequate to hold accountable companies that contribute to or linked in rights violations. Thus, Ethiopia should adopt due diligence law that would enable companies to identify, prevent, mitigate and remediate human rights violations that they may cause directly by their operation or to which they contribute or linked in through their business relationship. Thus, labor law lacks essential features and core legal concepts that are vital to fight corporate immunity when companies contribute to human rights violations without having immediate employment relationship with employees.

3.1.5. The National ICT Policy and the Information Network Security Agency Laws

One challenge that the use of internet and social medias such as Facebook, Twitter and Instagram posits in Ethiopia is a challenge associated with spreading hate speech, misinformation and fake news. The private companies that provides the service of these social medias have responsibilities to prevent, mitigate and remediate any adverse impact of their services against human rights by employing human rights due-diligence mechanisms. They have responsibilities

<https://ehjournal.biomedcentral.com/articles/10.1186/1476-069X-4-6> accessed [02 December 2020]

¹⁴⁸ _____ ‘Union Carbide: Dow Lawsuit re Bhopal’ (Business and Human Rights) available at <https://www.business-humanrights.org/en/union-carbidedow-lawsuit-re-bhopal> accessed [05 May 2020]

to “integrate human rights into their structures, including through transparent human rights impact assessment procedures, adequate oversight, and opportunities for individuals to obtain redress, in compliance with the Guiding Principles on Business and Human Rights.”¹⁴⁹

In connection with the right to [access] the internet, the government has also a duty to protect and regulate the private actor involving in the delivery of telecom services. The regulatory capacity of the state, however, is not unlimited and it should act within the legal frontiers and standards recognized under international human rights law. In his December 2019 country visit to Ethiopia, David Kaye, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression explained the situation as:

“It is not clear that the Government sees access to information as a priority. The most alarming example of this position is *a frequent resort to shutting down the internet in times of public protest and even school exams*. In fact, during the visit, the Information Network Security Agency confirmed that the internet was shut down in order to address a cyber-attack on government and private banks. No Government official could articulate for me a legal basis for such actions, but some continued to justify it. *Internet shutdowns have been widely condemned as disproportionate measures under international human rights law, and I am particularly concerned that such actions are undertaken without constraint under law or policy. I strongly urge the Government to discontinue the use of this tool.*”¹⁵⁰ (The emphasis is mine)

The Special Rapporteur has clearly specified the practice within the government concerning internet blackout during political protest. The practice has an implication of concealing violations of rights perpetrated by security forces during protest and thus perpetuate impunity by making accountability procedure more cumbersome. Ethiopia commented on the report of the

¹⁴⁹ Visit to Ethiopia: Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, A/HRC/44/49/Add.1 (A/HRC/44/49/Add.1) Par. 37

¹⁵⁰ David Kaye, ‘End of Mission Statement by the United Nations Special Rapporteur on the Right to Freedom of Opinion and Expression’ (Visit to Ethiopia, 2-9 December 2019) available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25402&LangID=E> accessed [14 May 2020]

Special Rapporteur and vehemently contested the statement made in connection with internet shutdown. The relevant section of Ethiopia's response to the report states:

“First, according to proclamation no 808/2013 which reestablishes Information Network Security Agency, the agency among others is vested with the power to keep the country safe from any threats against national security and it can take measures when the necessity arises. Further, [it] can be looked into article 6 of this Proclamation which details the powers and functions of the agency. Second, the FDRE constitution is progressive in recognizing the right to freedom of information. Under Article 29 (2), it has guaranteed a freedom to seek, receive and impart information and ideas of all kinds. Moreover, under the same article sub article 3, access to information of public interest is guaranteed. However, as it is enshrined under international law governing the subject whom Ethiopia is also a party to, clearly specified that these rights are not absolute and derogations [*Sic*] within the established scope are permissible. The limits Ethiopia have incorporated under article 29 (6) of the constitution are verbatim of those specified under article 19 of UDHR and article 19 sub article 3 of ICCPR.”¹⁵¹

In this Comments, Ethiopia did not dispute the factual ground concerning the practice of internet shutdown, but raised the constitutional and legal grounds to justify its practice. To begin with, the right to [access] the internet which is derived from the right to freedom of expression, the right to privacy and the right to peaceful assemblies is not absolute and permissible limitations may be imposed based on Article 29 (6) of the FDRE Constitution. However, this ‘permissible limitations’ should not be considered arbitrary and any limitations to this important right must comply with constitutional requirements stipulated under Article 29 (6), Article 19 of the UDHR and Article 19 (3) of the ICCPR.

Accordingly, any restriction into this right is permitted only when it fulfils the requirements of legality, necessity, and proportionality.¹⁵² The first requirement, the legality element, requires a

¹⁵¹ ‘Comments by the State: Report of the Special Rapporteur on the Promotion and Protection of the Freedom of Opinion and Expression on his Visit to Ethiopia’ A/HRC/44/49/Add.3, (15 April 2020) Para 20 available at <https://undocs.org/A/HRC/44/49/Add.3> accessed [05 December 2020]

¹⁵² ICCPR (n 73) Article 19 (3)

prior adopted, clear and specific law with wider scope of application. The law raised to justify the practice by the GoE is the Information Network Security Agency (INSA, the Agency, hereinafter) Re-establishment Proclamation Number 808/2013.¹⁵³ This law fails to satisfy the legality requirement on multiple grounds. To begin with, the law does not give to the INSA an authority to shut down the internet as the GoE claimed it. There is no clear provision in the Proclamation authorizing INSA to take measures that would result in nationwide telecommunications blackout. The objective of the Agency, as stipulated under Article five of the Proclamation, is “to ensure that information and computer based key infrastructures are secured, so as to be enablers (*Sic*) of national peace, democratization and development Programs.”¹⁵⁴ The powers given to the Agency under Article 6 are in line with this objective and their main focus is protecting the country’s information and computer based infrastructures from “cyber or electromagnetic attacks.”¹⁵⁵

While authoritatively interpreting Article 19 (3) of the ICCPR in connection with a law imposing restriction on the right to [access] internet, the CCPR stated that:

“Permissible restrictions generally should be *content-specific*; *generic bans on the operation of certain sites and systems are not compatible with paragraph 3*. It is also inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government.”¹⁵⁶

Apart from one case when the internet blackout was made to protect the country’s financial sector from cyber-attack, other blackouts were made consistently during the times of protest, assemblies or to prevent online organization or activism. The blackout has been not content specific and it is a blanket denial of any access to the internet and other telecommunication services sometime, as the case in Western Oromia provinces. Besides, the nationwide blackout and generic restrictions fails to satisfy the element of proportionality. The proclamation cited by

¹⁵³ A Proclamation to Re-Establish The Information Network Security Agency [Proclamation No. 808/2013] (Addis Ababa 2 January, 2014)

¹⁵⁴ *Id.*, Article 5

¹⁵⁵ *Id.*, Article 6 (4)

¹⁵⁶ CCPR General comment no. 34 (*n* 75) 43

the GoE lacks the clarity and specificity requirement, as there is no authority bestowed to INSA to shut down internet and telecommunication services. Besides, the practice of the GoE persistently fail to satisfy the proportionality requirement and thus, the practice of telecommunications and internet services blackout may not be justified under Article 29 (6) of the FDRE Constitution and Article 19 (3) of the ICCPR.

Ethiopia adopted the National Information Security Policy in September 2011.¹⁵⁷ The main focus of this policy is on the protection of data and information from security threat. The policy is mainly intended to protect government offices and state infrastructures' data from attack and minimum attention was given to the private sector. In addition, the policy fails to give any substantial direction or guidance concerning the obligation of private business organizations on handling data and information of their customers, their responsibility to take precaution to prevent their customers' data from attack, mitigate or remediate any harm related to their operation

The National Information and Communication Technology Policy and Strategy also capitalizes on the development of the ICT sector and there is no section dedicated to create legally enforceable obligations upon private actors operating in the sector to respect human rights. The policy goal is illustrated under section three of the policy as developing “telecommunications and communications infrastructure in all regions of the country in view of promoting the development of ICT services and encouraging extensive utilization by the public.”¹⁵⁸ The policy mentioned that the private actor involvement in the sector is underdeveloped and cited it as an indicator of low level ICT development in the country.¹⁵⁹ To improve this, the Policy mentioned enhancing the participation of the private sector in the ICT industry as one of the strategic focus

¹⁵⁷The FDRE National Information Security Policy (September 2011)

<https://www.insa.gov.et/web/guest/%E1%88%B0%E1%8A%90%E1%8B%B6%E1%89%BD> accessed [02 December 2020]

¹⁵⁸ The National Information and Communication Technology Policy and Strategy, available at https://unctad.org/system/files/non-official-document/CSTD_2013_WSIS_Ethiopia.pdf accessed [05 December 2020]

¹⁵⁹ Id., Section 1-e

of the policy.¹⁶⁰ Further, strengthening the “role of the private sector to ensure the rapid development of ICT” is considered as one of the goals of the policy instrument.¹⁶¹ The policy dedicated a specific section for the private actors involvement in the sector and fully focused to create conducive legal and regulatory environment for private involvement in the sector.¹⁶²

The close examinations of the two policies indicate that human rights based approach were not employed, particularly in relation to the obligations of private economic actors to respect human rights. The National Information Security Policy focuses on protecting the government offices and state infrastructures’ data or information from security threat. Besides, the focus given for private sector in the National ICT Policy and Strategy is to develop the involvement of private sectors in the industry by creating incentives and conducive environment for their engagement. They do not create any policy direction or guidance for economic actors to adopt policy commitment to respect human rights. Besides, they do not require economic actors to employ risk-based human rights due-diligence mechanisms in their operation and they do not give any hint that such law would be adopted in the future.

3.1.6. The Ten Years Perspective Development Plan (2020 to 2030)

This development plan is the most recent national policy that Ethiopia adopted under the vision of ‘Ethiopia: An African Beacon of Prosperity’ and that is spearheaded by the theme of “Ethiopia’s Homegrown Economic Reform Agenda.”¹⁶³ The development plan is prepared by taking into account policies that are currently under implementation in the country, the gains from previous policies, regional agreements, international treaties, and current regional and international economic realities.¹⁶⁴ These measures enabled the policy to take into account the gains from previous policies and rectify the previous shortcomings. One area of improvement is the concept of qualitative measurement of growth and the definitional criteria given to the word ‘prosperity’ under section 1.1 of the plan.¹⁶⁵ Unlike in previous policies, this plan pursued a

¹⁶⁰ Ibid

¹⁶¹ Id., Section 2.5-E

¹⁶² Id., Section 3.6

¹⁶³ Ten Years Perspective Development Plan ((2020-2030) (Addis Ababa, December 2020)

¹⁶⁴ Id., Section 1.2 - 1.5

¹⁶⁵ Id., Section 1.1.

holistic approach enhancing indicators of prosperity or development. Accordingly, the perspective development plan gives priority for the citizens so that they could be benefited from inclusive equitable access to education, health, food and the right to water. According to the development plan, these essential social services should be made available to citizens based on need not ability to pay.¹⁶⁶

This specific section of the plan gives special attention or policy direction on how social services should be delivered. The need-based approach preferred by the perspective development plan hints that these social services are essential for the citizens' survival and should be publically delivered. It is known that if these services are to be delivered by private sector alone, their accessibility would be based on 'the ability to pay' and 'not on the need'. Making essential social services to be delivered predominantly by the private sector would complicate the realization of the visions stipulated under the plan. Thus, even though the perspective development plan does not rule out the possibility of the social services to be delivered by private actors, it can be safely concluded that the plan envisioned a public delivery of essential social services as a priority. This is crucial to ensure accountability for human rights violations as it would be easier to hold state accountable for violations of human rights and as public scrutiny is magnified when the state is the final owner or duty bearer.

Further, the policy envisions enhanced social and political freedoms as human rights, peace, good governance and justice are indicated as key indicators of development or prosperity.¹⁶⁷ These indicators play crucial role in the realization of broad based and all-inclusive growth, which is crucial to enhance human rights for all irrespective of social status.

The plan enlisted four strategic pillars targeting to realize quality based economic growth, increasing productivity and competitiveness, building a green and climate-resilient economy and ensuring institutional transformation.¹⁶⁸ One of the pillars espoused by the development plan is ensuring that the economy is led by 'private sector.' The plan aspires to achieve this goal by creating conducive environment for local investor engage in critical sectors of investment and

¹⁶⁶ Ibid

¹⁶⁷ Ibid. See also 'Ten Years Perspective Development Plan: Justice Sector' a discussion available at <https://www.youtube.com/watch?v=3oO3BcSkJ0w> accessed [06 December 2020]

¹⁶⁸ Id., Section 2 (2.1-2.4)

extending government support so that the local private investors flourish. In line with the ‘Ethiopia’s Homegrown Economic Reform’ agenda, the development plan set direction for privatization of SOEs through partial and full liberalization (those that are beyond essential social services). Accordingly, the future of the country would inspect growing private sector involvement in economic sectors such as service, manufacturing, industry, mining etc. as it is a perspective strategic plan, and details would reasonably expected to be covered by subsequent plans such as action plans and annual plans. Key legal provisions that are capable to fully uphold human rights from corporate crimes could be creatively drawn from the broad visions enlisted under section one of the perspective development plan.

3.2. Gaps in Relevant Laws

Ethiopia regulates economic actors operating within its jurisdiction legal provisions scattered in numerous proclamations within private and public laws. This section examine whether these laws are adequate, whether companies could evade accountability even in the full implementation of these domestic laws and whether the country needs special law aimed at addressing the human rights responsibilities of corporations.

3.2.1. The FDRE Constitution

The FDRE Constitution has devoted more than one-third of its provisions to human rights. Chapter three of the Constitution, running from Article thirteen to forty-four, accords constitutional recognition to basic rights and freedoms.¹⁶⁹ According to Article 9 (2) of the Constitution, “All citizens, organs of state, political organizations, *other associations as well as their officials* have the duty to ensure observance of the Constitution and *to obey it.*”¹⁷⁰ (Emphasis is mine) According to this provision, the phrase ‘*other associations, as well as their officials*’ include business organizations operating in Ethiopia and their officials or management staffs.¹⁷¹ As there is no specific condition attached to the phrase, the term “*other associations*” includes all business organizations irrespective of their size, ownership structure, sector, location, and country of origin.

¹⁶⁹ FDRE Constitution (n 74) Article 13-44

¹⁷⁰ Id., Article 9 (2)

¹⁷¹ Abate (n 22) 52

Business organizations assumed two constitutional duties under this constitutional provision. The first duty is the duty to abide by the Constitution including its human rights provisions by themselves. This requires corporations to respect human rights and prevent them from causing human rights violations directly by their operation. The second duty imposed on corporations by Article 9 (2) of the Constitution is the duty *‘to ensure observance of the constitution.’* This prohibits companies from contributing to human rights violations and from being linked in human rights violations indirectly by their business relationship through their supply chain.

Further, Article 13 (1) of the Constitution has enlisted the identity of entities that has an obligation to respect and enforce the fundamental rights and freedoms’ provisions of the constitution. Article 13 (1) states, “All Federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty *to respect* and enforce the provisions of this Chapter [Chapter three].”¹⁷² Unlike under Article 9 (2), business organizations do not assume an obligation under Article 13 (1). In one peer-reviewed article published in the South African Journal of Human Rights, the FDRE Constitution was categorized in a group of constitutions whose bill of rights do not bind natural and juristic persons (other than state agencies) based on Article 13 (1) of the Constitution.¹⁷³

However, there is no apparent conflict between Article 9 (2) and Article 13 (1) of the Constitution as far as the human rights obligations of business organizations is concerned. To begin with, Article 9 (2) has clearly stipulated that other associations, other than state agencies, have a duty not only to obey the Constitution but also to ensure its observance. As the state, citizens and political organizations are already mentioned in the preceding sentence it can be concluded that the phrase ‘other associations’ is employed to represent private actors including economic actors. Article 9 (2) of the Constitution is included in Chapter two of the Constitution dedicated for the fundamental principles that helps to understand the spirit of the Constitution, and it sets a framework to understand other provisions of the Constitution. Besides, Article 13 (1) regulates the vertical application of the Constitution obliging the state and its agencies to uphold and enforce Chapter three of the Constitution. It does not state that business organizations

¹⁷² FDRE Constitution (n 74) Article 13 (1)

¹⁷³ C Heyns and W Kagoungo, ‘Constitutional Human Rights Law in Africa’ (2006) 22 South African Journal of Human Rights 673, 679

have no human rights duty to observe. The Article is silent concerning the role of business organizations on issues incorporated in that specific chapter. Owing to the history of the country at the time when the Constitution was adopted, major human rights violations have been perpetrated by the state and its agencies. That is why special emphasis was given to imposing human rights obligations on the state agencies by mentioning them both under Article 9 (2) and 13 (1).

Further, according to Article 13 (2) of the FDRE Constitution, Chapter Three of the Constitution shall be interpreted in light of international human rights instruments adopted by Ethiopia.¹⁷⁴ Ethiopia is the state party to most of the nine core human rights instruments.¹⁷⁵ These treaties, as authoritatively interpreted by their respective monitoring bodies, imposed an obligation on Ethiopia to respect, protect, and fulfill human rights including the obligation to protect human rights from corporate human rights violations. They also require Ethiopia to adopt a legislative instrument requiring business organizations to respect human rights during their operation.¹⁷⁶

Constitutional provisions by their nature provide a general framework. Details on specific issues are expected to be specified in subsequent and subsidiary laws. As explained above, Article 9 (2) of the Constitution can be creatively interpreted to draw economic actors' responsibility to respect human rights. However, there has been no robust subsequent law adopted so far in Ethiopia explaining how business organizations should move to vindicate their constitutional duty 'to ensure observance of the Constitution [including human rights provisions] and obey it.' Besides, due to the absence of a constitutional court in Ethiopia and the "reluctance of ordinary courts to adjudicate cases based on the bill of rights,"¹⁷⁷ this constitutional provision has been denied an opportunity to protect Ethiopians from corporate crimes in Ethiopia.

¹⁷⁴ FDRE Constitution (n 74) Article 13 (2)

¹⁷⁵ UN OHCHR website, Ethiopia available at

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=59&Lang=EN last checked [25 May 2020]

¹⁷⁶ CESCR General Comment No. 24 (n 51)

¹⁷⁷ Abate (n 22) 53

3.2.2. Other Private Laws

One of the obligations imposed on states by international human rights instruments is the obligation to protect human rights from being violated by non-state actors including individuals, business organizations, and other non-state entities. Concerning the state obligation to protect human rights from violations by economic actors, the CESCR astutely described in its General Comment No. 24 as:

“The obligation to protect entails a positive duty to adopt a legal framework *requiring business entities to exercise human rights due diligence in order to identify, prevent and mitigate the risks of violations of Covenant rights*, to avoid such rights being abused, and to account for the negative impacts caused or contributed to by their decisions and operations and those of entities they control on the enjoyment of Covenant rights. States should adopt measures such as imposing due diligence requirements to prevent abuses of Covenant rights in a business entity’s supply chain and by subcontractors, suppliers, franchisees, or other business partners.”¹⁷⁸ (Emphasis is mine)

Imposing mandatory corporate human rights due diligence mechanism is recognized as a core means of protecting individuals from corporate scandals. The nature of this due diligence and what corporations are prohibited to do are clearly indicated in this cited paragraph. The risk-based due diligence system shall enable corporations to prevent, mitigate, or remediate the adverse impact of their operation on human rights. Accordingly, the law should clearly prohibit businesses from causing or contributing to human rights violations. Besides, the due diligence law should oblige businesses to mind from where they source their products and prevent them from being linked in human rights violations by their business relationship such as through their supply chain.

Besides, the duty of corporations to conduct human rights due diligence is recognized under various sections of the UN Guiding Principles on BHR. This same standard is enshrined under chapter four of the OECD Guidelines for MNE. Accordingly, businesses are obliged to “carry out human rights due diligence as appropriate to their size, the nature and context of operations,

¹⁷⁸CESCR General Comment No. 24 (n 51) Para 16

and the severity of the risks of adverse human rights impacts.”¹⁷⁹ Accordingly, enterprises, especially those that pose a significant threat or risk to human rights by their nature or context of operation, shall carry out human rights due diligence that would enable them to identify, prevent, or mitigate actual and potential adverse impacts associated with their business operation.

There is no comprehensive legislative instrument that imposes mandatory due diligence on business organizations operating in Ethiopia. The binding statutory law that prevents a company from causing, contributing or from being linked in violations of human rights through their business operation is not yet adopted.

Laws that govern the formation and operation of business organizations shall encourage, enables, oblige and create a conducive environment so that businesses respect human rights. However, there exist no comparable provisions in Ethiopian company laws and regulations. The 1960 Commercial Code of Ethiopia does not have provisions concerning the human rights obligations of corporations established under Ethiopian laws.¹⁸⁰ In similar fashion, the proposed Draft Commercial Code does not impose mandatory human rights due diligence duty on businesses operating in Ethiopia.

Further, companies are increasingly concealing their relationship by pursuing complex corporate governance structure. A vertical structuring of a company in a parent-subsiary relation and a horizontal structuring of a company as a sister company are some of such corporate personality structure. The doctrine of separate corporate personality is a well-established doctrine in company law and one member of a corporate group may not be held liable for the action or omission of the other member. According to the doctrine of ‘separate legal personality’, a company is considered capable of enjoying rights and obligations separate and distinct from its shareholders once it complied with all legal requirements determined for its formation.¹⁸¹ Accordingly, a parent company is not liable for the action of its subsidiaries in principle.

¹⁷⁹ OECD Guidelines for MNE (n 16) Chapter IV, Paragraph 05

¹⁸⁰ The Commercial Code of the Empire of Ethiopia [Proclamation Number 166/1960, Negarit Gazette]

¹⁸¹ Endalew Lijalem, ‘The Doctrine of Piercing the Corporate Veil: Its Legal and Judicial Recognition in Ethiopia’ (2012) 6(1) MLR 77, 79

One of the typical exceptions to the doctrine of separate corporate personality is a situation where the corporate veil is pierced ‘to establish a single economic entity.’¹⁸² Accordingly a corporate veil can be legally pierced and a parent company may be held liable for the action of its subsidiaries when the substantive separation between the two no more exist and when the two companies overlap in their personnel and management making it difficult where one begins and the other end.¹⁸³ It is the case where “the parent company is particularly involved in the activities of the subsidiary, to an extent greater than what would normally be expected in a parent/subsidiary relationship.”¹⁸⁴ This exceptional circumstance is called “a single enterprise theory” of piercing corporate veil and it applies when the two companies mix their personnel, management and resources to achieve a single business goal. According to a ‘single enterprise theory’, parent and subsidiary companies or companies organized under a single group may be held jointly and severally liable for the injury or damage caused by the activities of members of the group.¹⁸⁵

Under the Ethiopian Commercial Code, creditors of a subsidiary company may proceed against its parents when the parent company has served as a director of a subsidiary company. According to Article 347 (4) of the Commercial Code, body corporate can serve as a director and according to Article 366 of the same Commercial Code, a director (including a body corporate if it served as a director) can be held liable when it ‘fails to preserve intact company’s asset’ and when ‘company’s asset is insufficient to meet company’s liabilities.’ Even in this exceptional case, it is impossible to guarantee the right to remedy of victims of corporate human rights crime effectively. To begin with, this remedy is available only when the parent company is elected to serve as a director of a subsidiary company and unavailable in any other scenario. Secondly, the veil that is pierced by the application of the above-mentioned article is the veil covering the subsidiary company’s shareholders. A veil covering the parent company from being held liable for the action of its subsidiary is not fully pierced. Therefore, the shareholders of the parent

¹⁸² Id., 88

¹⁸³ Ibid

¹⁸⁴ Dr. Jennifer Zerk, ‘Corporate Liability for Gross Human Rights Abuses: Towards a Fairer and more Effective System of Domestic Law Remedies’ (A Report Prepared for the Office of the UN High Commissioner for Human Rights) 46

¹⁸⁵ Ibid

company remain untouched by the piercing. When the subsidiary's veil is pierced, creditors could go to a parent company that served as a director's asset and if the asset of the parent company were insufficient too, there would be no possibility of going to assets of the parent company's shareholders. Thus, in the event of a subsidiary company's scandal, the victims of human rights remain uncompensated when it caused damage or injury that its asset is insufficient to compensate.

Arranging and re-arranging the company's structure to deal with risks and to respond to the company's business goal is not illegal and may not serve as a ground to pierce a corporate veil under Ethiopian company law. A parent company may carefully refrain from supervising activities of its subsidiaries, may refrain from engaging in any management works, may refrain from providing resources to its subsidiaries that would enable them to mitigate the adverse impact of their operation on human rights in order to save itself from exposing to liability. Therefore, to respond to corporate human rights crimes, a legal theory based on corporate due diligence should be adopted and the corporate veil shall be pierced when a subsidiary company engages in gross human rights violations.

There have been no provisions in international investment laws that prevent Ethiopia from protecting its nationals from corporate scandals by imposing binding human rights obligations on businesses. Imposing human rights obligation on corporations may not also detrimentally affect Ethiopia's competitiveness in attracting FDI. Upholding international human rights increases investors' competitiveness by according a competitive edge over their competitors. There is global advocacy by civil societies and human rights activists calling upon consumers to mind their buying choices by being conscious consumers. Accordingly, they are calling to boycott products produced by neglecting international human rights in their production process.

Ethiopia can strategically use its BITs to protect its population from corporations' scandals by including binding human rights obligation in BITs. However, thirty-three BITs that Ethiopia signed with various countries from 1996 to 2018 have been examined and binding human rights obligations was assumed in none of the BITs.¹⁸⁶ The BITs recognize duty to respect local laws

¹⁸⁶ Bilateral Investment Treaties: Ethiopia (International Investment Agreements Navigator, Investment Policy Hub) available at <https://investmentpolicy.unctad.org/international-investment-agreements/countries/67/ethiopia> accessed [05 December 2020]

on labor and environment. The focuses of the BITs were on the protections that the parties should extend to investors such as the national treatment, most-favored nation, and protection from expropriation, and they lack provisions that would guarantee the comprehensive protection of human rights.

Another legal gap under the Ethiopian legal system is the inability of Ethiopian legal frameworks to solve innovatively legal barriers that prevent individuals or communities from effectively utilizing their right to remedy. The right to access to remedy is one of the core rights recognized under international human rights instruments and the UN Guiding Principles on BHR.¹⁸⁷ Ethiopia is also a party to international human rights instruments that capitalizes on the right to access to remedy as core human rights crucial for the realization of all other human rights.¹⁸⁸ The obligation that states adopt under international human rights law requires states to prevent human rights violations by businesses, undertake effective investigation when violations are reported, make diligent prosecution and remediate materialized harms due to adverse human rights impacts of business operation.¹⁸⁹ When the rights of individuals or local communities are affected by adverse impact of corporations, it is the duty of a state to make accessible judicial or non- judicial remedies to make sure that the rights of the affected person is fully and effectively addressed.

The right to remedy should be free from legal, practical and other factors hindering their effectiveness. According to the guidance of the working group on BHR, states should not “erect barriers to prevent legitimate cases from being brought before courts in a host and/or home states.”¹⁹⁰ One of such a barrier preventing victims of corporate human rights abuse from vindicating their case in the courts of law is the problem associated with standing. Standing in civil procedure code is a legal requirement that forces parties to the case to demonstrate a significant connection to a case and harm sustained because of a law or action challenged by the case. One way of doing away with a barrier posed by standing is liberating standing and enabling individuals or associations to challenge corporate human rights violations without a need to

¹⁸⁷Zerk (n 184) 56

¹⁸⁸ The UDHR (n 73) Article 8, The ICCPR (n 73) Article 2 (3), ICESCR (n 92) Preamble

¹⁸⁹ The UN Guiding Principle (n 4) Principle one

¹⁹⁰ Guidance on National Action Plans on Business and Human Rights (n 130) 32

demonstrate a vested interest through a legal innovative solution called public interest litigation (PIL, hereinafter). PIL plays a pivotal role in addressing corporate human rights abuse. It improves access to justice “for marginalized and vulnerable communities, raises awareness and debate about a particular issue of general public concern.”¹⁹¹ This PIL is crucial in addressing corporate abuse of human rights through effective human rights litigation by empowering victims, becoming a voice for vulnerable communities and ensuring accountability for human rights violations.

There is a gap in the legal regulation of PIL for corporate human rights violation cases in Ethiopia. According to Article 37 (1) of the FDRE Constitution, “Everyone has the right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power.”¹⁹² According to this constitutional provision, it is a right for everyone to bring any justiciable matter to a court of law or other competent organs with judicial power and it is a duty of the state to make these institutions competent and accessible. Therefore, it is an obligation of the state to make available judicial and non-judicial forums to enable individuals or affected communities to challenge any encroachment to their human rights by corporations.

Further, Article 37 (2) regulates how associations including human rights NGOs and civil society organizations utilize the rights of access to justice. According to Article 37 (2)-A, human rights NGOs or civil society organizations shall prove a vested interest to have a standing in the court of law or other non-judicial forums adjudicating issues of corporate human rights violation. In addition to justiciability, these NGOs shall prove that the collective or individual interest of their members is at stake.

However, sub-article two (B) abolishes the need for ‘vested interest’ and permits PIL in Ethiopia. According to Article 37 (2)-B “any group or person who is a member of, or *represents a group with similar interest*” can seek a legal remedy from courts of law or other non-judicial entity

¹⁹¹Yenehun Birlie, ‘Public Interest Environmental Litigation in Ethiopia: Factors for its Dormant and Stunted Features’ (2017) 11(2) MLR 305

¹⁹² FDRE Constitution (n 73) Article 37 (1)

mandated to adjudicate individual claims. (Emphasis is mine).¹⁹³ This sub-article lists three entities that could use the right of access to justice. The first one is ‘any group.’ There is no requirement attached to this entity except the issue of the justiciability requirement stipulated under sub-article one. Human rights NGOs or civil society organizations shall be considered ‘group’ and permitted to bring cases of corporate human rights violations perpetrated on anyone or any group without being asked to prove their connection to a case.

The second authorized person to bring a case to the attention of a court or other entities mandated with judicial powers is an individual. There is a condition attached to a situation whereby an individual natural person brings a case to court based on sub-article two-B. This individual shall be a member of certain groups of individuals (The first prong of sub-article 2-B). If he or she is not a member of that group then he or she shall prove that he or she represents a group that has similar interest. In the second scenario an individual bringing a case for other group, to which he or she has no relation, shall be expected to prove that he or she has that group’s representation and the latter shall have similar interests. This constitutional provision (Article 37 (2)-B) has liberated standing and it can be utilized for strategic human rights litigation by human rights NGOs or civil society organizations to challenge corporate human rights violations in Ethiopia.¹⁹⁴

On the other hand, the position of the Ethiopian Civil Procedure Code has made the position of PIL under the Ethiopian legal system imprecise. Under Article 32 (2), the Civil Procedure Code stipulated, “No person may be a plaintiff unless he has a *vested interest* in the subject matter of the suit.”¹⁹⁵ This provision is a pure traditional common law approach that requires a plaintiff to

¹⁹³Id., Article 37 (2)- B

¹⁹⁴Getahun Kassa, ‘Mechanisms of Constitutional Control: A Preliminary Observation of the Ethiopian System’ (2007) 20 (1-2) Africa Focus 75, 86 See also Yoseph Dadwaza, ‘Public Interest Litigation as Practiced by South African Human Rights NGOs: Any Lessons for Ethiopia?’ (2005, unpublished LLM thesis, University of Pretoria) 40. On another hand, there are groups of Ethiopian lawyers that believe as it is impossible to bring PIL solely based on this constitutional provision. See Adem K Abebe ‘Towards More Liberal Standing Rules to Enforce Constitutional Rights in Ethiopia’ (2010) 10 African Human Rights Law Journal 407

¹⁹⁵ The Civil Procedure Code of Ethiopia [Negarit Gazeta, Decree Number 52/1965], Article 32 (2)

have a substantial connection to the case. It complicated the issue of standing and has contributed to legal vagueness thereby preventing human rights NGOs from challenging corporate human rights injustices in Ethiopia.

In the case of the right to a healthy environment, Article 11 the Pollution Control Proclamation and Article 10 of Regulation No 159/2008 permit PIL for environment cases.¹⁹⁶ According to the proclamation, any person has the right to “lodge a complaint at the Environmental Protection Authority (EPA) or the relevant regional environmental agency against any person allegedly causing actual or potential damage to the environment.”¹⁹⁷ This innovative solution to corporate environment destruction abolishes a need to show a vested interest in environment case. PIL granted to bring cases before administrative agencies extend to the judicial forum when the case goes up for a judicial review of an administrative decision. However, the scope of application for the proclamation and its directive is limited to environment cases and the authorities have no mandate on other human rights cases.

In addition to the legal gap and ineffective implementation of laws, lack of capacity and legal knowledge of victims of corporate human rights abuse to approach the courts and seek redress contributes to corporate impunity for human rights violations in Ethiopia. This problem can be addressed in two ways. The first one is raising awareness and empowering the local community so that they could demand their rights. This is a work to be done through the cooperation of civil society organizations, human rights NGOs, government and businesses themselves. The second one is granting civil societies and other human rights NGO’s standing so that they can bring cases of human rights violation into the attention of courts by themselves. Still, in the second case, civil society organizations and human rights NGOs should closely work with the local affected communities and find out their true intention and needs. The second option is practically productive and has the capacity to empower vulnerable groups, raise the issue to have the attention of wider communities and could contribute to law reform. Accordingly, the best way to tackle corporate impunity for violation of human rights in Ethiopia is by liberalizing standing,

¹⁹⁶ Environmental Pollution Control [Proclamation Number 300/2002, Fed.Neg.Gazetta] Adopted 3 December 2002 See also Prevention of Industrial Pollution Council of Ministers [Regulation Number 159/2008, Federal Negarit Gazette]

¹⁹⁷Id., Article 11

easing the vested interest principle and enabling human rights NGOs to bring cases into courts without a need to prove a strong connection to the case through the instrumentality of PIL.

The other legal insufficiency and gap under the Ethiopian legal framework is the challenge concerning the determination of compensation for human rights violations perpetrated by corporations. It has been indicated in the first National Action Plan for Human Rights that a bill having nation-wide implementation would be drafted determining the nature and amount of compensation to be paid for victims of water and air pollution.¹⁹⁸ However, this law has not been adopted and the right to remedy of victims of corporate crimes is jeopardized.

The Ethiopian private laws are insufficient to address problems of human rights violations by business organizations. In order to bring a file based on private law remedies for violations of human rights, claimants are expected to establish their case within an established basis of liability under domestic law.¹⁹⁹ For example, to bring cases of human rights violations by characterizing it as a tort case, one has to establish his or her claim based on three bases of liability recognized under Article 2027 of the 1960 Civil Code.²⁰⁰ However, some gross human rights violations do not squarely fit into these established bases of liability. For example, tort law may not help to hold accountable corporations that violate human rights of individuals by failing to exercise due diligence in their supply chain or remotely through their value chains.

3.3.Regulation Gap

3.3.1. Internal Regulation

A. Firm Level Operational Grievance Mechanism

This is a system of regulation by businesses themselves. The OECD Guidelines for MNE recognizes this system of self-regulation as a mechanism by which enterprises address or remediate adverse human rights impact associated with their operation or to which they contributed or to which their names are linked.²⁰¹ The first of such a self-regulation mechanism is called the Operational Level Grievance Mechanism (OLGM, hereinafter) that works through

¹⁹⁸ National Human Rights Action Plan I (n 132) 172

¹⁹⁹Zerk (n 184) 45

²⁰⁰The 1960 Civil Code of Ethiopia [Proclamation Number 165/1960] Article 2027

²⁰¹ OECD Guidelines for MNE (n 16) Chapter IV, Para. 46

industry code of conduct and standards developed by companies themselves. This OLG, in the words of Kaufman and McDonnell, is mainly intended to remediate materialized human rights impact and be established at the company level.²⁰²

This operational-level grievance handling should be effective and genuine. Effectiveness is measured by the mechanisms' legitimacy, accessibility, predictability, equitability, compatibility with accepted standards within the OECD guidelines.²⁰³ The working mechanism of the complaint handling mechanism should be transparent and all parties likely to be affected by the works of the mechanism should be given an opportunity for dialogue and participation.

Different mechanisms with the purpose of addressing rights violations may simultaneously exist at the company level or beyond. The rights of workers for collective bargaining are recognized under most legal system including the Proclamation No.1156/2019.²⁰⁴ In line with workers' right to a collective union, trade union might be established at the company level and operational-level complaint handling should not jeopardize the worker's right to effectively utilize trade union to address labor-related workplace conflict. Further, the operation-level complaint handling mechanism should not prevent the affected person from seeking judicial remedy and accessing other non-judicial administrative units.

This mechanism of responding to human rights violations is purely voluntary and it lacks effective oversight from external organs or authority and lacks external compliance audit. It is designed to work through dialogue between the company and the right holder with minimal bargaining power. It is also limited in scope as the code of conduct is normally internal (in-house) and developed with Limited stake-holder involvement and input.²⁰⁵ Accordingly, codes of conduct or standards are not uniform for all business organizations. The other drawback is the conflict of interest that exists in how a system of OLG works. The system is designed and implemented by the company itself and the participation from the affected person is limited. OLG lacks independent, impartial and transparent monitoring and reporting mechanisms.²⁰⁶

²⁰² Kaufmann J. and K. McDonnell, 'Community Driven Operational Grievance Mechanisms' (2016) 1 (1) Business and Human Rights Journal 127

²⁰³ OECD Guidelines for MNE (n 16), Chapter IV, Par. 46

²⁰⁴ Labor Proclamation (n 145), Article 113^{ff}

²⁰⁵ Nolan J., (n 15) 5

²⁰⁶ Ibid

Companies can restrict the negative impact of this drawback by engaging the affected communities or persons in the investigation, decision-making procedures and determination of redress.

Despite the above-listed shortcomings, addressing human rights violations through OLGGM enables workers, local communities, or any person affected by the company's operation to vindicate its case at a place closer to them. Further, it gives a company an opportunity to know the adverse impacts of their operation before it escalates and costs them enormous costs and resources and assists them to address it through prevention and mitigation processes. It also assists victims to get redress for the violations of their rights when the judicial remedy is unavailable or costly. Thus, Ethiopian firms or foreign corporations operating in Ethiopia could address human rights issues in their structure by implementing OLGGM. By doing so, they could save resources for themselves and can play a gap-filling role filling a legal gap left by the GoE.

B. Multi-Stakeholder Initiatives

There is also another aspect of self-regulation, which is external self-regulation. This voluntary external self-regulation is called a Multi Stake-holder Initiative (MSI, hereinafter). MSI is a mechanism in which industries, civil societies, governments, local communities and other stakeholders come together to address challenging issues concerning corporate accountability, including the issue of corporate human rights accountability while conducting business.²⁰⁷ MSI is a voluntary initiative, out of 'traditional state-based regulatory mechanism,' in which industries operating in similar sectors join together to ensure compliance with their human rights obligations or to achieve their goals collectively. MSI can be transnational bringing industries operating in various jurisdictions together or national in which MSI is established by industries in a given national polity. MSI usually works by creating a set of standards, principles or codes that members should comply within their day-to-day activities or while dealing with their labor force, their customers, and people living in the area of their operation.²⁰⁸ In addition to setting standards, MSI also certifies production, monitor operation and conduct compliance

²⁰⁷ Multi Stake-holder Initiative Database available at <<https://msi-database.org/>>last checked [25 May 2020]

²⁰⁸ Some MSI do not set any standard or codes, and they are established as advisory group.

assessment.²⁰⁹ After the adoption of these codes or principles at the MSI level, then individual companies are required to uphold these codes in their operation.

An assessment of companies' compliance with these standards is carried out centrally at the MSI level. This assessment is normally conducted as a desk-top assessment unless specific or serious allegations or suspect of violation requires empirical and out of office on-site review process. Based on the findings of the assessment MSI assists companies falling behind, inter alia, by developing a continuous improvement plan so that they fully comply with the standards in their performance. Continuous improvement plan is usually followed by a subsequent follow-up in which industries are expected to report their progress to the MSI. These MSI that set codes or principles to which their members should adhere, and that conduct monitoring and evaluation activities are called standard setting MSI. Other MSI does not set standards rather they merely serve as a forum for learning and cross-sector cooperation among member companies.

MSI is created to bridge the gap of regulation that might be created due to leniency of internal industry level self-regulation and absence of or arduousness of binding state-level regulation. MSI serves different purposes. First, it assists to create a uniform set of standards across various sectors. Secondly, as codes, principles or conducts are adopted at MSI level after deliberation among members, it assists the legitimacy of the standards and its implementation. It also assists to easily identify industries falling short of the accepted standards and extend necessary assistance to bring the falling company to full compliance with the standards or to make them accountable. Besides, MSIs mandates the participation of civil societies in their governance, operation and decision-making process and this gives an advantage of better implementation of standards and increased legitimacy.

Further, when industries leverage is small when they act independently, MSI assists to boost their leverage by pooling together the influence they had individually. Mainly, in the case of the supply chain, if companies' leverage is minimum when they act individually, they should join or collaborate with other similar companies to increase or pool together the leverage they have over the company at the other end.²¹⁰ The OECD Guidelines for MNE encourages companies to

²⁰⁹ MSI Database (n 207)

²¹⁰ OECD Guideline for MNE (n 16) Chapter II, Commentary Par. 20

participate in MSI with the view to advance responsible business conduct and supply chain management.²¹¹

The success of MSI is measured by the degree of their openness for participation and engagement of a society that is at the recipient end of companies' harm. These groups of societies are mostly workers and local communities living in the areas where companies that are members of a given MSI operate. The database developed by MSI Integrity and the Duke Human Rights Center at the Kenan Institute for Ethics, after analyzing forty-five standard-setting transnational MSI, found that affected local communities engaged in decision-making process of MSI only in fifteen percent of the reviewed MSI.²¹² Besides, only forty-nine percent of the reviewed MNIs give an opportunity to local communities to engage in any activities of the MSIs including implementation of their standards and policies.²¹³

According to the database, most reviewed MSI have failed to "meaningfully engage the workers and communities that are most affected by the standards they set."²¹⁴ Further, MSIs lack a mechanism to take measures on its misbehaving members. The only measure that MSI can take against the industry that falls short of its standard is sanctioning by suspending or expelling from membership or issuing a public report with the view to shame the member that is violating its human rights standards. However, MSI is financed by its members and its impartiality is questioned and it is improbable that MSI could expel a member crucial for its existence. An MSI is sustained by the membership contribution of its members and challenging violation of human rights by its members may be considered drying the stream of its resources.

²¹¹Id. Chapter II, Par. B-2

²¹² _____, 'The New Regulators? Assessing the Landscape of Multi-stakeholder Initiatives: Findings from a Database of Transnational Standard-Setting Multi-Stakeholder Initiatives' (MSI Integrity and the Duke Human Rights Center at the Kenan Institute for Ethics June 2017) 3 available at <https://msi-database.org/data/The%20New%20Regulators%20-%20MSI%20Database%20Report.pdf> accessed [06 December 2020]

²¹³ Ibid

²¹⁴ MSI Database (n 207)

3.3.2. External Regulation

The substantive aspect of external regulation at the international level is dominated by soft laws mechanisms. This state of voluntarism is an initiative to regulate businesses by subjecting them to legally non-binding voluntary standards.

There is an institutional gap in relation to an effective regulation of the human rights obligation of businesses in Ethiopia. The mandate of an institution entrusted with an authority to enforce corporate human rights accountability would be giving effective guidance to the business organizations on how to respect human rights, follow up their human rights activities and receiving reports of businesses on how they manage human rights in their structure. It also takes corrective measures when businesses fall short of their human rights obligations. This type of institution is non-existent in Ethiopia. The environment protection authority and ministry of labor mandate is limited and their current mandate does not enable them to look after human rights violations. Even, the case studies that we have analyzed in the previous chapter testifies that these institutions are not effectively undertaking their regulatory function and human rights are not mainstreamed in their departments.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATION

4.1. Conclusion

Human rights violations perpetrated by business organizations in Ethiopia and the lack of accountability thereof have exposed major gaps in policies and laws governing business organizations' human rights responsibilities. The UN Human Rights Council has unanimously endorsed UN Guiding Principles for BHR in 2011. Member states of the UN are urged to enforce this Guideline in their domestic frameworks by adopting a national plan of action on BHR. However, Ethiopia has not adopted a robust and effective national policy or plan of action with the objectives of preventing, mitigating or redressing adverse impacts of businesses on human rights. There is no specific policy document dedicated to this issue and provisions concerning labor and environment protection included in other policy instruments are inadequate to effectively set a policy ground for the protection of human rights from being transgressed by business organizations.

Article 9 (2) of the FDRE Constitution obliges business organizations' to respect the human rights and freedoms section of the Constitution. Even though this constitutional provision can be effectively utilized to guard violations of human rights by business organizations, the provisions denied an opportunity to be further elaborated by judicial interpretation.

On the other hand, constitutional provisions are general by their nature and subsequent subsidiary laws shall elaborate their specific details. The need for this subsequent law is particularly heightened in Ethiopia because Article 13 (1) of the FDRE Constitution that regulates the scope of application of human rights provision of the Constitution does not specifically oblige business organizations to respect human rights and fundamental freedoms. In order to resolve this vagueness and lack of clarity a statute of wider application, with sufficient details concerning the responsibility of business organizations to prevent, mitigate and redress adverse human rights impact of their operation should be adopted by the House of Peoples Representative.

The right to a remedy is one of the crucial rights recognized under various international human rights instruments ratified by Ethiopia. However, the operation of this crucial right has been obstructed by a lack of clarity of legal rules governing Public Interest Litigation in Ethiopia. This lack of clarity coupled with the absence of a legal framework that clearly obliges corporate human rights due diligence left victims of corporate crimes without legal recourse and granted corporations impunity to run their normal business without being held accountable for their human rights crimes.

4.2.Recommendation

4.2.1. Recommendation to the Government of Ethiopia

- A. The case of ensuring corporate human rights accountability should be considered as a vital case for all government agencies and shall be mainstreamed in all government policies and strategies, departments, directives, and guidelines.
- B. The GoE should adopt a national action plan on BHR that systematically and robustly address corporate accountability gaps. In the development of this action plan, all stakeholders, civil society organizations, human rights NGOs shall be given an opportunity to positively contribute to developing the plan of action. The GoE shall carry out genuine consultation while making administrative decisions, while granting licenses to businesses with the potential of causing human rights abuses and must carry out not only environmental but also social and human rights impact assessment of all development projects that could affect the life of the local community.
- C. A government should adopt effective and robust legislation requiring businesses to implement risk-based human rights due diligence that enable them to prevent adverse human rights impact, mitigate risk and remediate materialized violations. This law should be binding on all business organizations in Ethiopia.
- D. The government should provide an effective remedy for communities that are victims of corporate abuses in Ethiopia. In particular, the government must adopt a policy direction that would integrate civil societies and human rights NGOs in the fight against corporate human rights injustices. In particular, the PIL laws should be clarified and a policy or feature legislative measures shall confer broader standing for civil society organizations with sufficient precision. The GoE shall make the rights of access to remedy recognized under FDRE Constitution functional and ensure that victims of corporate human rights violations have access to judicial remedies.
- E. The GoE has built a strong reputation in participating in international peacekeeping missions and Ethiopia is a founding member of the UN and ILO. Thus, Ethiopia should support international efforts towards the adoption of binding treaties on the human rights obligations of business organizations.

4.2.2. Recommendation to Businesses

- A. Pending the adoption of the binding legal instrument on corporations' human rights obligation and further elaborating Article 9 (2) of the FDRE Constitution, businesses operating in Ethiopia should commit themselves to principles enshrined in UN Guiding Principles on Business and Human Rights.
- B. They should incorporate or refer into principles included in UN Guiding Principles in their contract with their suppliers or other third parties.
- C. Business organizations operating in Ethiopia should adopt at the highest executive level human rights policy commitment. They should publicize the document and ensure that the policy document is mainstreamed in their structures.
- D. In their dealings and procurements, both state-owned and private enterprises doing business in Ethiopia should ensure that all entities in their supply-chain respect human rights.
- E. They should adopt a company level risk-based human rights due diligence with the view of preventing, mitigating and taking remedial measures when adverse human rights impact is materialized because of their operation.
- F. They should make their annual reports and sustainability reports transparent and accessible for all including researchers. In their report, they should detail steps they are taking in exercising human rights due diligence, the impacts and shortcomings.

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