



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

**Implementation of the Right to Freedom of Association and Collective Bargaining in
Foreign Direct Investments in Ethiopia: The Case of Bole-Lemi Industrial Park.**

A Thesis Submitted in Partial Fulfillment for the requirement of Masters Degree (LL, M) in Business Law at the College of Law and Governance Studies, School of Law, Addis Ababa University.

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May 2020

Declaration of Originality

I, Firaol Tolesa Jetu, hereby declare that the thesis entitled “Implementation of the Right to Freedom of Association and Collective Bargaining in Foreign Direct Investments in Ethiopia: the Case of Bole- Lemi Industrial Park” is my original work and that it has not been submitted for any degree or examination in any other University. Reference materials employed under this paper have been duly acknowledged.

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May 2020

Dedication

This thesis is dedicated to my Dad, Tolesa Jetu Jebessa, who is my lifetime mentor.

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First and foremost, I would like to thank God for all the good things he made happen in my life!

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God bless you all!!!

Firaol Tolesa Jetu

May 2020

List of Acronyms and Abbreviations

1. ACHPR- African Charter for Human and Peoples Right
2. Art. – Article
3. CETU - The Confederation of Ethiopian Trade Unions
4. CELU - The Confederation of Ethiopian Labor Union
5. ECHR – European Charter on Human Rights
6. EIC – Ethiopian Investment Commission
7. EPZ - Export Processing Zones
8. FDI – Foreign Direct Investment
9. FDRE - Federal Democratic Republic of Ethiopia
10. Fed. – Federal
11. FFIC – Federal First Instance Court
12. Gaz.- Gazeta
13. ICCPR - International Covenant on Civil and Political Rights
14. ICESCR- International Covenant on Economic, Social and Cultural Rights
15. ILC- International Labour Conference
16. ILO –International Labour Organization
17. Neg. – Negarit
18. No. – Number
19. IP – Industrial Park
20. IPDC – Industrial Parks Development Corporation
21. MoLSA- Ministry of Labour and Social Affairs
22. UDHR -Universal Declaration of Human Rights
23. UN – United Nations
24. Para. – Paragraph
25. PMAC- Provisional Military Administrative Council
26. Proc. – Proclamation
27. Reg. – Regulation
28. Res. – Resolution
29. TGE -Transitional Government of Ethiopia
30. Vol. - Volume

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Abstract

The right to freedom of association and collective bargaining is one of the labor rights recognized by international instruments. This thesis tries to assess the implementation of the right to freedom of association and collective bargaining in FDI's in Ethiopia by specific reference to Bole-Lemi industrial park. Accordingly, the finding of the research indicates that the right to freedom of association and collective bargaining is less implemented and there are only two trade unions which are almost nonfunctioning out of 11 companies operating in the park. Various reasons are associated to this according to the data collected by interviews and focus group discussions conducted with different stake holders. Workers, Trade union leaders, CETU officials and MOLSA Representatives argue that the companies operating in the industrial park are less willing to the formation of trade unions in their respective companies, while Employers' Association claims awareness of the workers. With regards to collective bargaining, the existing trade unions are weak and nonfunctioning to put pressure on employers and make the bargaining happen. There is no signed collective agreement between employers and trade unions in the park. Government should take strong policy measure on removing all hindrances to establishment of trade union and orient the law of the country to foreign investors who wants to invest in Ethiopia.

CHAPTER 1

Introduction

This chapter presents the introductory part of the thesis. Background of the research, objectives, statement of the problem, research questions, significance, methodology, scope and limitations of the research are discussed briefly in this chapter.

1.1 Background of the Study

Freedom of association which includes the right of workers to form and join trade unions is one of the labour rights recognized by international community as a basic right of individuals. It is recognized under human right documents including UDHR¹ Art. 20(1), ICCPR² Art. 22(1), ACHPR³ Art. 10, and ECHR⁴ Art. 11.

Article 31 of the FDRE⁵ Constitution also grants every person the right to form association for any cause and purpose. Furthermore, under Article 42⁶, the Constitution proclaims that every employee has the right to collective bargaining through formation of labour unions. Collective bargaining is a negotiation made between employers and workers organizations or their representatives concerning conditions of work or collective agreement or the renewal and

¹The Universal Declaration on Human Rights, adopted and by UN General Assembly by Res. 227 A, 10th of December 1948, hereinafter UDHR, Art 20(1)

² International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, herein after ICCPR, art 22(6)

³ African Charter on Human and peoples Right, adopted on 1 June 1981, entered in to force 21 October 1981, herein after ACHPR, Art. 10

⁴ European Convention on Human Rights, adopted 4 November 1950, Herein after ECHR, Art. 11

⁵The Constitution of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazeta ,1st year No.1, Addis Ababa-21st August ,1995

⁶ Ibid, Art. 47

modifications of the collective agreement. Trade union is a worker's organization that protects the rights and interests of the workers and represents them in collective bargaining and labour dispute. To attain these constitutional ends, Ethiopia has adopted Labour Proclamation No. 377/2003 which is later amended by proclamation No. 1156/2019,⁷ a policy to address the labour right protection and problems associated with its infringement. Ethiopia has also been part to different ILO conventions on freedom of association and collective bargaining since 1963.

The Government of Ethiopia, with an ambition of becoming middle income economy, has been taking measures with a view to promote investment friendly laws and policies. The policies have attracted various multi- national corporations and led to the establishment of industrial parks in different parts of the country. Although the establishment of industrial parks is playing a great role in attracting FDIs, there are several issues raised by workers regarding workers' rights, their bargaining power and on amount of wages paid to local laborers. The existence of strong and independent labour association can have significant contribution in resolving issues raised on workers right and their bargaining power.

All developing countries struggle with the issue of labour rights and the need for development. One of the challenges they encounter emanates from, the fact that the government is trying its best to attract FDI to achieve the goals of economic development on one hand, and that it seems there are also moves towards protecting labour rights of employees on the other hand. However, balancing these two important agendas (investment and labour right protection) highly requires commitment. As FDIs are growing in the country, lack of labour unions and low wages have become major criticisms raised by ILO and other stakeholders.⁸

One of the basic criticisms on Ethiopia's labour law is that it impedes industrial growth and employment creation by overprotecting workers. On the other hand, there are complaints from

⁷ Labour Proclamation, Proc. No. 377/2003, Fed. Neg. Gaz., Year 10, No. 12 & Labour Proclamation, Proc. No. 1156/2019, Fed. Neg. Gaz., Year 25, No. 89, Labour Proclamation herein after

⁸ Birhane Hailemariam, ' Labour strike Rocks Bole Lemi Industrial Park , Employees demanded favorable working conditions and higher pay', Addis Fortune (Addis Ababa, 19 May 2018) < <https://addisfortune.net/articles/labour-strike-rocks-bole-lemi-industrial-park/>> accessed on 22 March 2020

the workers about job insecurity, poor working conditions and low wages in several industrial parks and FDIs in Ethiopia.⁹

The term “Industrial Park”, which is used interchangeably with the terms “special economic zones”, encompasses a number of interrelated concepts, including Free trade zones, Free ports, Export processing zones, trade and economic cooperation zones, economic processing zones and etc. ¹⁰ Even though different naming are given to them, all IPs can be broadly defined as— “demarcated geographic areas contained within country’s national boundaries where the rules of business are different from those that prevail in the national territory.”¹¹ These differential rules principally deal with investment conditions, international trade and customs, taxation, and the regulatory environment; whereby the zone is given a business environment that is intended to be more liberal from policy perspective and more effective from administrative perspective than that of the national territory.”¹²

Bole-Lemi Industrial Park, which is located in the capital Addis Ababa on a 5 km circular Goro road with Kotebe River to the South and the road to Bishoftu to the North,¹³ is one of the first

⁹ Ibid

¹⁰ Ermias Wedajo Azmach, Regulating Industrial Parks Development in Ethiopia: A Critical Analysis, Beijing Law Review, 2019, 10, 23-60 <<http://www.scirp.org/journal/blr>> accessed on 10th march 2020

¹¹ Ibid

¹² Id

¹³ Moti, ‘The detail report on the current status of Bole-Lemi Industry Park,’ unpublicized report, accessed from The Ministry of Industry Department of Industry Parks on August 2017. Cited on Ermias Wedajo, supra note 10

Industrial Parks of the country which in its first phase covers 156 hectares, employing nearly 16000 workers in 11¹⁴ companies mainly from South Korea, India, Taiwan and China¹⁵

1.2 Statement of the Problem and Research Questions

The right to freedom of association and collective bargaining is one of the basic labour rights enshrined in human rights documents, the ILO conventions and the Ethiopian labour law regime. Even though it is such a basic right, its implementation is still in question due to prevalence of malpractices with its formation and the way those associations operate.

Globally, there are researches conducted on freedom of association and its implementation in several countries. Mostly these researches were conducted by ILO and other international organizations that work on protection of labour rights. These researches focus on collective labour rights and not specifically on the freedom of association.

One of the researches conducted in Ethiopia about labour right is again conducted by ILO (2013) with the title “Assessment of Ethiopia’s Labour Inspection System”¹⁶ focuses on labour laws and the inspection system in Ethiopia. Finding of this research indicated that most of the employers may choose not to comply with the labour law of Ethiopia to save money in the short term, shifting the burden of loss on workers, their communities and the Ethiopian government. The

¹⁴ The 11 companies operating in the park are; 1.New Wide Garment from Taiwan producing wearing apparel (including sportswear), 2. Shints ETP Garment Plc from South Korea produces garments, 3. Ashton Apparel Manufacturing Plc garments from India, 4. C & H Garments Plc (M & M Garments Plc) from China makes wearing apparel (including sportswear), 5.Lyu Shoutao Factory Plc from China investing on leather products (including gloves), 6. Jay Jay Textiles Plc, Indian Company producing wearing apparel (including sportswear), 7. George Shoe Ethiopia Plc Taiwan leather shoe, 8. Vestis Garment Production Plc India garments, 9 Arvind Lifestyle Apparel Africa Plc (ANF GULF) from India which is garments industry, 10. KEI Industrial Engineering Consultancy Plc US/South Korean garments and 11. Nitton Apparels Manufacturing Plc China garments.

¹⁵ Interview with Anwar Kemal, Director of EIC at Bole Lemi Industrial Park Branch office, (5 August 2019)

¹⁶ Jeff Wheeler J.D, and Keith Goddard, DSc, P.E. CSP, ‘Assessment of Ethiopia’s Labor Inspection System’, 2013

research is conducted on Ethiopian labour law which is too general to indicate what the law says with regards to freedom of association and its practice in Ethiopia.

The other research is, that of Mehari Redai (2015) which is a PhD dissertation on the theme “Privatization in Ethiopia the Challenge it poses to Unionisation and Collective Bargaining”¹⁷. This research explores the challenge Ethiopia as a developing country faces in responding to issues associated with economic liberalisation on the one hand and the protection and promotion of ‘core’ labour rights on the other. In doing so, the researcher tried to analyze economic liberalization and the right to Unionisation and Collective bargaining but not its implementation in foreign direct investments.

There is also an article on “Protection of Core Labour Rights in Ethiopian Industrial Development Zones: The Case of Eastern Industrial Zone”¹⁸ by Jetu Edossa. The writer explored the practical protection of the four core labour rights which are: freedom of association and collective bargaining, abolition of forced labour, elimination of child labour, and freedom from discrimination in Eastern Industrial Zone. Even though the article concluded that it is practically difficult for workers in Eastern Industrial Zone to form their own trade union that helps them ensure work related rights and interests, it is a general research on the core labour rights not specific to the right to freedom of association and collective bargaining.

Thus, this research will generally tries to assess the existing laws with regard to freedom of association, bargaining power of workers association and how these associations are being formed in FDI in Ethiopia, specifically in Bole-Lemi Industrial Park in detail. The research will try to fill research and practice gap on implementation of the right to freedom of association and collective bargaining in FDI in Ethiopia, particularly Bole-Lemi Industrial Park.

¹⁷ Mehari Redae, ‘Privatisation in Ethiopia the challenge it poses to unionisation and collective bargaining’ (2015), PhD thesis, University of Warwick, pp. 57, <<http://webcat.warwick.ac.uk/record=b2805614~S1>> accessed 24th April 2020

¹⁸ Jetu Edosa Chewaka (2016). Protection of Core Labour Rights in Ethiopian Industrial Development Zones: The Case of Eastern Industrial Zone, in Getachew Assefa et al., (Eds). Economic, Social and Cultural Rights in Ethiopia (Addis Addis Ababa University School of Law: Addis Ababa, 2016). Pp. 101-134.

Based on the statement of the problem, the central research question of this study is: Is the right to freedom of association and collective bargaining being implemented in Bole-Lemi Industrial Park? Based on this central question, the following specific research questions will be addressed.

1. Is the right to freedom of association and collective bargaining duly implemented in the Industrial Park?
2. Are the formations of trade unions in accordance with the labour law?
3. Are trade unions in the Industrial Park free from influence of the employers?
4. What is the actual function of trade unions in the Industrial Park?
5. What does the practice of collective bargaining right look like? Is it functional or nominal?

1.3 Objectives of the Study

1.3.1 General Objective of the Study

The general objective of the research is to assess implementation of the right to freedom of association and collective bargaining in FDIIs in Ethiopia, with particular reference to Bole-Lemi Industrial Park.

1.3.2 Specific Objectives of the Study

The thesis has the following specific objectives;

- To identify whether the right to freedom of association and collective bargaining is duly implemented in the Industrial Park.
- To analyze the existing legal frameworks on the right to freedom of association and collective bargaining.
- To Assess the functions of trade unions in the Industrial Park
- To identify whether the trade unions are free from the influence of the employers
- To assess the status of collective bargaining of workers in the Industrial Park

1.4 Research Method

The researcher has employed both doctrinal and empirical research approaches in the course of conducting the study. The research is doctrinal in the sense that it tries to analyze the relevant laws and international instruments as well as the existing literatures. It is empirical in that it studies the practical implementation of the right to freedom of association and collective bargaining in Bole Lemi Industrial Park.

This research employed qualitative research method as a major technique of data collection and analysis because the researcher wants to assess and analyze the implementation of freedom of association in detail. As a primary source of data, interviews are conducted with officials of MoLSA, IPDC, EIC, CETU, investors association representative and two companies' human resource managers. Additionally, in-depth interview is conducted with workers and trade union leaders in the Industrial Park along with focus group discussions and observations. Labour proclamation, relevant ILO conventions in line with different scholarly materials including books, thesis, journal articles and internet sources are used as secondary sources of data.

1.4 Tools and Techniques of Data Collection

The target groups of population for the interview and focus group discussions were workers of different companies in the Industrial Park, officials from MoLSA, CETU, IPDC, EIC, HR Managers and representative of Investors Association. Interview has been conducted with different stakeholders and since the purpose of this study is to assess the implementation of the right to freedom of association and collective bargaining, the researcher has selected one person from each organizations listed above purposely based on their position in the organization and knowledge about the issue at hand except EIC where two officials interviewed.

Two leaders of trade union and eight workers who are currently employed in Bole-Lemi Industrial Park were also selected from both the companies with trade unions and companies with no trade unions for in-depth interview. Total of 10 workers has also participated in two focus group discussions. The workers were selected using purposive sampling based on their knowledge about freedom of association and collective bargaining and their work experience in the Industrial Park.

The researcher used in-depth knowledge and work experience as a criterion because workers who stay longer period are expected to have detail knowledge related to actual practice of freedom of association and collective bargaining in the Park. Since the aim of the research is to assess how freedom of association and collective bargaining is being implemented in the Industrial Park, the two criteria are useful. The focus group discussions were conducted to diversify information obtained through in depth interview from both concerned officials and workers. Two HR managers of companies operating in the park are interviewed and they are the only managers the researcher got consent to interview.

1.5 Method of Data Analysis

Qualitative data gathered is analyzed qualitatively by arranging issues of facts and law. The researcher employed thematic analysis of facts and rule of legal interpretation for legal analysis and logical reasoning for factual analysis.

1.6 Scope and Limitation of the Study

The major aim of this research is to assess implementation of the right to freedom of association and collective bargaining. The researcher focused mainly on how this right is being implemented in FDIs in Ethiopia particularly Bole-Lemi Industrial Park. Thus, the researcher focused more on the implementation of the right than critically analyzing factors that affect its implementation and challenges and prospects of applying the right to freedom of association and collective bargaining.

The major challenge that the researcher encountered in doing this research is unwillingness of most of the employers and managers of companies in the Industrial Park to cooperate for interviews. It is very difficult to find employers and even those who are found are unwilling to be interviewed. The other challenge was difficulty of getting workers for interview. The researcher used workers lunch time and Saturday afternoons since it is very difficult to contact workers during working hours.

1.7 Significance of the Study

The aim of this research is to assess the implementation of the right to freedom of association and collective bargaining in FDIIs in Ethiopia, particularly Bole-Lemi Industrial Park. Accordingly, the study has believed to be significant in showing how the right to freedom of association is being practiced in Industrial Parks of the country, particularly Bole-Lemi Industrial Park and contributes to the betterment of its implementation. Since the right to freedom of association and collective bargaining is one of the basic labour rights, it has significant influence in showing how this right is actually being implemented. The study also has a significance in initiating further studies on the topic with regard to the effect of the implementation or non implementation of the right to freedom of association, challenges and prospects of implementation of the right to freedom of association and collective bargaining and factors that hinder implementation of the right to freedom of association and collective bargaining.

1.8 Organization of the Research

The research is organized in to four chapters in which the researcher attempted to answer the research questions described above. The First Chapter contains the introductory part or contents of proposal which introduces the study including its background, statement of the problem, objectives, methodology of the study and scope and limitations. In the Second Chapter, the paper reviews the general concepts, definitions, theoretical and legal frame work of the right to freedom of association and collective bargaining both in Ethiopia and internationally. The Third Chapter explains finding and analysis of the data collected using both primary and secondary sources and the Fourth Chapter presents conclusion and recommendations.

CHAPTER 2

The Legal and Theoretical Framework of the Right to Freedom of Association and Collective Bargaining

This chapter deals with the theoretical and legal frameworks of the right to freedom of association and collective bargaining. It discusses the historical development of the right, the international and national legal frameworks and the right to freedom of association and collective bargaining in EPZs.

2.1 Concepts and Foundations of the Right to Freedom of Association and Collective Bargaining

2.1.1 Freedom of Association

Freedom of association refers to the right of workers and employers to create and join organizations of their choice freely and without fear of reprisal or interference.¹⁹ When we see the definition given to the right of assembly, it is the right of people to congregate in a peaceful way for public expression of religion, politics or grievances.²⁰ This indicates that the right to freedom of association is an enabling right that can possibly help employees join hands to exercise their right collectively by forming their organization that includes expressing grievances.

On the other hand, unionization is the process of organizing the employees of a company into a labour union which will act as an intermediary between the employees and company management. Most of the time a union can be authorized if it can be able to attain a majority vote

¹⁹ILO, Freedom of Association and Collective Bargaining, 'Trade union unity and principles of freedom of association in Eastern Africa', https://www.ilo.org/actrav/events/WCMS_315488/lang--en/index.htm, accessed on 21 April, 2020

²⁰Ibid

of the employees in the company. Accordingly, if a trade union is established in a given company, it is said the company is unionized.²¹

2.1.2 Historical Development of Freedom of Association

Literatures show that the oldest independent associations were established in religious vicinities particularly in churches. The Roman Catholic Church that represented the official religion can be considered as the most notable of those independent religious institutions. It had also a variety of affiliated religious societies to which clergymen or common people could belong that includes the knightly orders that participated in the Crusades.²²

It is an undeniable fact that individual members played significant roles in the Enlightenment age during the American and French Revolutions, and other historical events and movements. It has been said that:

*The rise of more overtly political secret societies at the time of the French Revolution prompted the British Parliament to pass the Unlawful Societies Act in 1799, one of the first anti association laws of the modern era. The fear of social unrest in that period also resulted in the Combination Acts of 1799 and 1800, which banned trade union activity.*²³

²² Democracy web, Freedom of Association: History,

<<http://www.democracyweb.org/association/history.php>>, accessed on September 14, 2019.

²³ Mesfin Sileshi Haile, freedom of Association and collective bargaining: the law and practice in Ethiopia, LLM thesis, civil service university, 2014

According to French politician Alexis de Tocqueville, in his classic study “Democracy in America”, in democratic countries association was ‘the mother of science’ which serves as a basis for all other forms of progress.²⁴

Freedom of association has played a unique role in history through its often violent clashes with political and economic liberalism. The economic side of liberalism allows the making of a contract between employer and workers without any interference. “Thus many reformers who campaigned for the abolition of slavery were also opposed to collective bargaining and organized labour. For example, William Wilberforce, a great leader of the British abolition movement, supported the suppression of trade unions through the Combination Acts”.²⁵

Since owners want to protect their property right and workers struggle for their right of freedom of association, there was a clash between these two rights, and workers were disadvantaged in it. Because of the threat posed by the Combination Acts and anti-conspiracy laws, many early unions in Britain were formed in secret. Because of the rise of the British labour movement the act was repealed and the number of trade unions became large enough to establish the first national federation of unions in 1833.²⁶

The action of employers against unions that includes: violence, lock out, dismissal and other continued throughout the 19th century. Trade unions also took collective actions that include mass petition campaigns, national strikes, and related working class efforts that failed to give the trade unions decisive political power. The scope of freedom of association has become an issue at stake until today.²⁷

²⁴ Ibid

²⁵ Id

²⁶ Id

²⁷ Id

2.1.3 Historical Development of Freedom of Association and Collective bargaining in Ethiopia

In Ethiopia, formation of workers association is related to social association locally known as “Edir” since workers are not allowed to form a labour union.²⁸ Ethiopian workers used Edir as a platform to discuss issues related to their rights such as respect to workers job security, prevention of hazardous works, different kinds of leaves and etc. and later, they were able to form an association called “Ye Etiopiawian Serategnoch Hibret Dirijit Mahiber Sindica”, which is equivalent to Association of Ethiopian Workers.²⁹

Even though the 1955 Ethiopian constitution recognized the right to form an association, there was no clear law that binds labour relation in Ethiopia until 1962. The labour relation decree issued in 1962 authorized formation of trade unions and in April 1963, Confederation of Ethiopian Labour Unions (CELU) got legal recognition from Imperial authority.³⁰ CELU never evolved into a national federation of unions. Instead, it remained an association of labour groups organized at a local level. The absence of a national constituency, coupled with other problems such as corruption, embezzlement, election fraud, ethnic and regional discrimination, and inadequate finances, prevented CELU from challenging the status quo in the industrial sector. Further, both management and government officials treated the unions with contempt.³¹

After its establishment CELU has passed through different challenges which include the dismissal of the confederation in 1974 in order to establish an association which better cope with socialist ideology of the regime.³² In 1975, the Provisional Military Administrative Council (PMAC), also known as the Dergue, promulgated Proclamation No. 64/1975 which explicitly

²⁸ AETU ,’Ye Ethiopia Serategnoch Enqisiqase, Kifle’, (written in Amharic language), (unpublished)Addis Ababa,(February 1984)

²⁹ Ibid

³⁰ Bahru Zewde, A History of Modern Ethiopia, second edition (London: James Currey, 2001),p. 200

³¹ Ibid

³² Id

repealed Labour Proclamation No. 210/1963 that gave recognition for CELU³³. The proclamation stated its purpose to improve the standard of living of the worker by freeing him/her from exploitation, expanding employment opportunities and eradicating unemployment, organizing workers in trade unions in line with socialist principles, attaining higher production through improved efficiency and systematic work methods as well as the participations of workers in the management of undertakings.³⁴

2.1.1. Collective Bargaining

There are controversies in defining collective bargaining. In 1960 the Manual published by the International Labour Office defined collective bargaining as a negotiation made between employer or organization of employers and representatives of workers or their organization regarding working conditions and terms of employment.³⁵ It is a fundamental right that is rooted in the ILO Constitution and reaffirmed as such in the 1998 ILO Declaration on Fundamental Principles and Rights at Work³⁶ It is defined under the 1981 Collective Bargaining Convention No.154 Art.2: as follows.

The term 'collective bargaining' extends to all negotiations which take place between an employer, a group of employers or one or more employers' organizations on the one hand, and one or more workers' organizations, on the other, for: (a) determining working conditions and terms of employment; and/or (b) regulating relations between employers and workers; and/or (c) regulating relations between employers or their organizations and a workers' organization or workers' organizations³⁷

³³ Labour Proclamation No. 64/1975, Arts.111 and 114(1)

³⁴ Edmond J. Keller, 'Revolutionary Ethiopia: From Empire to People's Republic', pp. 177

³⁵ MacCann M., Rights at work, pay equity reform and the politics of legal mobilization, Chicago and London, The University of Chicago Press, 1994, p 42

³⁶ ILO Declaration on Fundamental Principles and Rights at Work, 1998ILO,

³⁷ Collective Bargaining Convention (No. 154) ,adopted by ILC in its 67th session, June 1981 , Convention No 154 hereinafter, art 2

From this definition we can say that, Collective bargaining is a key means through which employers or their associations and trade unions can establish fair wages and working conditions, and ensure equal opportunities between women and men.³⁸ It also provides the basis for sound labour relations. Typical issues on the bargaining agenda include wages, working time, training, occupational health and safety and equal treatment.³⁹ The objective of these negotiations is to arrive at a collective agreement that regulates terms and conditions of employment. Collective agreements may also address the rights and responsibilities of the parties thus ensuring harmonious and productive industries and workplaces. Enhancing the inclusiveness of collective bargaining and collective agreements is a key means for reducing inequality and extending labour protection.⁴⁰

The “Collective Bargaining Manual” prepared by MoLSA summarizes the definition of collective bargaining in the following statements:⁴¹

Collective bargaining requires:

- voluntarism and consent,
- existence of at least two parties
- needs decision making process of parties involved;
- Is machinery that can synchronize the interest of employer and workers, and is an agreement that determines working conditions of an undertaking?

Thus, we can say that collective bargaining is an action that requires joining of hands of workers through their legal representatives and that this can only be true with the existence of trade unions. In other words, it is only the trade union leaders as legal representatives of workers

³⁸ Ibid (n 35)

³⁹ Ibid

⁴⁰ Id

⁴¹ Ministry of Labour and Social Affairs, “Ye Hibret Diridir Manual”, (written in Amharic language) Birhanena Selam Printing Enterprise, Addis Ababa (November 2007) 4

that are capable of bargaining with the employer, but not individual employee. Hence, the right to freedom of association is a prerequisite to the right to collective bargaining and they are intertwined together.⁴²

Collective bargaining is said to be in place when a group of employees negotiate as a unit with their employer over pay, benefits and working conditions in the undertaking. The theme of this principle is that, employees would have more strength or bargaining power if they collaborate together than negotiating with their employer individually. Because of this characteristics feature, collective bargaining is inherently a democratic process since majority of employees select the subjects they bargain over and vote on whether they agree to a contract.⁴³ It is undeniable fact that the will of the majority may disfavor particular employees or employee groups that have higher levels of skill than the average employee. Hence, unions must fairly represent all employees in the unit.⁴⁴

Employers can enjoy unregulated right of hiring and firing of workers if the system is a laissez-faire one. This makes them to have an upper hand and more bargaining power that enables them to dominate workers in every way they think appropriate. They disgust statutes that likely disadvantage them because they inherently prefer to decide terms and conditions of employment by their own. This tendency of employers brought collective bargaining to the surface. In order to strike a balance between the strong bargaining power of the employer against weak and unorganized workers the recognition of united power becomes mandatory. Collective bargaining becomes a foundation for this movement and the statute favors the trade union that represents workmen.⁴⁵ The analysis of collective bargaining demands the existence of parties to collective

⁴² Ibid

⁴³ Ibid

⁴⁴ Gorman R., Basic Text on Labour Law: Unionization and collective bargaining ,St .Paul, Minnesota, West Publishing Co. (1976) pp. 540-541

⁴⁵ International Labour Office, 'Gender Promotion Programme, Promoting Gender Equality through collective bargaining', Switzerland, Author (2002) pp. 9

bargaining, subject matter of collective bargaining and objects of collective bargaining and they are discussed very briefly here in under.

2.2.1. Parties to Collective Bargaining

Collective bargaining involves two parties. One of them is the employer, which is represented either alone or through Employers' Association or federation, and the other group is workers that are represented either through a union or workers' federation. These two parties directly participate in the process of collective bargaining.⁴⁶

2.2.2. Subject Matter of Collective Bargaining

The International Labour Organization divided the subject matter of collective bargaining in to two broad categories. The first part sets out the employment standards that are applicable up on all individual workers with respect to work relations with their employer. This includes subjects such as wages, working hours, holidays with pay and period of notice upon termination of contract of employment. The second one regulates the relationship of parties to the agreement themselves and could not have any effect up on worker and employer relationship. These includes, but not limited to, enforcement provision, dispute settlement methods, grievance procedures, duration of the agreement, undertaking not to resort to strike or lockout during the period, etc.⁴⁷

2.2.3 Objects of Collective Bargaining

The International Free Trade Union called collective bargaining as 'A Workers Bills of Rights' and enumerated the following as objects of the union in collective bargaining:

- To establish and build up union recognition as an authority in the work place;
- To raise workers' standards of living and win a better share in company's profits;

⁴⁶ Covington R, Getman J., and Jones J., Labour Relations and social Problems: Discrimination in Employment, Washington D. C. (The Bureau of National Affairs, Inc., (1976) pp.5

⁴⁷ Ibid

- To express in particular terms the workers' desire to be treated with due respect and to achieve democratic participation in decision affecting their working conditions;
- To establish orderly practices for sharing in these decisions and to settled disputes which may arise in day to day life of the company;
- To achieve broad general objectives such as defending and promoting the workers' interests throughout the country. ⁴⁸

Although the parties started their negotiation with divergent views, the object of collective bargaining is to try to reach a compromise. This indicates that the primary motive of collective bargaining is to resolve the differences between the parties with regard to subject matter of collective bargaining of members of the union. ⁴⁹

There are five prerequisites in order to have collective bargaining. ⁵⁰ First, in order to achieve collective bargaining it is a necessity to have the right to freedom of association respected. This is because denial of the right to freedom of association negates collective bargaining right. Second, for the success of collective bargaining it is essential to have strong, independent, democratic and well organized trade union. Third, management should give recognition to trade unions. Because recognizing trade union as a bargaining agent is the back bone of collective bargaining. Fourth, willingness to give and take is so important for collective bargaining. Hence, parties are required to have mutual trust and appreciation of the views of one another. This is because the aim of entering in to negotiation is to adjust differences by compromise and concession and to reach in to agreement. Fifth, there has to be statutory provisions that regulate unfair labour practice or victimization of trade unions. ⁵¹ In the absence of the above mentioned five prerequisites it is not possible to have sound collective bargaining that benefits both the employers and the trade unions.

⁴⁸ Id

⁴⁹ Id

⁵⁰ Id

⁵¹ Id

Gorman mentioned that contract made between the employer and agents of workers is called labour contract⁵² and it resembles to the commercial contract with regard to its form. But the former is an agreement between two signatory parties and outline the rights and duties of employees which were third parties for the contract.⁵³ Collective bargaining was also described as a critical way for improving employment conditions, safe and healthy work environment for both women and men. This shows discrimination, particularly with respect to employment and occupation, and equal pay for works of equal value are trade union issues that have to be addressed through collective bargaining. Therefore, equality issues are the theme of collective bargaining.⁵⁴

Furthermore, other writers stipulate that most collective agreements clearly mention discrimination of any sort, the enforcement of which is executed through grievance handling procedures.⁵⁵ According to MacCann, collective bargaining agreements influence most policy reforms. Often times they verify crucial to initiate job evaluation studies and task forces. Getman pointed out that although collective agreements have such a big impact and are so valuable they are majoritarian than individual.⁵⁶

Virginia argues that ILO conventions have characteristic features that differentiate them from other conventions that lead some of the earlier commentators to consider them as either international legislations or draft national legislations. While other conventions are adopted by conference of States, ILO conventions are adopted by International Labour Council (ILC) which

⁵² Gorman (n 43)

⁵³ Virginia A. 'Form Follows Function: Formations of International Labour Standards-Treaties ,Codes, Soft Law, Trade Agreements,' In Fanagan R. and Gould Iv W. (editors),International Labour Standards, Globalization, Trade and public policy, Stanford university press, Stanford, California, (2003)183

⁵⁴ Ibid

⁵⁵ Virginia A., (n 52)

⁵⁶ MacCan, (n 33)

composes workers' and employers' representatives in addition to government representatives.⁵⁷

As indicated by Virginia 'workers rights are human rights', nevertheless little attention has been devoted by the international human rights movements towards workers rights. Workers organizations and their leaders themselves ask the support of human rights groups for the defense of their rights very rarely.⁵⁸ He argues that the condition of workers' rights in a given country is a clear indication of the position of human rights in that country. For example, the violation of freedom of association, which is the most fundamental workers' rights, is the first sign of deteriorating situation in that country.⁵⁹

2.3 Legal Frameworks of Freedom of Association and Collective Bargaining

2.3.1 International Legal Frameworks

In relation to freedom of association and collective bargaining, the international legal framework that exists includes UN declarations, ILO constitution, ILO conventions and declarations. They are discussed briefly herein under.

2.3.1.1 UN Declarations

Article 23(4) of UDHR provides that everyone has the right to form and to join trade unions for the protection of his interests.⁶⁰ Article 22 of ICCPR on the other hand declared that everyone shall have the right to freedom of association with others that includes the right to form and join trade unions for the protection of his interests.⁶¹ No restrictions may be placed on the exercise of this right other than those which are either prescribed by law or in the interests of national security or public order or the protection of the rights and freedoms of others. Moreover, article

⁵⁷ Ibid

⁵⁸ Virginia A., (n 53)

⁵⁹ Ibid &, Bureau for Workers' Activities ,ILO Declaration on Principles: a new instrument to promote fundamental rights, A workers' education guide ,2nd edition ,International Labour Office, Switzerland (2000)

⁶⁰ UDHR,(n 1)

⁶¹ ICCPR, (n 2)

26 of the covenant mentioned that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.⁶² The law of a State shall be designed in such a way that prohibit any discrimination and guarantee to all people's equal and effective protection against discrimination on any ground.⁶³ Article 7 of ICESCR also emphasizes that State parties should undertake to ensure the right of everyone to form trade unions and join the trade union of his choice for the promotion and protection of his economic and social interests.⁶⁴ The only exception enshrined is ensuring not to contradict with the rules of the organization concerned. In addition, article 8 of the covenant guarantees the right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade union organizations.⁶⁵

2.3.1.2 ILO Constitution

The ILO Constitution in its preamble has provided that freedom of association should be recognized by every nation. Collective bargaining elements including the regulation of the hours of work, adequate living wage, and the protection of the worker against sickness, disease and injury arising out of his employment are mentioned on the preamble.⁶⁶

Members are obliged to bring the convention to the concerned authority for ratification and communicate to the director general of ILO.⁶⁷ This shows us that the right to freedom of association and collective bargaining is given due attention since 1919.

⁶² Ibid, art. 26

⁶³ Freedom of Association and Protection of the Right to Organize Convention (No. 87) Adopted: 9 July 1948, Entered into force: 4 July 1950

⁶⁴ ICESCR art 7

⁶⁵ Ibid art 8

⁶⁶ ILO, Declaration of Philadelphia, Declaration Concerning the Aims and Purposes of The International Labour Organization, adopted at the 26th session of the ILO, Philadelphia, 10 May 1944, <http://www.ilocarib.org.tt/cariblex/convention_23.shtml,>accessed on 26 September ,2019

⁶⁷ Ibid art 19(5)

2.3.1.3 ILO Declarations

Under Article 2 of the Declaration on Fundamental Principles and Rights at Work and its follow-ups, all members of ILO, whether they ratify the eight fundamental conventions or not, have an obligation to respect, promote and realize in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those conventions.⁶⁸

Furthermore, article 1 (A) (iv) of the ILO Declaration on Social Justice for Fair Globalization is provided that, respecting, promoting and realizing the fundamental principles and rights at work is very much important.⁶⁹ In addition it is noted that: freedom of association and the effective recognition of the right to collective bargaining are particularly important to enable the attainment of the four strategic objectives; and the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes.⁷⁰

From the aforementioned declarations one can conclude that ILO has, from time to time, made progressive emphasis on workers right and paid due attention to freedom of association and collective bargaining. The emphasis goes to the extent that explains they are not only just right rather they are enabling rights as well.

2.3.1.4 ILO's International Conventions

According to article 2 of Convention no 87, workers and employers shall have the right to establish and to join organizations of their own choosing without previous authorization.⁷¹ Accordingly, making any sort of discrimination is prohibited. In addition, article 3 of the

⁶⁸ ILO Declaration on Principles: a new instrument to promote fundamental rights, (n 59), art 2

⁶⁹ ILO, Declaration on Social Justice for a Fair Globalization, adopted by the International Labour Conference at its 97th Session, Geneva, 10 June 2008

⁷⁰ Ibid

⁷¹ Convention (No. 87), (n 63), art 2

convention prescribed that workers' and employers' organizations shall have the right to draw up their respective constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs⁷².

The public authorities are duty bound to refrain from any interference which would restrict this right or impede the lawful exercise thereof.⁷³ Article 4 of the same convention states that workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority.⁷⁴ Article 5 mentions that workers' and employers' organizations shall have the right to establish and join federations and confederations and such organization shall have the right to affiliate with international organizations of workers and employers respectively. Article 8 mentions the correlative duties on the organizations and state parties. In exercising the rights provided for in this convention workers and employers and their respective organizations are duty bound to respect the law of the land.

On the other hand, the law of the land is restricted not to impair or applied as to impair the guarantees provided for in this convention.⁷⁵ According to article 11 of the convention, each member of the ILO for which this convention is in force undertakes all necessary and appropriate measures to ensure that workers and employers may exercise freely their right to organize.⁷⁶

Furthermore, the right to collective bargaining is also provided under the Right to Organize and Collective Bargaining Convention (No. 98).⁷⁷ Article 1 of the Convention provides that workers will be protected against acts of anti-union discrimination that includes dismissal because of

⁷² Id, art 3

⁷³ Ibid

⁷⁴ Id, art 4

⁷⁵ Id, art 5

⁷⁶ Id, art 11

⁷⁷ Right to Organize and Collective Bargaining Convention (No. 98) Adopted: 1st July 1949, Entered into force: 18 July 1951

union membership or participation in union activities and free from requirements that a worker not to join a union or abandon union membership for employment.⁷⁸

On the other hand, it is mentioned under article 2 of the convention that workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration. In particular, acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations, shall be deemed to constitute acts of interference within the meaning of this Article.⁷⁹

From these two conventions it is clear that the right to collective bargaining comes to existence after the right to freedom of association and can be said that it is an extension of the latter. The two conventions are rights that are intertwined together and exercising them separately cannot be realistic. Therefore, having the right of freedom of association without the right to bargain collectively is something of no value and the right of collective bargaining is infeasible without the right to freedom of association since a union is required to bargain on behalf of its members.

⁷⁸ Ibid

⁷⁹ Ibid

2.3.2. The Current Legal Framework of Ethiopia on the Right to Freedom of Association and Collective Bargaining

2.3.2.1 The FDRE Constitution

According to the provision of Article 31 of the FDRE Constitution, everyone is entitled to freedom of association for any reason in a legally prescribed manner.⁸⁰ Moreover, Article 42 of the Constitution allows workers including civil servants below certain ranks to be unionized and bargain collectively which extends to their right to exercise strike.⁸¹ This shows the emphasis given to labour rights by mentioning it in a separate article. It is clear that according to the provision of article 9 (4) of FDRE Constitution, all international agreements ratified by the country are integral part of the law of the land.⁸² On top of this, the Constitution also emphasizes that the interpretation of chapter three of the Constitution should be made in conformity with international instruments adopted by Ethiopia in addition to other international human right instruments.⁸³

From the abovementioned provisions of the FDRE Constitution, it is clear that fundamental rights and freedoms are constitutionally entrenched rights. Moreover, workers are allowed to have the right of freedom of association and to enjoy its fruit among which is the right to collective bargaining. This indicates the compatibility of the FDRE Constitution with international instruments mentioned above.

⁸⁰ FDRE constitution (n 5), art 42

⁸¹ Ibid art 9(4)

⁸² Id

⁸³ Id

2.3.2.2 Labour Proclamation No. 1156/2019

Workers right to establish and organize trade unions and employers association and actively participate therein is recognized under the proclamation.⁸⁴ Accordingly, trade union can be established in an undertaking where number of workers is at least ten. However, number of members shall not be less than ten.⁸⁵

Trade unions have the following functions;

1. To observe conditions of work and fulfill obligations set forth in labour proclamation; protect rights and interests of their members, represent workers in collective bargaining and labour disputes before competent organ.
2. To ensure that the laws, directives and declarations are known to and be complied with and implemented by members.
3. To initiate laws and regulations pertaining to labour relations to participate actively during their formulation and amendments
4. To discharge other tasks provided in the bylaws of respective organizations.⁸⁶

Generally, trade unions are established to perform the abovementioned functions. In order to perform the functions listed above, they have to get registered by appropriately submitting the required documents.⁸⁷ Collective bargaining as defined under Article 125(2) of the proclamation is a negotiation process between employers and workers organization or their representatives concerning conditions of work in order to reach at collective agreement.⁸⁸ In general, matters concerning employment relations and conditions of work as well as relations of employers and their associations may be determined by collective bargaining.⁸⁹ In particular, the following matters could be determined by collective bargaining:

⁸⁴ Labour Proclamation No. 1156/2019

⁸⁵ Ibid art 114

⁸⁶ Ibid art 115

⁸⁷ Ibid art 119

⁸⁸ Ibid art 125(2)

⁸⁹ Ibid art 129

1. Matters specified by laws
2. Conditions for maintenance of occupational safety, health and manner of improving social services
3. Workers participation in matters pertaining to promotion, wages, transfer, reduction and discipline
4. Conditions of work on work rules and grievance procedures
5. Apportionment of working hours and interval break times
6. Parties covered by collective agreement and its duration of validity
7. On the establishment and working system of bipartite social dialogue
8. Establishment of day care

2.4. The Right to Freedom of Association and Collective Bargaining in Export Processing Zones

Increasing competition among EPZ-operating countries to attract foreign investment in the zones has become a global phenomenon⁹⁰. With an assumption that union-free zones would attract greater investment some EPZ-operating countries have, under their laws, either deprived EPZ workers of their right to organize themselves or placed severe limitations on the free exercise of this right.⁹¹ Even when there are no such limitations under the law, EPZ workers in many countries are unable to effectively exercise their freedom of association on account of the anti-union discriminatory practices adopted by employers which includes unjust dismissal, suspension of trade union members and officials, etc.⁹² The problem is accentuated when there is lack of effective enforcement of laws in the zones, as is often the case. Even when workers are willing and able to form and join trade unions of their choosing, the unions may be unable to function effectively when the law imposes unreasonable requirements for their recognition as bargaining agents, restricts the issues that could be subject of collective negotiations or when

⁹⁰ ILO, 'Freedom of association and collective bargaining in export processing zones: Role of the ILO supervisory mechanisms', International Labour Standards Department, Working Paper No. 1, Geneva (2007), p. 1-2

⁹¹ Ibid

⁹² Id

employers refuse to negotiate with them.⁹³ EPZ workers thus face various obstacles both in forming and joining unions of their own choosing and in exercising their collective bargaining rights.⁹⁴ When EPZ workers are either denied the right to form and join unions of their choosing, or are unable to effectively exercise this right, they are unable to collectively voice their concerns and protect their interests.⁹⁵

Regarding this, the freedom of association committee of the governing body of ILO held the position that despite the economic arguments, workers in export processing zones should enjoy the trade union rights provided in the freedom of association conventions like other workers, without distinction whatsoever.⁹⁶

When we look at Ethiopian context, there is no separate law governing labour issues of EPZ's. The labour law is applicable to Industrial Parks operating in the country.⁹⁷In the forthcoming chapter we will discuss the practical aspect of freedom of association and collective bargaining in Bole Lemi Industrial Park.

⁹³ Id

⁹⁴ Id

⁹⁵ Id

⁹⁶ Freedom of Association, 'Digest of decisions and principles of the Freedom of Association', Committee of the Governing Body of the ILO, Fourth (revised) edition (1996), para .240

⁹⁷ Industrial Parks Proclamation No. 886/2015, , Federal Negarit Gazeta ,21st year No.39, Addis Ababa- April 2015, Industrial Parks Proclamation herein after, art 28(1)

CHAPTER 3

3. Implementation of the Right to Freedom of Association and Collective Bargaining in Bole-Lemi Industrial Park.

In the previous chapter, we have discussed the theoretical and legal frameworks of the right to freedom of association and collective bargaining. However, this chapter explains how the right to freedom of association and collective bargaining is being practiced in Bole-Lemi Industrial Park. The researcher tried to analyze the practice with literatures and legal frame works.

3.1 Formation of Trade Unions in Bole-Lemi Industrial Park

As it has been clearly discussed earlier, every worker has the right to freedom of association including the right to form and join trade unions for the protection of their interests.⁹⁸ This right of workers is guaranteed under international human rights documents including UDHR, ICCPR and ICESCR which are ratified by Ethiopia and are part and parcel of the law of the land, and ILO conventions (Convention No. 87 and 98) to which Ethiopia is a party starting from 1963.⁹⁹ Workers have the right to form workers union in order to struggle for their rights and bargain with their employers on terms and conditions of benefits.¹⁰⁰ This right is equally guaranteed to workers in the Industrial Parks.¹⁰¹ Even though IPDC's roles and responsibilities are not directly

⁹⁸ UDHR art 23, ICCPR art 22, FDRE constitution art 41, Labour proclamation No. 1156/2019 art 115

⁹⁹ Ethiopia ratified 22 ILO conventions in which the eight core conventions are included and the eight core conventions, for their part include the conventions on Freedom of Association and the Right to Organize (NO.87) and the Convention on the Right to Organize and Collective Bargaining (NO. 98) (Source: <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?> cited on Mehari Redae, 'Privatisation in Ethiopia the challenge it poses to unionisation and collective bargaining' (2015), PhD thesis, University of Warwick, P. 57, <<http://webcat.warwick.ac.uk/record=b2805614~S1>> accessed 24th April 2020

¹⁰⁰ Interview with Ato Tinsae Yimam, Acting Director at IPDC Bole Lemi Industrial Park Branch Office, conducted on 16 July 2019

¹⁰¹ Industrial parks Proclamation (n 96), art 28

related with workers right, but they inform and advise investors on the constitutional rights of workers which includes the right to form associations, according to Tinsae.¹⁰²

From eleven Companies that operate in the Park¹⁰³, only two of them¹⁰⁴ have workers associations while the other nine do not have formal one.¹⁰⁵ They rather use their own way,¹⁰⁶ which is workers representative arrangement in most cases, in order to deal with disputes that arises between workers and employers (Industrial Park Operators).¹⁰⁷ They elect workers representatives who represent workers in discussions with investors.¹⁰⁸ Nine out of the eleven Companies have not either allowed the workers to establish associations or workers have no interest in forming it.¹⁰⁹ In one of the companies in the Industrial Park, the workers have been disinterested to form association while CETU officials have been trying to convince them about the benefits of having association.¹¹⁰ In another company, the workers have interest to form an association while the managers of the company are unwilling.¹¹¹

Company's managers, whether they are expatriates or not, do not directly deny the workers the right to form association. They rather provide several reasons that hamper the formation of

¹⁰² Interview with Tinsae Yimam, (n 99)

¹⁰³ See (n 14)

¹⁰⁴ Shints and Jeorj Shoe are the companies in which trade unions exist

¹⁰⁵ Interview with Tinsae, (n 99)

¹⁰⁶ Interview with Anwar, (n 15)

¹⁰⁷ Ibid, & Tinsae

¹⁰⁸ Ibid

¹⁰⁹ Id

¹¹⁰ Id

¹¹¹ Id

associations.¹¹² They deny the platform of formation in an indirect way. For example they do not let workers to meet and discuss.¹¹³ If workers do not get time and space to discuss together, it will be difficult for them to form associations.¹¹⁴

CETU has negotiated several times with companies on formation of trade unions though it is barely fruitful.¹¹⁵ However, Investors Association and HR Managers¹¹⁶ argue that, workers in the Industry Park are mostly from countryside with low education background¹¹⁷ and are less aware about the right to freedom of association.¹¹⁸ The employers' uneasiness to union formation mainly emanates from the fear that an organized labour will eventually seek to establish collective bargaining with a possible outcome where the amount of profit and managerial power available to the employer becomes more limited.¹¹⁹ Workers in companies with trade unions say, there is no difference between having association and not, except membership contribution

¹¹² Interview with Buzayehu, Senior Expert at MoLSA and Representative at Bole Lemi Industrial Park (5 August 2019), Interview with Ayalew Ahmed, Vice President, Confederation of Ethiopian Trade Unions (July 2019)

¹¹³ Ibid

¹¹⁴ Id

¹¹⁵ Interview with Ayalew Ahmed, (n 111)

¹¹⁶ Interview with Meron Alemseged, Investors Association Representative at Bole Lemi Industrial Park (26 April 2020), Interview with Lemma Afework, Human Resource Manager at Jay Jay Textiles Plc (26 April 2020) and Interview with Samrawit Bekalu Human Resource Manager at Arvind Lifestyle Apparel Africa(26 April 2020)

¹¹⁷ According to information from Tinsae and Anwar, 90% of the workers are labourers with educational background of less than grade10, whereas workers with degrees and diplomas constitute 10% only and mostly work as line supervisors.

¹¹⁸ Ibid

¹¹⁹ Mehari Redae, (n 17)

without any benefit in return, for trade union members contribute 10% of their salary to trade unions.¹²⁰

The two trade unions in the park, which are in Shints Ethiopia Garment Plc and Jeorj Shoe Ethiopia Plc, are formed based on the awareness created and negotiations made by CETU with both workers and Investors.¹²¹ The process of formation of the associations and election process of representatives were according to the law, but the associations are not functioning with their full capacity due to pressures from company managers.¹²² The trade unions do not conduct meetings with their members,¹²³ and the members want to leave the union to be exempted from membership fees.¹²⁴

Even though Investors Association and Company managers claim awareness of workers, it seems that the right to freedom of association has got little place in the Industrial Park. Companies either ignored this right or do not want their workers to be organized, and those who have allowed unionization even do not let them do their job effectively.¹²⁵

Similarly, literatures show that in Export Processing Zones, protective labour laws are withdrawn from application in order to attract FDIs and in some other cases, even though these protective laws are there, their enforcement would deliberately be ignored or delayed.¹²⁶ The right to

¹²⁰ Focus group discussion with Ahmed kedir, kidist Ayalew, Beza Shiferaw, Merga Debela and Fikirte Shimellis, conducted on 12 August 2019, Focus group discussion #1 hereinafter

¹²¹ Interview with Mulgeta Dereje, Trade Union Representative at Shints Ethiopia Plc (10 August 2019)

¹²² Ibid, The Researchers effort to interview The managers of Shints Ethiopia Plc was unsuccessful

¹²³ Interview with Mulgeta Dereje (n 120) and Interview with Tilahun Roba, Trade union member at Jeorg Shoe Ethiopia Plc.(6 August 2020)

¹²⁴ Ibid

¹²⁵ Interview with Mulugeta Dereje, (n 120)

¹²⁶ Blackett, Adelle (2001) ‘Global Governance, Legal Pluralism and the Decentered state: A labour law critique of codes of corporate conduct’, 8 Ind.J. Global Legal Studies. 401, 2 cited on Mehari, (n 118)

unionization could be among these rights at risk ¹²⁷ with a perception that organized labour is much more demanding than would be the case with a non-unionized workforce. ¹²⁸

With regards to Countries obligation to ensure the exercise of the right to freedom of association, the Freedom of Association and Protection of the Right to Organize Convention, (No. 87) provided that, member states to take all necessary and appropriate measures to ensure that workers and employers exercise freely the right to organize.¹²⁹ The position of the Committee on Freedom of Association of the Governing Body of the ILO on this regard is that all governments are obliged to fully respect the commitments undertaken by ratification of ILO Conventions since they accepted the fundamental principles embodied therein, including the principles of freedom of association.¹³⁰

3.2 Perception of Freedom of Association in Bole Lemi Industrial Park

The preamble of the Industrial Parks proclamation states that it is necessary to accelerate the economic transformation and development of the country through the establishment of Industrial Parks in strategic locations to promote and attract productive domestic and FDIs thereby upgrading industries and generate employment opportunity. ¹³¹ Accordingly the main aim of the Industrial Parks is economic development and creation of job opportunity. The researcher's visit to Bole-Lemi Industrial Park has also proved this.

¹²⁷ Hepple, Bob (2008) 'The WTO as a mechanism for Labour Regulation'. In: Bercussion, Brian and Estlund, Cynthia (eds.), *Regulating Labour in the Wake of Globalization: New Challenges, New Institutions*. (Portland: Hart Publishing), pp 10 Cited on Mehari (n 118)

¹²⁸ Mehari Redaie, pp 50, (n 17)

¹²⁹ Convention (No. 87), (n 63), art. 11

¹³⁰ Digest of decisions and principles of the Freedom of Association, (n 95), Para. 224

¹³¹ Preamble, Industrial Parks Proclamation, (n 96)

In relation to perception, it can be concluded that there is a good perception of the right to freedom of association among the Park management and interviewed Company Managers.¹³² There is an understanding that workers entitlement to form trade unions and participate therein is a legal right emanating from International Conventions and the Constitution.¹³³ Industrial Parks operate based on the law of the land, and therefore, workers right to freedom of association provided under the law need to be respected.¹³⁴ However the issue of creating awareness needs to be considered seriously¹³⁵ while, CETU and MoLSA are expected to do this.

CETU claims, it is working on awareness creation on the right to freedom of Association using different mechanisms including trainings in private Industries, but complains of budget.¹³⁶ Its effort to organize the workers is based on the best will of the employers to make it easy for the state and employers to neutralize the effort of the unions to organize the unorganized workforce in the Industrial Park.¹³⁷ But in order to realize formation of trade unions, CETU have to present itself as a major social force and engage substantially in its primary function of developing and mobilizing workers' solidarity that is crucial in strengthening the associational power of the working class.¹³⁸

¹³² Interview with Tinsae Yimam, Interview with Anwar Kemal, Samrawit Bekalu and Lemma Afework, s

¹³³ Ibid

¹³⁴ Id

¹³⁵ Id

¹³⁶ Interview with Ayalew Ahmed (n 111)

¹³⁷ Ibid

¹³⁸ Gifawosen Markos Mitta L, 'Globalisation& Politics 'Labor Rights, Working Conditions, and Workers' Power in the Emerging Textile and Apparel Industries in Ethiopia: The Case of Hawassa Industrial Park' ,New Research in GPE Working Paper No. 01/2019, Department of Social Sciences, pp 82 ,available on <https://www.uni-kassel.de/fb05/fileadmin/datas/fb05/FG_Politikwissenschaften/GlobPolicy>, accessed 29 April 2020

3.3 Awareness of Workers about the Right to Freedom of Association

In order to understand implementation of the right to freedom of association, workers awareness is crucial. Accordingly, from an interview and focus group discussions conducted with workers, most of the participants believe that workers are less aware about their right to freedom of association and collective bargaining as they are mostly from countryside with low education background.¹³⁹

Interviewed workers have better understanding about the concept. According to seven respondents out of ten interviewed, freedom of association is the right to have an association that stands for the workers right.¹⁴⁰ It represents workers in any legal debate and negotiates with employers in improving working condition and production.¹⁴¹ It serves both the employer and employee as it sets rules for production improvement through creation of responsible and healthy workers and working environment.¹⁴²

But the other three respondents reply, trade union is an organization which provides consumable goods such as sugar, oil, soap and cafeteria services with lower price for workers in the Park.¹⁴³ They associated the role of trade unions with their low wage and provision of basic necessity with cheap price since the salary of workers in the Industrial Park is claimed to be insufficient for survival.¹⁴⁴ From the response of the workers, it is clear that there is awareness gap about what the right to freedom of association is, trade union and its purpose. This is mainly due to educational status of the workers, who are mainly laborers with little educational background.

¹³⁹ The well aware respondents are from companies with trade unions and companies which have workers representative scheme.

¹⁴⁰ Interview with Mulgeta(n 120), Interview with Jalala Fekade, Worker at Shints Ethiopia Plc, 23 September 2019

¹⁴¹ Interview with Girma Abinet, Worker, Joerj Shoe Plc, 23 September 2019

¹⁴² Ibid

¹⁴³ Interview with Balcha Waqo, worker at New Wide company, 23 September 23,2019

¹⁴⁴ Interview with Kebede Gizaw, Worker at Ashton Apparel plc, 23 September 2019

The industries do not give training that raises their awareness about their rights and duty before hiring them.¹⁴⁵

Generally, both from researcher's observation and interview, it is possible to conclude that workers have little awareness about the right to freedom of association, and workers right in work place. This happened due to inefficiency of CETU and MoLSA in creating awareness for the workers. As the researcher has observed, most of the workers in the Industrial Park are girls and women's who migrated from rural areas to Addis Ababa. Most of them do not have even experience of living in the city, and they just work to survive, for they have little or no other option. The employers exploit this limitation of workers to produce much using cheap and uneducated labour force.

3.4 Collective Bargaining in Bole-Lemi Industrial Park

Collective bargaining is a negotiation that takes place between an employer, a group of employers or their representatives and workers' organizations on issues related to determining working conditions, terms of employment and regulating relations between employers and workers. It enables workers to articulate an organized voice in industrial relations, and it strengthens unity and solidarity of the workers.¹⁴⁶ With regard to collective bargaining in Bole-Lemi Industrial Park, there is no uniformity of practice. Some of the Companies use committee of workers representatives (workers council), some have trade union while others do not have any committee or association that represent workers. Thus there are variations with regard to implementation of the right of collective bargaining in Bole-Lemi Industrial Park.

¹⁴⁵ Ibid

¹⁴⁶ Mehari Redai, (n 17) pp. 80

3.4.1 Process of Collective Bargaining in Companies that Have Trade Union

In Bole-Lemi Industrial Park there are two companies that have organized trade unions but even these two Companies did not sign collective agreement with workers.¹⁴⁷ Mehari argues that the existence of trade unions cannot guarantee collective bargaining.¹⁴⁸ Accordingly ‘recognition’ of trade unions for collective bargaining purposes remained at the discretion of the employers where poorly organized and weak unions did not succeed in obtaining recognition from employers.¹⁴⁹ When we come to the case in Bole-Lemi Industrial Park, though trade unions are organized by efforts and supports of CETU, the employers are unwilling to sit and bargain with workers associations.¹⁵⁰

The companies already determined wages and benefits that workers earns including transport services , provision of lunches at work places and other allowances paid based on attendance and performance of workers by themselves prior to formation of trade unions and they do not want to bargain on such matters with unions.¹⁵¹ Both the trade unions in the Park are not strong enough to push the companies for collective bargaining though.¹⁵² Given the role of collective bargaining in ensuring members interest, workers complain that trade union is not working to get their benefits and interests respected,¹⁵³ while trade union representatives say the companies are using them as a platform of communication with workers when labour related disputes arise in companies, and no other role.¹⁵⁴

¹⁴⁷ Interview with Mulugeta Kebede (n 120)

¹⁴⁸ Mehari Redae, (n 17), pp. 74

¹⁴⁹ Ibid

¹⁵⁰ Interview with Mulugeta Kebede, (n 120)

¹⁵¹ Interview with Tinsae, interview with Anwar, Interview with Bogale Tumdedo, Director at Industrial Peace Relation, EIC, Bole Lemi branch office

¹⁵² Ibid

¹⁵³ Interview with Jalala Fekede, Interview with Girma Abinet

¹⁵⁴ Interview with Mulugeta (n 120)

Workers have lots of issues to bargain on with their employers, including issues of salary, bonus, overtime payment, working environment and workers managers' relationships.¹⁵⁵ Representatives of trade union have raised these issues, and showed their willingness to reach an agreement with their employers, while their employers did not show any will.¹⁵⁶

Regarding the issue of unwillingness to collectively bargain, ILO's Committee on Freedom of Association held the position that, for a Collective bargaining to be effective, we must assume a voluntary character and not entail recourse to measures of compulsion which would alter the voluntary nature of such bargaining.¹⁵⁷ From this, one can conclude that collective bargaining is a voluntary juridical act in which neither party would be compelled to bargain unwillingly.¹⁵⁸ Collective bargaining is not mandatory under the Labour Proclamation too. It is provided under the proclamation that: 1) Any trade union shall have the right to bargain with one or more employers or their representatives, 2) employer or employers association shall have the right to bargain with their workers organized in trade unions¹⁵⁹

However, according to Article 4 of the Right to Organize and Collective Bargaining Convention 1949 (No .98)¹⁶⁰, measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective

¹⁵⁵ Ibid

¹⁵⁶ Id

¹⁵⁷ Digest of Decisions and Principles of the Freedom of Association (n 95), para. 845

¹⁵⁸ Mehari, (n 17)

¹⁵⁹ Labour Proclamation No. 1156/2019 art 126(1 &2)

¹⁶⁰ Convention No. 98, (n 77) , art 4

agreements.¹⁶¹ Article 5(1) of Collective Bargaining Convention, 1981 (No. 154)¹⁶² encourages to take measures adapted to national conditions to promote collective bargaining in order to make collective bargaining practicable and effective.¹⁶³ Mehari argues that member States can exercise their duty of promoting collective bargaining if they prescribe mandatory procedures for collective bargaining as far as they do not compel parties to agree.¹⁶⁴

3.4.2 Collective Bargaining in Companies that do not have Trade Union

Collective bargaining is a basic mechanism by which workers' organizations ensure the rights of workers get respected. Thus, for a collective agreement to take place, there needs the existence of workers association since collective agreement by itself is a negotiation which takes place between an employer, a group of employers or one or more employers' organizations on the one hand, and one or more workers' organizations on the other.¹⁶⁵

In Bole-Lemi Industrial Park, companies where there are no trade unions, use their own mechanism through which they deal with labour issues by electing workers representatives (they call it workers council)¹⁶⁶ and deal with them on labour issues at hand.¹⁶⁷ However, Workers complain on this workers council mechanism as the representatives are not free to raise their questions out of fear of threats and dismissal.¹⁶⁸ Workers are dismissed for asking their rights several times.¹⁶⁹ According to the labour proclamation, submission of grievance on the employer

¹⁶¹ Convention No. 98, (n 77), art.4

¹⁶² Convention No. 154, (n 36), art 5

¹⁶³ Mehari Redai (n 17) pp. 77,

¹⁶⁴ Ibid, pp. 78

¹⁶⁵ Convention (No. 154) art 2, emphasis added.

¹⁶⁶ Interview with Lemma Afework, Interview with Samrawit Bekalu, (n 117)

¹⁶⁷ Interview with Meron Alemseged supra note 117, Interview with Tinsae, Interview with Anwar

¹⁶⁸ Focus group discussion #1, (n 120)

¹⁶⁹ Ibid

is not a legitimate ground for termination of employment contract by the employer¹⁷⁰ and the Federal Supreme Court Cassation bench on the case between Petards Manufacturing S.C Vs. Yiftusira Negash & Genet Wondimu, has also affirmed this.¹⁷¹ This workers representative mechanism is rather taken as a way to just forward what managers told workers than a platform of negotiation on the rights and benefits of workers.¹⁷² But company managers and Tinsae¹⁷³ argue to the contrary. According to them, in earlier days when the park started operation, conflicts between managers and workers was very high, that it sometimes escalates up to closure of the park due to strikes, but now workers raise their concerns through their representatives.¹⁷⁴

Regarding this, the committee of the governing body of ILO on freedom of association takes a stand that independence of the parties in collective bargaining is of great importance and negotiations should not be conducted on behalf of employees representatives appointed by or under the domination of employers.¹⁷⁵ In companies with no trade unions, the representatives should at least be free to put issues of workers they represent on the table for negotiation. But it is controversial whether workers representatives in Bole-Lemi Industry Park fall under the definition¹⁷⁶ of workers representative of Convention (No. 135).

3.5. Issues of Collective Bargaining

Hereunder, the issues and subject matters of collective bargaining are discussed in relation to their practice in the Industrial Park.

¹⁷⁰ Labour Proclamation No. 1156/2019 art. 26(2)

¹⁷¹ Petards Manufacturing S.C Vs.Yiftusira Negash & Genet Wondimu, Federal Supreme Court Cassation File No.105921, 14/07/2007 EC, Federal Supreme Court Cassation Decisions, Vol.18, pp 6

¹⁷² Focus Group discussion #1, (n 120)

¹⁷³ Interview with Meron Almeseged, Interview with Lemma Afework, Interview with Samrawit Bekalu

¹⁷⁴ Ibid

¹⁷⁵ Digest of decisions and principles of the Freedom of Association, Supra note 132, para 789, emphasis added

¹⁷⁶ Workers' Representatives Convention (No. 135), International Labour Conference, 56th Session, 2 June 1971, art.3

3.5.1 Wage

Wages as defined under are regular payments that a worker is entitled to in return for a work he/she performs under contract of employment.¹⁷⁷ All the workers participated in the interviews and focus group discussions complained about the insufficiency of the wage being paid in the Industrial Park. Salaries being paid do not cover their house rent and they are forced to leave in groups.¹⁷⁸ Workers have asked for salary increment several times and even there were strikes in the Park¹⁷⁹. But there were no changes, and workers who were suspected of leading the strike and who asked for salary increment were dismissed.¹⁸⁰ However, Companies and Investors Association argue on the contrary. They claim that even though the salary paid to them seems low, there are mechanisms to compensate which includes attendance and efficiency bonuses a sum of which could reach up to 500 birr a month.¹⁸¹ Workers are also provided with lunch at work places and transportation services.¹⁸²

Tinsae admits that wages paid in the park are low compared to the cost of living in the city but adds the attendance and efficiency bonus somehow are incentives.¹⁸³ Since there is no fixed minimum wage for private sector workers in the country, even MoLSA cannot intervene in the issue¹⁸⁴ though they have been informally communicating with the employers to at least improve their salary scale.¹⁸⁵

¹⁷⁷ Labour Proclamation No. 1156/2019, art 53(1)

¹⁷⁸ Focus group discussion #1,(n 199)

¹⁷⁹ Ibid, Birhane Haile Mariam (n 8), Interview with Tinsae

¹⁸⁰ Focus group discussion #1 (n 199)

¹⁸¹ Interview with Lemma, Interview with Samrawit and Interview with Meron.(n 117)

¹⁸² Ibid

¹⁸³ Interview with Tinsae Yimam, (n 99)

¹⁸⁴ Ibid

¹⁸⁵ Id

In Ethiopia, there is no fixed minimum wage under the law.¹⁸⁶ However, it is a new development under the new proclamation as it provided that the council of Ministers by its regulation will establish minimum wage board that decides on minimum wage by studying labour market along with the country's economy.¹⁸⁷ With regards to the attendance bonus, which workers are paid if and only if they attend work the whole month without being absent,¹⁸⁸ and efficiency bonus, such payments including allowances and bonuses are not considered as wages under Ethiopian law.¹⁸⁹ Since workers have the right to just and favorable conditions of work which ensure fair wages and a decent living for themselves and their families¹⁹⁰ bargaining on the issue of salary is one of the key issues for the workers in the industrial park.

3.5.2 Bonus

Bonus is a form of compensation that's not guaranteed and is usually paid after the completion of a certain event.¹⁹¹ It is a payment made to encourage workers for their contribution to the profitability of the Company up on the end of a budget year most of the time.¹⁹²

Accordingly, most¹⁹³ of the workers in Bole-Lemi Industrial Park have complained nonpayment of bonus. They said their companies are profitable as the workers meet production targets¹⁹⁴

¹⁸⁶ Labour Proclamation No 1156/2019 art 53(1)

¹⁸⁷ Ibid art 55(2)

¹⁸⁸ Focus group discussion with Aberash zeleke, Hulageresh Adugna, Dawit Zerihun, Nuru Awol and Daniel Abera, 25 September 2019, Focus group discussion#2 hereinafter

¹⁸⁹ Labour proclamation No 1156/2019, art 53(2)

¹⁹⁰ UDHR art 23(3), ICESCR art 7

¹⁹¹ Susan M Heisfield,, 'What Is Bonus Pay and Why Might an Employer Pay It to Employees?',

<https://www.themuse.com/advice/how-bonuses-work>, accessed on 1 May 2020

¹⁹² Ibid

¹⁹³ Among the 10 workers interviewed, 6 of them complained they haven't paid bonus at the end fiscal year

given to them and sometimes work more than that.¹⁹⁵ But they have never been paid a bonus.¹⁹⁶ Even workers who have served more than three years in companies complains of nonpayment of bonus by stating that workers of private companies receive a lump sum of money at the end of budget year depending on profitability.¹⁹⁷

Company managers do not accept the accusation that their companies are profitable to pay bonus.¹⁹⁸ They argue most of the companies started operation recently and hence have not reached profitability stage.¹⁹⁹ For a company to pay benefits first the company should cover its cost of operation and reach profitability stage.²⁰⁰

Regarding profitability of companies and payment of bonus to workers, the issue of how recent is recent need to arise. The park started operation in 2014²⁰¹ which is more than five years, and it could be argumentative whether the issue of recent establishment shall arise. On the issue of target production, in the opinion of the researcher, companies set target productions calculating their profit. Even thou companies are not obliged to pay bonus; its payment initiates workers for better performance. Due to this, issues related to payment and calculation of bonus is one of the basic issues to be bargained on for workers of Bole-Lemi Industrial Park.

¹⁹⁴ Production target is the amount of work that workers are expected to perform divided to a day, a month and a year

¹⁹⁵ Ibid

¹⁹⁶ Id

¹⁹⁷ Interview with Mulugeta Kebede, (n 120)

¹⁹⁸ Interview with Lemma, interview with Samrawit and Interview with Meron, (n 115)

¹⁹⁹ Ibid

²⁰⁰ Birhane Hailemariam, (n 8)

²⁰¹ Interview with Meron Alemseged (n 115)

3.5.3 Payment of Overtime Work

Normal hours of work shall not exceed eight hours a day and 48 hours a week under the labour proclamation.²⁰² Accordingly, working hours beyond specified time are regarded as an overtime work. Workers may not be compelled to work overtime, however overtime may be worked whenever the employer cannot be expected to resort to other measures and when there is accident (actual or eminent), force majeure, urgent work or substitution of absent workers assigned on works that run continuously without interruptions.²⁰³ Overtime works are limited to only four hours in a day and twelve hours in a week²⁰⁴. In addition to that, workers who have worked overtime are entitled to additional payment calculated based on the time the work is performed.²⁰⁵

In relation to the practice in Bole-Lemi Industrial Park, the workers complain that they cannot say no to overtime works.²⁰⁶ However, the Federal Supreme Court Cassation bench on the case between Alemayehu General Contractor Vs. Abiyot Fekadu, ruled that the law has put an obligation to work on any weekly rest days provided that there is an accident (actual or eminent), force majeure and urgent work to be done.²⁰⁷ Workers also complain that they are not paid for the overtime work, and the companies only cover transportation cost calculated depending on the distance of the home of the worker from the park because there is no transportation service out of the regular working hours.²⁰⁸ Employers however are not clear on issues of overtime payment.²⁰⁹

²⁰² Labour proclamation No. 1156/2019 art 61(2)

²⁰³ Ibid, art 67(1)

²⁰⁴ Ibid art 68

²⁰⁵ Ibid

²⁰⁶ Focus group discussion #2, (n 185)

²⁰⁷ Alemayehu General Contractor Vs. Abiyot Fekadu, Cassation File No. 37815, Federal Supreme Court Cassation Bench, 02/03/2001 E.C, Federal Supreme Court Cassation Decisions, Vol. 8, pp 109

²⁰⁸ Ibid (n 206)

This is a clear indication that strong trade unions are required to bring such issues to the table for collective bargaining with employers and their associations.

3.5.6 Working environment

Except one worker, all the workers interviewed and participated in focus group discussions have responded that there is good working environment in the Industrial Park. This is due to the serious follow up by companies who receives the products produced in the park.²¹⁰ These companies make visits to the working environment of the park periodically and cross check that the working environment is clean, safe and suitable for workers.²¹¹ One worker complained that there is no place to eat lunch which may in turn result in returning late from lunch which is source of conflict between workers and managers²¹². Though there are no such complaints from workers on a working environment, collective agreements guarantee a safe working condition.

3.5.7 Workers and Managers Relationship

There is a gap in workers and managers relationship in the Industrial Park.²¹³ According to Tinsae and Anwar, most of the investors in the Industrial Park are from East Asian countries, including China, India and Korea and they bring expats as production managers from their own countries where as a culture a boss is regarded as a little God.²¹⁴ Shouting and sometimes even beating workers is normal for them,²¹⁵ but in our country the work culture is different. In

²⁰⁹ In an interview with Meron, she said, most of the time there is no overtime work and I think the workers are paid if they work

²¹⁰ Interview with Tinsae, Interview with Meron

²¹¹ Focus group discussion #2, (n 188), this worker is from a company which do not provides lunch but pays lunch allowance.

²¹² Ibid

²¹³ Interview with Anwar, Interview with Tinsae & Focus group discussions #1 & #2

²¹⁴ Interview with Anwar and Interview with Tinsae

²¹⁵ Ibid

Ethiopia yelling is considered as a sign of hate and embarrassing others. Thus, there is a cultural difference about which they are working to raise awareness of both workers and expatriates.²¹⁶ Time and workload are also sources of conflict between managers and workers.²¹⁷ Workers complain that the managers require us to be perfect in early coming to work, while they do not let us leave on time.²¹⁸ There is always conflict between workers and managers with this regard.²¹⁹ Accordingly, collective bargaining on issues of workers and managers relationship is very crucial for worker of Bole-Lemi Industrial Park.

3.6 Benefit of Trade Union for Workers and Employers

There is no doubt that freedom of association is beneficial for both parties. One of the benefits of trade union is that it creates trust among the workers and employers. Freedom of association also helps to improve productivity of companies by creating mutual confidence between employees and employers.²²⁰ This benefit of freedom of association also goes beyond regulating and stabilizing business relationship and contributes in maintaining basic human rights. It contributes in promoting freedom of speech and defending the right to freedom of equality. Rights to freedom of association and collective bargaining are called ‘enabling rights’, because they enable citizens to organize in order to realize other human rights and they underpin the democratic process. Not only do these rights directly assist with the improvement of living and working conditions, they also contribute more broadly to economic and social development.²²¹

It is necessary to have healthy workers - employers’ relationship in general and important for the workers since it allows them to be organized and defend themselves from exploitation and

²¹⁶ Id

²¹⁷ Interview with Abraham Aboye, worker at Ashton Apparel, 25 September 2019

²¹⁸ Interview with Abraham, Interview with Jalala Fekede and focus group discussions #1 & #2

²¹⁹ Ibid

²²⁰ Ethical Trading Initiative, 2013

²²¹ Ibid

improper influence of the employer in particular. Thus, freedom of association is very beneficial for the industrial relationship.

3.7 Workers Right and Trade Unions in Bole-Lemi Industrial Park

One of the major benefits of trade union is protecting workers rights and interests, but not limited to that.²²² As it was mentioned above, nine out of the eleven companies operating in Bole-Lemi Industrial Park do not have trade unions and the existing trade unions are not strong and functional. There is no signed collective agreement among trade unions and employers on conditions of work, which is mainly due to unwillingness of employers to collectively bargain. Thus, based on the observation of the researcher, there are lots of infringements of workers right in Bole-Lemi Industrial Park with regards to freedom of association and collective bargaining which are discussed as follows.

Workers say that they are facing lots of problems due to nonexistence and dysfunction of trade unions in the Park.²²³ They complain of non representation in both companies with workers representatives and not.²²⁴ Workers representatives are not elected by the workers rather by the managers based on their proximity and duration of stay in the respective companies.²²⁵ Thus, they are more of representatives of the employers than the workers. Employers and the park management²²⁶ discuss with workers during strikes or when workers raise their issues in group but bears no fruit most of the time and workers get discouraged due to threats and dismissals.²²⁷

²²² Focus group discussion #1 & #2

²²³ Ibid

²²⁴ Id

²²⁵ Id

²²⁶ Park management according to workers are representatives of IPDC, EIC & MoLSA in the park

²²⁷ Ibid (n 224)

Some dismissed workers just leave and search for another job than taking their cases to courts.²²⁸ This workers raise nonexistence of court in nearby area and the time taking court procedures as a reason.²²⁹ The researcher observed that there is FFIC Bole bench around Summit, which is not that far from the Park,²³⁰ but EIC's Bole-Lemi branch office is dealing with FFIC to open special labour division bench in the Industrial Park so that labour disputes are solved in a soonest possible period.²³¹ According to FFIC, it's possible to open a special labour bench in the Industrial Park taking in to consideration the number of workers working there and number of actual cases,²³² but there is a fear that it may spoil the industrial peace as workers may resort to spending their times by taking cases to courts which may influence productivity in the long run.²³³

But EIC's Peaceful Industrial Relations Director claims that his office is working on issues raised by workers before it goes to strikes.²³⁴ They hear workers grievances, discuss with both workers and management of companies on how to solve problems raised among them in a peaceful manner.²³⁵ They even negotiate with employers on the cases of illegally dismissed workers.²³⁶

²²⁸ Id

²²⁹ Id

²³⁰ The park is located near Goro

²³¹ Interview with Anwar Kemal, (n 15)

²³² Interview with Tesfaye Niway, Vice President of Federal First Instance Court and Spokesperson of Federal Courts, (30 April, 2020)

²³³ Ibid

²³⁴ Interview with Bogale Tumdedo, Director at Peaceful Industrial Relations, EIC, Bole Lemi Branch office

²³⁵ Ibid

²³⁶ Id

CHAPTER 4

4. Conclusions and Recommendation

4.1 Conclusion

In this research the researcher tried to assess the right to freedom of association and collective bargaining and its implementation in FDI in Ethiopia particularly in Bole-Lemi Industrial Park. The researcher has tried to analyze the laws with regard to freedom of association and collective bargaining and its implementation in Bole-Lemi Industrial Park. In doing so, the researcher has analyzed laws, (proclamations and regulations of ILO conventions) with the actual practice in the Industrial Park.

Based on the finding of the study, there are only two companies that have tried to establish trade unions out of eleven companies operating in the Park. In the rest of the companies, either the companies or the workers do not have willingness and initiation for establishment of trade unions in their company. The formation of trade union in the two companies was initiated by CETU officials who visited the company for short period of time. CETU has created awareness about trade unions for the workers and helped them form and elect trade union leaders even though both unions are not functioning well due to lack of cooperation from company managers. Companies do not directly deny workers to be organized and form trade unions. They rather keep the workers busy in order to make them have no time to meet and discuss.

Even workers who work in companies with trade unions do not believe that the union is protecting their rights and the managers do not cooperate with the leaders of the association.

With regard to awareness of the workers and managers about freedom of association and collective bargaining, a lot of work is expected from CETU and MoLSA. Workers in the Industrial Park that the researcher has interviewed have little knowledge about freedom of association and collective bargaining. Most of them do not even know what freedom of association and collective bargaining is. They consider it as consumer association or some other form. Since most of the workers in the Industrial Park are less educated, there is a need to give awareness for the workers. Managers and Investors Association representative interviewed

believe trade union is beneficial but complains of workers awareness level. Some also relate existence of trade unions with strike which they think is very difficult for the industry sector.

There is no signed collective agreement in the Industrial Park and generally there is little or no practice of collective bargaining. This mainly due to lack of strong trade union that has a bargaining power with the employers. As there is no strong union that reflect their opinion and defend their right, workers resort to strike and violence to let their right get protected and their concerns heard. The strikes and violence in the Industrial Park were mostly concluded by settling the workers issue through discussions with employers and the park management, though workers complain of dismissal of workers who raise their questions afterwards.

With regard to collective bargaining, it is possible to look at the experience of Bole-Lemi Industrial Park by categorizing it in two groups: those who have trade union and those who do not have association. According to the observation of the researcher and the response of the workers, workers who have association even if it is not functioning fully have better bargaining power than those who do not because they have at least information with regards to their right and how to bargain. Since they have also connections with CETU they have better awareness and their handling is better than those who do not have trade union.

Workers who do not have trade union can also be divided in to two categories: those workers who have representatives and those who do not have one. Based on the finding of the research, there is no significant difference between these two groups. Both of them have little awareness on their right and process of collective bargaining. They complain of being abused and exploited by their employers. Both of them believe there is little or no chance of dealing with the employers, since employers are harsh on those who raise any question about workers right.

Even though there is little or no foundation to bargain, workers have a lot of issues to deal about with their employers. The finding of this research indicates that workers want to bargain on the amount of wage, payment of bonus, overtime payment, working environment and workers - managers' relationship. Workers raise the issue of low wage as a main problem. They believe that the wage they are earning is not equivalent with the work they are engaged in and not even

sufficient to cover living cost. Workers also complain of not being paid for overtime works but only transportation fee.

When one looks at the benefits of freedom of association and collective bargaining, one can understand that it is crucial both for the companies and workers. Freedom of association and collective bargaining help the workers to organize themselves and defend their rights collectively. It also helps workers to have awareness about their rights and duties at work. By maintaining workers right it also benefits companies by providing them workers who have confidence in themselves and contribute positively to the company by discharging their responsibility effectively and efficiently. Existence of strong trade union also contributes in creating harmonious work relationship between workers and employers. It also contributes to the profitability of the company by reducing workers turnout.

Generally there are a lot of issues in relation to implementation of freedom of association and collective bargaining in Bole-Lemi Industrial Park. The issues include very poor practice of freedom of association and collective bargaining. Even those trade unions that exist do not serve the members due to hindrances from the employers' side. There is also confusion from government's side on how to resolve industrial conflict, whether it is resolved through tripartite modality or collective bargaining between employers and employee.

4.2 Recommendations

Freedom of association and collective bargaining is not a right that solely stands. It is accompanied with other rights like freedom of expression, freedom of speech, economic right, the right to be free of exploitation and the like. Thus due attention should be given to ensure that workers enjoy this basic right.

In a country like Ethiopia that needs more foreign direct investments to boost its economic development, handling the already existing investors in a good way is essential without compromising workers right. Accordingly, concerned authorities has to give due attention in supporting the workers establish strong trade unions that engages in bargaining with employers.

All workers working in different companies in the Industrial Park need to be allowed to freely form trade unions, and, in order to realize formation of these trade unions, CETU have to present itself as a major social force, exerting its maximum effort to fully realize workers freedom of association and the right to bargain with their employers by engaging in its primary function of creating awareness, mobilizing workers, facilitating establishment of trade unions and support the already existing ones.

EIC and IPDC should also pay due attention to the formation and operation of trade unions in the Industrial Park. Furthermore, the Federal Government should orient investors about workers right to association and collective bargaining.

Generally,

- As awareness is very crucial, there should be a system of creating awareness about the right to freedom of association and collective bargaining and its benefits to workers of the Industrial Park.
- CETU and other officials should facilitate the establishment of trade unions in all companies in the Industrial Park and follow up their operation.
- Government should take strong policy measure on removing all hindrances to establishment of trade union and orient the law of the country to foreign investors who wants to invest in Ethiopia.

- Since freedom of association has positive impact to increase productivity and is beneficial for both the workers and employers, both should work positively and committed towards achievement of the right to freedom of association and engage themselves towards collective bargaining in good faith than looking at each other as adversary.

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Annexes

I. Interview Guideline for Key Informant Interview

Personal Profile of Respondent

- a) Name: _____
- b) Position: _____
- c) Duration of stay in the position: _____
- d) Company's name: _____
- e) Address of company: Region_____ Sub city_____

Interview Questions

- 1) What is the right to freedom of association and collective bargaining?
 - Definition of the right
 - Why is it necessary?
 - How is it perceived in our country and especially in your organization (ministry, Corporation, Commission)?
 - What are the mechanisms to ensure the right to freedom of association and collective bargaining?
- 2) What do the laws say about the right to freedom of association and collective bargaining?
 - What do the international laws say?
 - What do Ethiopian laws say?
 - What are the intentions of the laws?
- 3) Are formations of trade unions in accordance with the labour law?
 - Are workers aware of their right to freedom of association and collective bargaining?
 - Who is responsible to ensure the right to freedom of association and collective bargaining?
 - How much the personnel are aware of the rights and committed?

- Is there a gap in execution of the laws with regard to the right to freedom of association and collective bargaining?
- 4) How is the right to freedom of association and collective bargaining perceived among employers and workers?
 - Do the workers see the right as beneficial?
 - What are the perceptions of employers? Do they take it as a threat or right of employees?
 - Does the law create good relationship between workers and employers?
 - 5) How is the right to freedom of association and collective bargaining being implemented in Bole-Lemi industrial park?
 - Is the law being practiced?
 - Is there freedom of association in the park?
 - What, if any, makes the practice of the laws in Industrial park different?
 - 6) What is the actual function of trade unions in the industrial Park?
 - Do the workers in industrial parks have trade unions or worker unions?
 - How is the formation of trade unions in Industrial Park?
 - Who initiate the formation?
 - How are the leaders of trade unions elected in Industrial Park?
 - 7) What does the practice of collective bargaining right look like?
 - Do the workers express their concerns through the unions freely?
 - Does the union serve as a tool for fair negotiation between employers and employees?
 - Does the union have contribution in ensuring the right of workers?
 - How does the union contribute in ensuring workers right?

II. Interview Guideline for in-depth Interview (Workers)

- 1) As a worker of Bole-Lemi Industrial Park, what do you know about the right to freedom of association and collective bargaining?
- 2) Is there trade union in the Company you work for?
- 3) Are you a member of trade union?
- 4) What is the benefit of having trade unions?

- 5) Would you explain the extent of freedom of association in this Industrial Park?
- 6) How are the trade unions formed in the Industrial Park? Who initiated the formation?
- 7) What is the opinion of your employers about trade unions?
- 8) How do you elect leaders of your trade unions?
- 9) What is your role in trade unions and how do you use your right to collective bargaining through the unions?
- 10) How does the union contribute in ensuring your rights?

III. Interview Guideline for Focus group Discussion

- 1) As a worker of Bole-Lemi Industrial Park, what do you know about the right to freedom of Association and collective bargaining?
- 2) How are trade unions formed in the Industrial Park? Who initiated the formation?
- 3) How do you use your right to collective bargaining through the unions?
- 4) How does the union contribute in ensuring your rights?

IV. Interview Guideline for Investors Association and Human Resource Managers

- 1) As a representative of investors association, / As HR Manager/, what do you think about the right to freedom of association and collective bargaining?
- 2) Do the workers in this Industrial Park have trade unions or worker unions?
- 3) What is the benefit of having trade unions?
- 4) Would you explain the extent of freedom of association in this Industrial Park?
- 5) How are trade unions formed in the Industrial Park? Who initiated the formation?
- 6) What is the opinion of investors about trade unions?
- 7) What is the investor's role in trade unions and how do the investors look at collective bargaining through the unions?
- 8) Do you think trade union benefits investors? If your answer is yes, how does the union benefit investors?