ADDIS ABABA UNIVERSITY

SCHOOL OF LAW

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# HUMAN RIGHTS DUE DILIGENCE AND FOREIGN DIRECT INVESTMENTIN ETHIOPIA: THE CASE OF LABOUR RIGHTS IN TEXTILE AND GARMENTSECTOR AT BOLE LEMI INDUSTRIAL PARK

A Thesis Submitted to the School of Law of Addis Ababa University in PartialFulfillment of the Requirement of Master Degree in Human Rights Law

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May 27, 2016

DECLARATION

Here with I, declare that, this paper prepared for the partial fulfillment of the requirements for LL.M Degree in Human Rights Law entitled "Human Rights Due Diligence and FDI in Ethiopia : The Case of Labour Rights in Textile and Garment sector at Bole Lemi Industrial Park" is prepared with my own effort. I have done it independently with the close advice and guidance ofmy advisor.The works of others included in this dissertation are properly cited.

Declared by: Mahlet Yebeka

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Date: 27 May 2016

Certification Statement

Here with I state MAHLET YEBEKA has carried out thisresearch work on the topic entitled "HUMAN RIGHTS DUE DILIGENCE AND FDI IN ETHIOPIA : THE CASE OF LABOUR RIGHTS IN TEXTILE AND GARMENT SECTOR AT BOLE LEMI INDUSTRIAL PARK.This work is original in nature and has not been presented for a degree in any university and it is sufficient for submission for the partial fulfillment for the award of LL.M degree in Human Rights Law.

YONAS BIRMETA

Signature …….

Date……

**Table of Contents**

**Contents Pages**

Background of the study----------1
1.1. Introduction----------1
1.2. Statement of the Problem----------4
1.3. Research Questions----------9
1.4. Objectives of the study----------9
1.4.1. General Objective of the Study----------9
1.4.2. Specific Objectives of the Study----------9
1.5. Significance of the Study----------10
1.6 Scope of the Study----------10
1.7 Research Methodology of the Study----------11
1.8 Limitations of the Study ----------11
CHAPTER TWO----------12
Business and Human Rights ----------12
2.1. Introduction ----------12
2.2. Brief history of Business and Human Rights Debate----------16
2.3. International Initiatives and Frameworks ----------17
2.3.1 United Nations----------17
2.3.1.1 UN Norms on Responsibilities of Transnational corporations and other Business Enterprises ----------18
2.3.1.2.The UN Global Compact ----------19
2.3.1.3.UN Framework on the Duty to Protect, Respect and Remedy of States -19
2.3.1.4.UN Guiding Principles on Business and Human Rights ----------23
2.4 Corporate Social Responsibility Vs Business and Human Rights----------25
2.5 The Emerging Consensus ----------28
CHAPTER THREE ----------29
Due Diligence and Human Rights ----------29
3.1 Introduction ----------29
3.2 The Concept of Human Rights Due Diligence ----------29
3.3 Due Diligence in the Human Rights Aspect ----------31
3.4 Human Rights Due Diligence Under International Human Rights Law ----------32
3.5 Components of Human Rights Due Diligence ----------34

3.5.1. Human Rights Policy Commitment ----------34
3.5.1.1 Approaches to Human Rights Policy ----------36
3.5.2. Human Rights Impact Assessment----------36
3.5.3. Integration ----------37
3.5.4. Tracking performance ----------38
CHAPTER FOUR----------40
Labour Rights and Foreign Direct Investment in Ethiopia----------40
4.1. Introduction----------40
4.2. Labour Rights in Ethiopia----------42
4.2.1. The FDRE Constitution----------43
4.2.2. International labour rights treaties----------44
4.2.3 Labour Proclamation 377/2003 ----------44
4.2.4 Federal Supreme Court Cassation Division Decisions----------45
4.2.5 Ministry of Labor and Social Affairs Directives----------45
4.3 Foreign Direct Investment in Ethiopia----------46
4.4 Impacts of Labor Laws on Foreign Investment and Employment----------47
4.5 The Nexus between Foreign Direct Investment and Human Rights----------49
4.6 Labour Rights in Human Rights Lens----------50
CHAPTER FIVE ----------48
Ethiopian Textile Industry and Human Rights Due Diligence at Bole Lemi Industrial Park ----48
5.1 Introduction ----------48
5.2 Regulatory Approaches to Human Rights Due Diligence----------54
5.3 Industrial Parks in Ethiopia ----------55
5.4 Business and Human Rights in Ethiopia----------56
5.5 Human Rights Due Diligence Practice in Bole Lemi Industrial Park----------58
Conclusion----------63
Recommendations ----------66
Bibliography ----------67

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**Abstract**

*FDI is one of the main engines for economic development of a country. The possible developmental benefits out of FDI includes employment creation, the development of human capital, the implementation of internationally acceptable codes of employment practice, improving the access of the host economy to world markets. The sum of these in effect results in boosting the economy of capital receiving state. Through by way of such investments many international trade companies do their business all over the world including our country. At first look, investment activities present opportunities for business and profit, but do not immediately bring to mind having positive human rights impacts. In some circumstances, Foreign Direct Investments does not always bring positive impacts with regards to human rights. These cases are very evident when it comes to developing countries to which our country is a great example. Where, as a result, undesirable consequences are being followed such as forced eviction of indigenous peoples, unfair labour practices including forced child labour, discrimination against certain types of individuals, failing to provide safe and healthy working conditions, repressing trade unions, discouraging the right to bargain collectively and environmental pollution. This in turn will have contribution to the failure of social and economic development of a society. This takes us to case of business and human rights. This issue became permanently implanted on the global policy agenda in the 1990s, reflecting the dramatic worldwide expansion of the private sector at the time, coupled with a corresponding rise in transnational economic activity. These developments heightened social awareness of businesses' impact on human rights and also attracted the attention of the United Nations which has resulted in the endorsement of the United Nations Guiding Principles on Business and Human Rights in the year 2011 following its Protect, Respect and Remedy Frame work. Such international standards advocates for the conduct of adequate Human Rights Due Diligence by business enterprises in a way clearly stating that business corporates also do have a responsibility to respect human rights.*

*Ethiopia is one of the fast growing countries. Foreign direct investment plays a vital role in the country's economic development through creating wealth and job opportunity. Through this way foreign investment by transnational corporations many investors are running their business in many industrial parks. Labour rights treatment in industrial parks are known to be not sound enough to be respected.*

*Key words: UNGP, MNC, TNC, Globalization, Human Rights Due Diligence,*

# CHAPTER ONE

# BACKGROUND OF THE STUDY

## 1.1 Introduction

Foreign Direct Investment (FDI) is one form of business activity and it is the most noticeable means of transferringwealth and technology between two countries. The past quarter century has witnessed remarkable growth in world Foreign Direct Investment flows, stimulated by the evolving investment strategies of Transnational Corporations (TNCs) and the liberalization of national FDI policies[1]. According to UNCTAD[2], global FDI flows rose by 11% in 2013 to an estimated US$1.46 trillion, up from a revised US$1.32 trillion in 2012[3]. Thus FDI inflows increased in all major developed, developing andtransition economies.

By way of FDI, international trade companies have the ability to improve the welfare of many societies by being an important source of employment andchannel of technology transfer[4]. The developmental benefits of FDI are not automatic, andmechanisms may be required to ensure that the expected benefits of FDI are equitably distributed in order to make a positive impact on poverty alleviationandsocial welfare[5]. The extent to which this is possible depends not only on purpose andvalues held by a particular company, but also by the domestic regulations of capital receiving state.

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[1] Transnational corporations (TNCs) are increasingly involved in this process, providing additional resources and technology and facilitating access to new markets. United Nations Conference on Trade and Investment Report 2002, Preface.

[2]UNCTAD serves as the focal point within the United Nations Secretariat for all matters related to Foreign Direct Investment and Transnational Corporations.

[3]United Nations Conference On Trade And Development, 'Global Investments Trends Monitor' (2014)<http://unctad.org/en/PublicationsLibrary/webdiaeia2014d1_en.pdf> accessed 6 June 2015.

[4]Note: The possible developmental benefits out of FDI includes employment creation, the development of human capital, the implementation of internationally acceptable codes of employment practice, improving the access of the host economy to world markets. The sum of these in effect results in boosting the economy of capital receiving state

[5]Carolyn Jenkins and Lynne Thomas, 'Foreign Direct Investment In Southern Africa : Determinants, Characteristics And Implications For Economic Growth And Poverty' (University of Oxford 2002) <http://www.csae.ox.ac.uk/reports/pdfs/rep2002-02.pdf> accessed 4 July 2015.

The shift in sovereignty accompanying globalization has meant that non-state actors are more involved than ever in issues relating to human rights[6]. This development poses challenges to international Human Rights law, because for the most part that law has been designed to restrain abuses by powerful states andstate agents[7]. While globalization has enhanced the ability of civil society to function across borders andpromote Human Rights, other actors have gained the power to violate Human Rights in unforeseen ways[8]. As corporations are going global, they are increasingly confronted with Human Rights challenges[9]. As such, new ways to deal with Human Rights challenges corporate operations must be developed as traditional governance mechanisms are not always able to tackle them[10].

The globalization of business operations has contributed to the further realization of human rights, such as economic, social andcultural rights[11]. However, adverse impacts by business enterprises on the enjoyment of Human Rights have been observed more frequently; for example, unsafe working conditions, child labor, discrimination, negative impacts on the environment and damage of health[12].

Debate on the impact of MNCs on society and, more specifically, on Human Rights involves both optimisticandpessimist voices. The optimists suggests that multinationals may contribute to advancing the cause of Human Rights because they bring capital, technologies, management techniques andmanagers who frequently are eager to introduce social improvement alongside their financial investmentand in addition large corporations can improve the living conditions of poor countries through the adoption of voluntary codes of conduct andCorporate Social Responsibility policies[13]. Others criticize and question the capacity of MNCs to advance the

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[6] Lawdigitalcommons.bc.edu, '"Protecting Human Rights In A Globalized World" By Dinah Shelton' (2002) <http://lawdigitalcommons.bc.edu/iclr/vol25/iss2/7/> , accessed 24August 2015.

[7] *Id*

[8] *Id*

[9] Se´bastien Mena, Marieke de Leede, Dorothe´e Baumann, Nicky Black, Sara Lindeman, Lindsay McShane, ”Advancing the Business and Human Rights Agenda: Dialogue, Empowerment, and Constructive Engagement”, Journal of Business Ethics, (2010), P. 161

[10] *Id*

[11] Si Chen, ’Towards a Business and Human Rights Treaty’, Master Thesis at Norwegian Centre for Human Rights (2015), P. 31

[12] *Id*

[13] Elisa Giuliani, “Multinational Corporations’ Economic and Human Rights Impacts on Developing Countries: A Review and Research Agenda”, Discussion Paper n. 158, P.9, <www.ec.unipi.it/documents/Ricerca/papers/2013-158.pdf>, accessed on 21 June 2015.

cause of Human Rights in which the complicity of large global corporations have proven violating human rights.

The relationship that exists between Foreign Direct Investment (FDI) andHuman Rights is complex one[14]. Thus scholars are divided on their approaches in assessing such relations. On one side, the neo-classical and neo-fundamentalist scholars often argues that FDI is an engine of economic growth and achampion for Human Rights[15]. The others from the global research andneo-imperialist tradition have argued that FDI has historically been associated with negative developments that undermine Human Rights.

The issue of business andHuman Rights became permanently implanted on the global policy agenda in the 1990s, reflecting the dramatic worldwide expansion of the private sector at the time, coupled with a corresponding rise in transnational economic activity[16]. These developments heightened social awareness of businesses' impact on Human Rights andalso attracted the attention of the United Nations which has resulted in the endorsement of the Guiding Principles on Business andHuman Rights in the year 2011.

[14]Bjorn Letnes,"Foreign Direct Investment And Human Rights: An Ambiguous Relationships", Forum For Developing Studies, Volume 29, Issue 1, (2002) P.33

[15]Jenkins, 1996: 439–459.

[16]United Nations, Guiding Principles on Business and Human Rights, ( A/HRC/17/31), March 2011, Para 1.

## 1.2 Statement of Problem

At first glance, investment activities present opportunities for business andprofit, but do not immediately bring to mind having positive Human Rights impacts. In some circumstances, Foreign Direct Investment does not always bring positive impactswith regards to Human Rights. Business Corporations can impact the entire range of Human Rights issues positively or negatively, including discrimination, sexual harassment, health & safety, freedom of association. These cases are very evident when it comes to developing countries. Where, as a result, undesirable consequences are being followed such as forced eviction of indigenous peoples, unfair labour practices including forced child labour, discrimination against certain types of individuals, failing to provide safe and healthy working conditions, repressing trade unions, discouraging the right to bargain collectivelyandenvironmental pollution. This in turn will have contribution to the failure of social and economic development of a society. The reasons for such results could depend upon the country's economic development level, the willingness and ability of governments to control such negative impacts having Human Rights dimensions through its mechanisms. This discussion will lead us to the case of Business and Human Rights.

Every company in every industry sector has Human Rights impacts and responsibilities. In recent years there has been an upsurge of concern over Human Rights andMNEs[17]. In the daily reality of doing business, companies encounter Human Rights challenges in many different ways[18]. However, they may not always recognize them explicitly as Human Rights issues[19]. A number of significant cases have been documented on apparent collusion between MNEs andhost governments in major violations of human rights. The case of Shell vsOgoniland[20], BP vs Colombia and Unocal vs Myanmar are some of the most publicized cases.

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[17]Peter.T. Muchlinski, "Human Rights and Multinationals: Is there a Problem," International Affairs, Volume 77, Issue 1, 2001 P.32

[18]Business and Human Rights Initiative,'How to Do Business with Respect for Human Rights: A Guidance Tool for Companies', The Hague: Global Compact Network Netherlands, 2010, P.6

[19]*Id*

[20]Human Rights watch (1995), Nigeria, the Ogoni crisis: a cases study of military repression in south east Nigeria where the high revenues accumulating to local government and elites are associated with political and economic marginalization of local inhabitants, who have been very negatively affected by environmental degradation and military occupation of their land.

Ethiopia is endowed with a natural resource which has attracted significant foreign industry and investment. While the presence of foreign and TNC has been positive for the economy, it has also affected the Human Rights of some local communities[21].

Developing countries including Ethiopia are attracting significant portion of global Foreign Direct Investments due to the expectations of advantages that it will bring to their economies. It is true that such investments help in the economic development of a country in many ways.As a result, a number of TNCs have invested in different sector including agro processing, manufacturing andservice.Heineken,AYKA ADDIS Textile and Investment Group, Dangote Industries, the Rezidor Hotel Group (Radisson Blu Hotel and Resorts) are some of them.

According to UNCTAD (2014), the industrial strategy which Ethiopia is now following is attracting more investment from Asian capital in order to develop its manufacturing base[22]. Due to such investments, Ethiopia is able to use the investments as a development tool for the country's general economic growth. Regardless of these positive effects that are being followed as a result of FDI, the negative impacts of such investment on the protection and respect of Human Rights in general and labour rights in particular also has to be considered.

Clothing and textiles contribute to 7% of total world exports[23]. Nowadays, manufacturing often takes place in developing countries that account for half of the world textile exports[24].Althoughthis clothing industry provides large employment to unskilled and female workers; it is criticized for its low wages and poor working conditions. It is argued that the

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[21] Note: the case of the Swedish Retainer H&M can be cited as an example. Is H&M turning a blind eye on land grab in Ethiopia? , A TV4 investigation, [Online video], Dec 3, 2014,<https://www.youtube.com/watch?v=DFWbyTrE7zM>accessed on 24June 2015.

[22]United Nations Conference on Trade And Development, 'World Investment Report' (2014), P.39, <http://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=937>accessed 5 July 2015.

[23]https://www.ukessays.com/essays/economics/the-textile-industry-in-kenya-an-overview-economics-essay.php, last accessed on May 1,2016.

[24] *Id*

intense competition in the world, textile market gives strong pressure of cost reduction for garment firms, as called immisering growth[25].

The Ethiopian textile and garment industry is now the most favorable business sector that is chosen by many investors including international trade companiessince production costs are inexpensive than of Asian counties which are known for being suitable for textile and garment sector. According to Ethiopian investment commission,Ethiopia is an ideal environment for the processing of cotton due to the availability of cheap labor, low cost of electricity andsupply of cotton[26]. Thus Multinational textile companies are increasingly pitching their tent in Ethiopia, Africa's second most populous nation[27].The Swedish clothing retailer HennesandMauritz **(**H&M), andthe British multinational grocery andgeneral merchandise retailer TESCO are some examples.

Ethiopia has a large labor force of 38 million people.[28] A large proportion of this labor force is semi-skilled andeasily trainable[29]. Labour being intensive andcheap in the sector has made it easy for business enterprises to violate labour rights. This in other way posed a danger in the on the protection andpromotion of such rights.For workers, the relatively higher waged jobs created by such investment may lead to better living standards, but to do so, it is necessary that investors respect human rights, rather than care only about profits. Well-managed investments, observant of human rights, are more likely to contribute significantly to a country's economic development[30].

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[25] *Id*

[26]Ethiopian Investment Commission, Investment Opportunity Profile for Cotton Spinning Mill in Ethiopia April 2014.

[27]Multinationals Keen On Ethiopia's Textile Industry, <http://venturesafrica.com/multinationals-keen-on-ethiopias-textile-industry/>, accessed on 19 August 2015

[28]*Id*

[29]*Id*

[30]Investment and Labour Rights: A Case Study ', <http://www.socialwatch.org/node/11109>, accessed 16 August 2015.

In order to tackle business related violation of Human Rights the UNHRC has endorsed Guiding Principles on Business andHuman Rights to its earlier UN framework on Protect, Respect and Remedy[31].These UN Guiding Principles for Business and Human Rights (UNGuiding Principles) are an important articulation of the essence of business and human rights[32].They have become the authoritative global reference point for preventing and addressing adverse impacts on Human Rights arising from business-related activity[33].

Because the Guiding Principles enjoy such strong andbroad backing, they have become the de facto tool for advancing corporate respect for Human Rights worldwide[34]. The Guiding principles are grounded in legally binding norms and standards andprovide authoritative guidance as to the application of existing core international Human Rights treaties in these areas[35].Nothing in these Guiding Principles should be read as creating new international law obligations, or as limiting or undermining any legal obligations a State may have undertaken or be subject to under international law with regard to human rights[36].

As UNGuiding Principles give reference to respect human rights, the corporate responsibility to respect Human Rights is the responsibility that is laid on Business Corporations. Thus,the society now has basic expectation of business enterprises to respect human rights[37]. Therefore, business

[31] Note: These Guiding Principles were proposed to the UN Human Rights Council as part of the 2011 report to the Council by the UN Special Representative on business and human rights, Professor John Ruggie who was mandated from 2005 to 2011.

[32]Anita Ramasastry (2015) Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability, Journal of Human Rights, 14:2, 237-259, DOI: 10.1080/14754835.2015.1037953.

[33]Office of the United Nations High Commissioner for Human Rights, 'Survey on the implementation of the Guiding Principles on Business and Human Rights : The Role of States as economic actors', P. 1

[34]KendylSalcito, Chris Wielgaand Burton H. Singer "Corporate Human Rights Commitments And The Psychology Of Business Acceptance Of Human Rights Duties: A multi-Industry Analysis", International Journal of Human Rights,Volume 19, Issue 6 (2015), P.2.

[35]Michael K. Addo, Address on African Regional Forum on Business and Human Rights, 17 September 2014.

[36]Commentary on the UNGP, General Principles, P.2

[37]A/HRC/17/31, supra note 28, Para.6.

enterprises have to know andshow that they respect human rights. The mechanism of doing so is through the conduct of Human Rights due diligence[38].

Obligations of due diligence exists in many fields of international law, including the law of neutrality, diplomatic protection, human rights, or the protection of the environment[39].

The Preamble to theUDHR, which is no longer a mere standard-setting instrument but an expression of customary international lawrequires not only States but also "every individual andorgan of society" to participate in the promotion andprotection of basic human rights[40]. Thus it can be said that MNCs, as 'organs of society', have, at the very least, the ability to hold as well as enforce rights andobligations[41]. In addition, there have been certain developments in international law in the last few decades that have led non-State actors to being increasingly recognized as subject to international law[42].

The global garment supply chain is characterized by poor working conditions. Many workers do their job under unhealthy and dangerous conditions. Poor labour rights records and low level of enforcement means that there are risks of Human Rights and labour rights infringements.

According to Addis Ababa bureau of labour andsocial affairs labour inspection reports, there exist cases of violation of wide range of labour rights in a profit making enterprises in general and in textile factories in particular which are owned by foreign investors. Working in poor conditions, facing limits in their rights andfreedoms, are some of the examples. The nonfulfillment of respective responsibilities of business enterprises with respect to respecting

[38]Note: Human Rights Due Diligence is a tool that can be used to prevent or mitigate potential human rights impacts and remediate actual impacts that have occurred on the course of doing business.

[39]Note: Specifically, the rapid uptake of human rights due diligence by business, investors and multi-stakeholder standards, has seen human rights due diligence emerge as a requirement for conducting responsible business.

[40]Universal Declaration of Human Rights, GA Res 217A (III), Preamble, UN Doc A/810 (10 December 1948).

[41]Surya Deva, "Human Rights Violations by Multinational Corporations and International Law: Where From Here?" (2003-4) Volume 19,Connecticut Journal of International Law p, 53.

[42]Melba K. Wasunna, "Human Dignity And Corporate Accountability For Human Rights Violations", Kenya Law Journal , P.6<http://kenyalaw.org/kl/index.php?id=4524>, accessed on 12 June 2015

labour rights as Such are attached with business activities in way of FDI Ethiopia which poses a danger on the enjoyment of such rights in general.

The first UN regional forum on business and human rights[43] in Africa took place in Addis Ababa Ethiopia from September 16- 18, 2014 to address ways of promoting the prevention andmitigation of business related Human Rights risks. Ethiopia was one the participants of the forum. Promoting multi-stakeholder dialogue andcooperation on business andhuman rights, implementation of the Guiding Principles were some of the goals of the forum.

Other than participating in business andHuman Rights forum, Ethiopia has given a yes vote to a resolution which was adopted in the UN Human Rights Council that will begin the process of elaborating an international legally binding instrument on business andHuman Rights which can be regards as taking the initiative to tackle business related Human Rights violations and this shows that the case of Human Rights violation by business enterprises, which also includes TNC, is in fact is a great concern.This concern becomes every state's issue when dealing with business related Human Rights violations which necessitates the conduct of HRDD by business enterprises.

Human Rights Due Diligence is a process of building internal awareness and understanding of where a company's activities may have the potential to intersect with Human Rights or infringe upon the enjoyment of Human Rights by others[44].

This issue of Human Rights Due Diligence is not well known in our country whereas it is already being incorporated into public policy andregulation at the international, national, and local levels of other jurisdictions. It is possible to say almost all business companies in Ethiopia don't have Human Rights policy commitment.The developed states for example UK, Netherlands, Switzerland had developed national action plan on business andHuman Rights for the purpose of implementation of the Guiding Principles.These are no longer restricted to European Union

[43]African Regional Forum on Business and Human Rights<http://www.ohchr.org/EN/Issues/Business/Forum/Pages/AfricaRegionalForum.aspx> accessed on July 22, 2015.

[44]International Council on Mining and Metals, 'Human Rights In The Mining And Metals Industry: Integrating Human Rights Due Diligence Into Corporate Risk Management Processes', March 2012, P.8, Available at <www.icmm.com/document/3308> accessed on 6 June 2015.

member states, as the list now also includes countries such as the US, Colombia, Chile, Mexico, Mozambique and Kenya.

The adverse impact of FDI can be clearly seen from the perspective of Human Rights in general andlabour rights in particular. In the field of investment, those adversely affected not only include the workers, but also their families, the local communities, and in some instances, the society as a whole.

Taking this as a ground, the research will try to discover what measures have been taken or are being taken currentlyon the area of Business andHuman Rights in general and will try to look the practice of Human Rights Due Diligence by private Textile corporation with special focus on labour rights.

With ever increasing flow of FDI in the textile industry, it's not hard to picture how the lives of many can be touched in a way of their employment relation which necessitates a measure which will balance the protection of employee's rights and promotion of investment.

## 1.3 Research Questions

Based on the above statement of problem, the research will focus on how such framework has been implemented so far. Main research questions are

1. What has been the influence of the UNGP's in Ethiopian case in general andon labour standards in particular?
2. What are the norms andimplementation mechanisms to protect and promote labour rights in Ethiopia?
3. How is the case in relation to Business andHuman Rights monitored particularly on violation of labour rights?

## 1.4 Objectives of the Research

Basically the research will have the following general andspecific objectives

### 1.4.1 General Objectives

The general objectives of the proposed research are to investigate how the issue of Business andHuman Rights are dealt under the different legislations and policy of Ethiopia and also to

look at the general practice on Business and Human right in the country. It also has the objective of investigating how far the notion of Human Right Due Diligence has become a great deal or harmonized with in business enterprises that operates in the country and finally to investigate whether Ethiopia is following holistic approach to entertain both business in general and FDI in particular and promotionof human rights.

### 1.4.2 Specific objectives

1. To examine the national andinternational legal framework regardingFundamental rights at work within the realm of investment andcorporate responsibilities.
2. To observe the influence, the Guiding Principles resulted in respect of labour rights by sampled textile factories.
3. To observe the practice of Human Right Due Diligence in local business firms as well its impact in allowing FDI.

## 1.5 Significance of the Study

It is believed that the research will be important to disclose the deep challenges that are faced by both government and business corporates in implementing the Guiding Principles in the area of Business andHuman Rights andmake possible policy recommendations. Furthermore, it is believed that this research will be help full as a standing research for further research since the area is in the developing state.

## 1.6 Scope of the Study

The thesis evaluates the impact of FDI from Human Rights perspectives. Thus for the purpose of this thesis the main concern lies and focus on FDI having the effect on Human Rights protection since FDI involves large amount of capital which will be brought from foreign saving which also implies the transfer of large amount of capital to establish large scale industries here in Ethiopia which may have an adverse effect or impact on the promotion and protection of Human Rights in connection with conducting business activities in general and on labour rights in particular.

Therefore, for the Thesis purpose, the scope of the study when mentioning FDI, it is to mean those foreign investments made only on the Textileand Garment industry andthus excludes those

Multinational companies that run their business across Ethiopia on different sectors. In the meantime, when mentioning labour rights, it is to mean a composition of rights concerning the right to legally stipulated working hours, freedom of association and collective bargaining, the right to leave, the right to safeand healthy working condition andthe right to decent wage.

In addition, I limit my analysis on the practice of Human Rights Due Diligence only to TextileandGarment factories which are currently operating in Bole Lemi Industrial park. The motivation for this choice is due to several reasons. As it is the first industrial park ever built in Ethiopia, it is to see if Textile and Garment factories in the industrial park have related or similar way of mechanism in place to deal business related Human Rights violations, particularly on labour rights. Secondly, since such factories are exporting companies to the international market, they are exposed to quality andother requirements which in other way are connected with Human Rights issues. Therefore, it is to see if they practice Human Rights Due Diligence.

## 1.7 Research Methodology

This thesis adopts a methodology that combines literature, policy andlegal research with qualitative insights obtained through interviews withTextile andGarment company representatives and a survey that took place in Bole Lemi Industrial park.

Both primary and secondary data collection methods are used to conduct the research. Interviews and observations are used as primary sources. The researcher seeks collecting and analyzes any relevant legislation. The methodology also includes empirical case study specifically on the practice of Human Rights Due Diligence. Secondary sources such as journal articles or other written commentaries on the issue of Business andHuman Rights are also used.Additionally, questioners are prepared for participants of different social status both close-ended andopen-ended questions.

### 1.8 Limitation

The set of business enterprises identified for the study are numerically small andlimited. Thus, they may not be representative enough to draw broad conclusions.Be it this way, the research will give a clear view how sampled Textile and Garment factories practice the case of business andhuman rights.The time shortage for the entire conduct of the research is also one of the main limitations of the study.

## Chapter Two

## Business and Human Rights

### 2.1 Introduction

Globalization has altered the competitive dynamics of nations, firms, andindustries[45]. This is most clearly seen in changing patterns of international trade, where the explosive growth of imports in developed countries indicates that the center of gravity for the production andexport of many manufactures has moved to an ever expanding array of newly industrializing economies in the ThirdWorld.[46] Globalization has many dimensions andone of its dimensions can be seen from the economic aspect. The economic dimension of globalization[47] is characterized by emergence of global actors which are non-state by their nature for example, TNC, but having the state alike autonomy over the international market. It is also characterized by development of international trade andinvestment.Ideally globalization should encompass a strong social dimension[48]. This should be based on universally shared values, and respect for Human Rights and individual dignity[49].

Business is the foundation of prosperity in society. As a result, it creates the resources that permit social development and welfare. As business or commerce can bring a robust in social andeconomic benefit for growing economies, it also has a potential to result in degrading the human condition to live a proper andsettled life which can range from individual base to enormous case where peoples are forcefully evicted to make a way for the success of the business. From a Human Rights perspective, economic globalization raises questions about the

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[45]Gary Gereffi , "International Trade and Industrial Upgrading In The Apparel Commodity Chain, Journal of International Economics, volume 48, Issue No.1, (1999), P.37.

[46]*Id*

[47]Note: Economic globalization refers to the intensification and stretching of economic interrelation across the globe.

[48]Gü ler Aras and David Crowther, A Handbook Of Corporate Governance And Social Responsibility, (2010), P.513.

[49]*Id*

Human Rights responsibilities of private actors, intergovernmental organizations andof third States when their actions have extraterritorial effects[50].

The relationship between business andHuman Rights has become an issue that States andbusinesses worldwide cannot ignore[51]. The approach international law has taken andcan take to business enterprises andthe protection of Human Rights flows from relationships among four sets of key actors involved in the process of international economic activity[52]. In aiming for the profit maximization, social andHuman Rights responsibilities have sometimes been abandoned andsidelined[53]. Multinational corporations are a good example in this regards since they run their business around the globe with a highly rate of affecting the Human Rights of others in connection with their business. They have the potential to deeply impact human rights[54]. With business activity, undesired out comes follows such as environmental pollution, social disorder could be resulted.

Business organizations do not operate in a vacuum[55]. In other words their relationship to the society andenvironment in which they operate is a critical factor in their ability to continue to operate effectively[56]. Given that business touches on Human Rights in so many different ways, it is not possible to make a simple subset of rights for business to violate. Therefore businesses

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[50]Koen De Feyter, "Localizing Human Rights", Institute of Development Policy and Management of the University of Antwerp, Discussion paper No 01/2006, P.5

[51]The 4th Annual United Nations Forum on Business and Human Rights, http://www.ohchr.org/EN/Issues/Business/Forum/Pages/2015ForumBHR.aspx, accessed on 10 July, 2015

[52]Steven R.Ranter, "Corporations and Human Rights: A Theory of Legal Responsibility", Yale Law Journal, (2001), P. 4

[53]Nisar Mohammad Bin Ahmad, "The Economic Globalization and Its Threat to Human Rights", International Journal of Business and Social Science, Vol. 2 No. 19 [Special Issue - October 2011], P. 273

[54]Robert C Bird, Daniel R Cahoy and Jamie Darin Prenkert, Law, Business And Human Rights: Bridging the Gap, 2014, P. 1

[55]<http://www.iso.org/iso/home/standards/iso26000.htm>, Last accessed on 9,September 2015

[56] *Id*

impacts Human Rights wherever andhowever they operate[57]. The conduct of businesses, especially TNCsandother large-scale enterprises can anddoes impact the enjoyment of Human Rights as much as that of Statesin several respects[58].Negative impacts of business activities of these international trade companies in host countries, particularly in developing countries, have led to recognition of the need of strengthening the international legal norms, especially within the UN framework.

Today it seems self-evident that among the major purposes andperhaps the essential point of international law is to protect individual human rights[59]. The classical theory on Human Rights does not accept any link other than that between people andState[60]. The Human Rights agenda was created by states for states themselves andthe institutional mechanisms it had were designed to deal with cases of states abuses. Except for a handful of obligations under international criminal law, international law typically assumes that private actors are best restrained under domestic law[61]. It's only gradually that the points of focus have come changed. The focus now is on the fact that businesses have enormous impact on human rights.

At the dawn of the 21st century one of the most important changes in the Human Rights debate is the increased recognition of the link between business and Human Rights[62]. Previous scholars such as Friedman andStranberg advocated that the only responsibility of business is to maximize

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[57]Note:In viewing human rights from the perspective of the rights-bearer, it is perfectly clear that human rights can be violated by the actions of all kinds of entities be it state agents, international institutions, individuals and corporations alike.

[58]International Commission of Jurists, 'Needs and Options for a New International Instrument in the Field of Business and Human Rights', June 2014, P.4.<http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/06/NeedsandOptionsinternationalinst_ICJReportFinalelecvers.compressed.pdf>, accessed on 11 June 2015.

[59]Samuel Moyn, The Last Utopia : Human Rights in History, (2010), P.176.

[60]*Id*

[61]Monica Hakimi, "State Bystander Responsibility", The European Journal of International Law Vol. 21 No. 2(2010), P.348.

[62]KhaydaraliYunusov, Valeriya Ok and HusniddinOchildiyev, "The Roles and Responsibilities of Transnational Corporations with Regard to Human Rights" ,CuadernosConstitucionales de la CátedraFadriqueFurióCeriol, Volume 2, No. 64/65 P.187

shareholders' profit or value is narrow, unsounded andoutdated in the current economic climate[63].

Protecting Human Rights everywhere is too big a job for governmentsalone[64]. These days' companies are becoming global. They operate around the globe. This in other way means their impacts are becoming global too. In most cases, the impact such companies are causing is worst in countries where the local government is unable to unwilling to enforce its own laws due to many reasons. This results that victims of corporate Human Rights abuses find themselves trapped between two actors to which one is the state andthe other is business entities which in most of the case have no interest in making things rights from Human Rights perspective. Most are now familiar with the broad charge sheet of Human Rights abuse that has so often been leveled against transnational businesses over the last two decades of economic globalization[65].
Historically, Human Rights have been conceptualized as obligations that are only left to states towards their citizens but now a broad consensus has emerged that business corporates also has a responsibility to respect human rights. This can be seen from the adoption of the UN Declaration on the Right to Development 1986,[66] the Stockholm Declaration of the United Nations Conference on the Human Environment,[67] the Rio Declaration on Environment and Development[68],the UN Global Compact's ten principles on human rights,[69]the UN Norms on the

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[63]Surya Deva, Regulating Corporate Human Rights Violations: Humanizing Business, P.150.

[64]Betty King, "The UN Global Compact: Responsibility for Human Rights, Labour Relations and the Environment in Developing Nations", Cornell International Law Journal, Volume, 34 ,Issue No.34, P.484.

[65]Kate Macdonald, Re-thinking Spheres Of Responsibility: Business, Human Rights and Institutional Action, Human Rights Paper, P.1, <http://library.bsl.org.au/jspui/bitstream/1/6683/1/Kate_MacDonald_human_rights_paper_8Oct09.pdf> accessed 22 July 2015.

[66]United Nations Declaration On The Right To Development, (A/RES/41/128), 4 December 1986. <http://www.un.org/documents/ga/res/41/a41r128.htm> accessed 14 July 2015.

[67]United Nations Environment Programme, Declaration of the United Nations Conference on the Human Environment, 1972. <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=97and articleid=1503>accessed 2 June 2015

[68]United Nations Environment Programme, Rio Declaration on Environment and Development, 1992. <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78and article id=1163> accessed 2 June 2015>

Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights (2003),[70] the UN Protect, Respect and Remedy Framework[71], UN Guiding Principles on Business and Human Rights[72]and the UN Interpretive guide to the corporate responsibility to protect Human Rights (2012)[73].

For decades, international organizations have tried to build a framework through which the responsibilities of business to Human Rights are more clearly understood[74]. How to make business operate in line with Human Rights is a question that has bedeviled the international community since at least the 1960s[75]. Complex problems arise because of both the nature of rights andnature of corporations. Human Rights codes (the UDHR for example) were designed to primarily dealing with states or governments as the rights observers andespecially as the rights ensurers[76]. This makes extension of rights obligations to corporations problematic[77]. For example, a central problem with extending Human Rights obligations to corporations is whether corporations have duties with respect to all or only some of the rights that governments are enjoined to respect.

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[69]TheTen Principles, UN Global Compact, 2000.<https://www.unglobalcompact.org/what-is-gc/mission/principles> accessed 15 July 2015.

[70]United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003), <http://www1.umn.edu/humanrts/links/norms-Aug2003.html> accessed 15 July 2015.

[71]United Nations "Protect, Respect and Remedy" Frameworkfor Business and Human Rights, (A/HRC/8/5), 7 April 2008.<www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf> accessed on 2 June 2015.

[72]United NationsGuiding Principles on Business and Human Rights, (A/HRC/17/31), 21 March 2011. <www.ohchr.org/Documents/.../GuidingPrinciplesBusinessHR_EN.pdf> accessed 2 June 2015.

[73]Office of the High Commission for Human Rights, UN Corporate Responsibility To Protect Human Rights: An Interpretive Guide (2012). <http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf> accessed 10 July 2015.

[74]Supra note. 52 P. xi

[75]AdelleBlackett, and Anne Trebilcock (eds.),Research Handbook on Transnational Labour Law, ( 2015), P.94.

[76]Wesley Cragg, Business and Human Rights, Edward Elgar Publishing, Inc, (2012) P.74.

[77]*Id*

### 2.2. Brief History of the Business andHuman Rights Debate

The transnational integration of the global economy harbours a multitude of challenges for Human Rights protection[78].The root cause of the business and Human Rights predicament today lies in the governance gaps created by globalization between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences[79]. It is these governance gaps that provide lenient environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation.

The case of business andHuman Rights has always been controversial and full of debates. The driving force for much of the debate about Human Rights in the global economy is has been the conduct of multinational corporations[80]. A climate of awareness about corporate responsibility grew rapidly in the late 1990s. Over the last 30 years andso on, the concern of business having an impact on Human Rights has increasingly grown. Now days some of the most powerful global actors today are companies, not governments[81].

Thus one can see the danger that is posed in regard to protection and respect of Human Rights in general. Of course recourse to national laws of and a system of enforcement and judicial relief in a country where corporations operate is the first option to ensure greater respect for human rights. However, for many reasons like existence of weak laws and enforcement, mare reliance on state to ensure Human Rights are likely to be long term prepositions costing the life of many victims as a result of greed of corporations to make profit.

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[78]Robert Grabosch and Christian Scheper, Corporate Obligations with Regard to Human Rights Due Diligence Policy and Legal Approaches , 2015

[79]Anita Ramasastry (2015) Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability, Journal of Human Rights, 14:2, 237-259, DOI: 10.1080/14754835.2015.1037953

[80]Cindy Holder and David Reidy (eds), Human Rights: The Hard Questions, (2013), P.163.

[81]For example, in its 2013 World Report Human Rights Watch noted that in 2011 alone, oil and gas behemoth ExxonMobil generated revenues of US$467 billion that is the size of Norway's entire economy. The other is Wal-Mart which is the world's third-largest employer with more than 2 million workers. It has a workforce that trails only the militaries of the United States and China in size. Human Rights Watch, World Report 2013 (USA 2013) 29

More recently, non-state actors have surfaced as a new class of Human Rights violators, and the need to regulate their conduct became apparent.In occasions when non state actors are in a way of threating the enjoyment of human rights, the response to tackle such problem has been far from never uniform. The first approach would insist on the importance of states as the main actors in the international system and the only bearer of Human Rights obligations under international law. This focuses on state responsibility anddemands that Human Rights problems concerning non state actors are simply dealt with as questions of the relevant government's obligations to ensure respect for human rights[82].

The second approach proposes that, governments are increasingly becoming irrelevant and powerless which in other way suggests giving attention on other actors such as TNC, International institutions such as IMF andWB. Thus, according to such approach we should face the fact that in this globalized economy, the trading which accompanies economic exploitation or civil wars is no longer in the hands of governments even if they were minded to seriously tackle these issues[83].

Between the year of 1990's to early 2000, there has been a records showing major incidents involving large scale type of business corporates causing Human Rights violation which in turn initiates demanding companies to operate within Human Rights standards drawn from international Human Rights law. The nature of duty the international Human Rights imposes has led to many debates over the subject.

The debates over the extension of Human Rights obligations from states to corporates,poses several key questions. The most basic question is if andwhy corporations should have such obligations at all. But even if it is granted that they do, there follows further questions. Which Human Rights obligations do corporations have? , whose Human Rights should they consider? Andare there even limits to the corporate resources they should devote to their Human Rights obligations?

[82]Andrew Clapham, Human Rights Obligations of Non state actors, Volume XV/1,(2006) P.25

[83]*Id*

In response to the evolution of business andhuman rights[84] literature andthe growing need for guidance on addressing business's impact on human rights, Professor John Ruggie was appointed as a Special Representative of the UNSG in 2005 to develop a business andHuman Rights framework[85].

## 2.3International InitiativesandFramework on Business and Human Rights

### 2.3.1 United Nations

The UNs' approach to Human Rights is based on a commitment to the indivisibility andinterdependence of civil, cultural, economic, political andsocial rights[86]. The organization, which was set up to lead global efforts on human rights[87], development and peace and security, has a particular role to play in supporting global action and governance frameworks to address the way business operates and affects Human Rights and development[88].

#### 2.3.1.1.UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights

This draft Norms on the Responsibilities of Transnational Corporations andOther Business Enterprises with Regard to Human Rights[89] was an early attempt to deal with the inadequacy of the traditional State-centric approach to regulating corporate behavior in the era of

[84]Note: The increasing attention given to business and human rights reflect the changing realities of a globalized world in which private actors or enterprises play an increasingly significant role in the protection of human rights.

[85]Miho Taka, A Critical Analysis of Human Rights Due Diligence Processes in Mineral Supply Chains: Conflict Minerals in the DRC, Governance of Africa's Resources Programme Occasional paper 208, December 2014, P.6<http://www.saiia.org.za/doc_download/670-a-critical-analysis-of-human-rights-due-diligence-processes-in-mineral-supply-chains-conflict-minerals-in-the-drc> , accessed 22 May2015.

[86]Wolfgang Benedek, Koen de Feyter, FabrizioMarrella (eds.) Economic Globalization And Human Rights, Cambridge University Press 2007, P.2

[87]Note: The UN Charter states that one of the purposes of the UN is to uphold respect for human rights. Art. 1,

[88]Human Rights Council, Twenty-ninth session Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, (A/HRC/29/28), 28 April 2015, Para 3

[89]Note: The "Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regards to Human Rights" were prepared by the Working Group, created for this endeavor by the Sub-Commission on the Promotion and Protection of Human Rights of the ECOSOC, in a resolution dating back to 1998.

globalization[90]. The draft norms restate thepreamble provision of the Universal Declaration that corporations are bound by Human Rights as organs of society[91]. However, such clear statement hasn't been able to halt business corporations from abusing human rights. According to the Norms, businesses were expected to promote, secure the fulfillment of respect ensure respect of andprotect Human Rights with in their sphere of activity and influence[92]. MNCs resisted their adoption as they potentially bound corporations to set of mandatory andambiguous obligations[93]. Though the draft norms were resisted anddenied over all acceptances, the prevalenceandseverity of corporate irresponsibility towards respecting Human Rights necessitated the adoption of several other international standards.

#### 2.3.1.2. The UN Global Compact

The Global Compact[94] was proposed andadopted by the UNSG in 2000.Originally it had nine principles, to which the principle to fight corruption was later added[95]. Itwas a global initiative to boost sustainable development through responsible corporate practices.Itrequires companies to respect andsupport for the protection that comprises many rights. The Compact covers the areas of Human Rights[96], Labour Rights[97] , EnvironmentalRights[98]andAnti-Corruption[99].TheseGlobal

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[90] Patricia Feeney, "Business And Human Rights: The Struggle ForAccountability In The Un And The Future DirectionOf The Advocacy Agenda", Sur -International Journal On Human Rights , Volume 6, No. 11, Dec. 2009

[91]Note: The UDHR, in its preamble, it is stated that 'every organ of society' to keep the provisions of the Declaration in mind, 'promote respect' for rights and freedoms, and adopt progressive measures to ensure their effective and universal observance.

[92]UN Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights,( U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2) 2003, art.1

[93]Supra note, 53,P. xi

[94]Note: The United Nations Global Compact is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption.

[95]The Global Compact, The Civil Responsibility of Business in the World Economy,. May 2005

[96]Note: United Nations Global Compact Principle 1 and 2 states that Businesses should support and respect the protection of internationally proclaimed Human Rights and Businesses should ensure that their own operations are not complicit in Human Rights abuses.

[97]Note: Principle 3-6 of the United Nations Global Compact states that (1) Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining. (2) Businesses should uphold the

Compact principles are derived from the Universal Declaration, the Rio Declaration on Environment andDevelopment, the ILO's Declaration on Fundamental Principles andRights at Work, and the UN Convention against Corruption.

#### 2.3.1.3. UN Framework on The Duty to Protect, Respect and Remedy of States

The Frameworkwhich is also called Ruggie Frameworkis formulated based on the notion of 'differentiated but complementary responsibilities of states andbusiness enterprises[100]. This framework generally rests on three pillars. They are the state duty to protect human rights; the corporateresponsibility to respect Human Rights andan access to remedies.

The Framework clarifies that the corporate responsibility to respect Human Rights exists independently of States' ability or willingness to fulfill their duty to protect human rights.It is a comprehensive framework in that it involves the major players. It seeks to establish a new common conceptual andpolicy framework for understanding the Human Rights duties andresponsibilities of state andbusiness actors[101]. It clearly differentiates the roles of each state andbusiness. The main idea behind the framework is that business should not take the roles the government has and again governments should do what they are intended to do. That is governing the public interest. Businesses are there to do business but in doing so they ought not to infringe on the rights of others.

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elimination of forced or compulsory labour.(3) Businesses should uphold the effective abolition of child labour. And (4) Businesses should uphold the elimination of discrimination in respect of employment and occupation.

[98]United Nations Global Compact, Principle 7-9 states that (1) Businesses should support a precautionary approach to environmental challenges.(2) Businesses should undertake initiatives to promote greater environmental responsibility.(3) Businesses should encourage the development and diffusion of environmentally friendly technologies

[99]Note: Principle Ten of the UN Global Compact states that Businesses should work against all forms of corruption, including extortion and bribery.

[100] Supra note.68.

[101]Tara J. Melish and Errol Meidinger, 'Protect, Respect, Remedy and Participate: New Governance Lessons for the Ruggie Framework', in Radu Mares(ed.),The UN Guiding Principles on Business and Human Rights Foundations and Implementation, Volume 39, 2011, P.4

A. State duty to Protect Human Rights

This fundamental principle is the anchor of International Human Rights Law in which the State duty to protect is a standard of conduct. The UN Framework unequivocally recognizes the state's duty to protect Human Rights Human Rights violations against non-state actors which is a corporate sector in the particular case. The Guiding Principles at the outsetprovide that states 'must protect against Human Rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.[102] In relation to such duty, the state must set appropriate policies, regulations andadjudication. This is a pillar which is heavily infused with legal obligation on the part of states[103].

From the perspective of Investment promotion, the Guiding Principles Pressure States to maintain adequate domestic policy space to meet their Human Rights obligations under their investment treaties andcontracts.Thus the State's duty to protect Human Rights includes the need for policy coherence (both horizontal andvertical)[104]. In addition, to use their membership of multilateral institutions to ensure that they do not hinder member states from meeting their duty to protect nor hinder business enterprises from respecting Human Rights andencourage business respect for human rights[105]. It can be seen that the Guiding Principles clearly envisage a need for international investment agreements to avoid regulatory gap in relation to Human Rights concerns.

Literally speaking, States are not per se responsible for Human Rights abuse by private actors. However, States may breach their international Human Rights law obligations where such abuse can be attributed to them, or where they fail to take appropriate steps to prevent, investigate, punish andredress private actors' abuse[106].

[102]United Nations Guiding Principles On Business and Human Rights , Principle 1

[103]Note: This duty of states to protect human rights includes an obligation to make sure that all other entities, with in their territory, including its agents comply with human rights norms.

[104]United Nations Guiding Principles On Business and Human Rights, Principle4

[105]United Nations Guiding Principles On Business and Human Rights, Principle 9 and 10

[106]Commentary on United Nations Guiding Principles On Business and Human Rights Principle1

B. Corporates responsibility to respect human rights

The second pillar of the Ruggie framework establishes that business corporations has in fact have a responsibility to respect Human Rights thus all must be able to demonstrate that they are meeting this responsibility through practicing due diligence and positive action irrespective of the local context or government capacities. This is the basic expectation society has of business. Due diligence originates from legal tools that States are already using to ensure that business behavior meets social expectations, including standards set in law[107]. Companies must undergo the practice of Human Rights due diligence as part of their operations andensure at least in minimum that their action don't undermines respect Human Rights.

C. Access to remedy

States have quartet layers of Human Rights responsibility. Namely, protect respect, fulfilland promote. States shoulder the obligation to protect Human Rights abuses against third parties,which also includes businesses corporates andit firmly supported state obligation to protect individuals and groups against abuses, which applies to the field of business and human rights. A great example here is to see Article 2 of the ICCPR. It has been regarded as one of the significant signs that states are required to protect Human Rights against abuses by business enterprises[108]. Article 2 of ICCPR[109] reads as

> (*a) "To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity"*.

This provision guarantee victims of Human Rights abuses by states or third parties or business enterprises in this case, are entitled to an effective remedy through judicial organs of the state. Therefore when abuses do occur, states shall, as per the subsequent text of Article 2, must ensure

[107]Olivier De Schutter, et.al, 'Human Rights Due Diligence: The Role Of States', December 2012. P.4.

[108]Supra note 10. P.30

[109]Article 2 of ICCPR

the access to remedy for the victims via competent judicial, administrative or legislative approaches as well as enforcement of the granted remedies[110].

This is the third pillar of the Guiding Principle. Both the state andcompanies can contribute to effective remedy by providing both judicial and non-judicial mechanisms. It obliges both the state andcorporates to redress the wrong that is caused by business entities respectively. With regard to state obligation, as part of their duty to protect against Human Rights violations by companies, states must take judicial, administrative, legislative or other appropriate steps to ensure that victims of such violations have access to effective remedy[111]. This is to say states should redress the victims by providing judicial mechanism in through its court system.

Access to remedy with respect to corporates is the other duty which falls on business enterprises. This duty includes putting the grievance system in place. Grievance mechanism is a non-judicial procedure that offers a formalized means through which individuals or groups can raise concerns about the impact an enterprise has on them including, but not exclusively, on their Human Rights and can seek remedy. These mechanisms may use adjudicative, dialogue-based or other processes that are culturally appropriate and rights-compatible so long as they are there to redress.

According to the UNGuiding Principles, for a grievance mechanism to be effective, it should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, anda source of continuous learning[112].

Company level grievance mechanisms can help to identifyloophole which can be taken as a feedback to improve actions that can be taken. A monitoring system a company employs which information gets directly from those which it impacts will enable the companies to raise concerns early before they even get worse. Professor Ruggie stated on his finding that many Human

[110] *Id*

[111] United Nations Guiding Principles On Business and Human Rights ,Guiding Principle 25

[112] United Nations Guiding Principles On Business and Human Rights, Guiding Principle 31

Rights allegation against companies for major Human Rights violations are emerging not as major Human Rights violation but minor grievances that were ignored[113].

#### 2.3.1.4.UN Guiding Principles on Business and Human Rights

Seven years later after the UN Norms misfortune, the United Nations endorsed Guiding Principles on Business andHuman Rights in 2011 as an implementation guide for the Ruggie framework. UNHRC endorsed a set of principles that clearly define the responsibilities of governments andbusiness for solving the dilemma that existed in demarcating the responsibilities that both the states andbusiness corporations have in protecting and respecting Human Rights.

These Guiding Principles on Business andHuman Rights maintains the primary responsibility of States to protect against Human Rights violations[114].At the same time, they give explicit recognition to the responsibility of businesses to respect, and not harm, human rights[115]. A corporate obligation with regard to Human Rights due diligence was introduced into the international Human Rights system with in these Guiding Principles. This obligation addresses gaps in Human Rights protection that have emerged due to companies' transnational activities.[116]

They are tapped as the authoritative global reference point on the respective roles, obligations and responsibilities of Governments andbusiness enterprises for preventing and addressing adverse Human Rights impacts resulting from business activities[117].The document consista set of principles directed to states andmultinational corporations, aimed at improving the respect of

[113]International Labour Organization, Prof. John Ruggie Presents Business and Human Rights Framework, [Online video], Jun 4, 2010, <https://www.youtube.com/watch?v=55PJw077eQE>accessed on 23 August 2015.

[114]Methven O'Brien, "The Corporate Responsibility to Respect Human Rights: A Status Review" NUS Law Working Paper Series, Working Paper 2015/005, May 2015, p,3.

[115]The Guiding Principles have thus contributed to preserving the legitimacy of human rights through a re-orientation of human rights norms, if not laws, in line with a changed global environment, and at a time when this was essential to ensure their continuing relevance as a narrative responsive to people's lived experiences of indignity and injustice.*Id.*

[116]Supra note,82

[117]Supra note. 112

Human Rights by business activities[118]. In general, UNGuiding Principlesare considered to be the international benchmark on the question of the impact of multinational corporations' operations on Human Rights.

The Guiding Principles offer a way to better hold that power to account[119]. In other words, they contend that governments need to be accountable for protecting Human Rights from violation by third parties which includes business enterprises.Thus they establish a global norm against which states andbusiness will be judged, andare therefore a key to providing greater access for victims to effective remedy, both judicial andotherwise[120].After endorsement of the UNGuiding Principles, theHRC formally recognized that ensuring the protection of and respect for Human Rights in the context of business activities involves both States and business enterprises[121].

Such endorsement by HRC according to Prof. John Ruggie, on Business Human Rights is for the first time ever in two ways. The first is that the HRC has never endorsed any kind of authoritative guidance on business and Human Rights [122]andsecondly the HRChad never endorsed a set of normative principles that government didn't negotiate themselves[123]. Rather the governments gave their respective vote on the work which the working groups presented. The vote also was unanimous. The aforementioned endorsement has given to UNGuiding Principles a significant authority as international standards set in the issue of business andHuman Rights [124].

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[118]MaddalenaNeglia, The Implementation of U.N. Guiding Principles on Business and Human Rights: Some Reflections on European and US Experiences, Maastricht School of Management Working Paper No.2014/354 September 2014, P. 1

[119]Mr Stavros Lambrinidis, UN Forum on Business and Human Rights Geneva, 4-5 December 2012, Keynote address by European Union Special Representative for Human Rights,

[120]*Id*

[121]Understanding Human Rights, <http://blogs.lse.ac.uk/investment-and-human-rights/connections/understanding-human-rights/> accessed on June 16,2015

[122]Interfaith Center on Corporate Responsibility, Prof. John Ruggie Keynote Speech: "Investing the Rights Way", [Online video], Mar 27, 2013, <https://www.youtube.com/watch?v=v11GM152BZ0>accessed on 23 August 2015.

[123]*Id*

[124]European Group of Human Rights Institutions, Implementing The U.N. Guiding Principles On Business And Human Rights: Discussion Paper, June 2012,<www.businessandhumanrights.org>. last accessed on 21 August 2015

For these reason it can be said that the Guiding Principles have special authoritative nature.This special authoritative nature helps the introduction of the ideas of the Guiding Principles in to the whole serious of other institutions both nationally andinternationally.

So what do these Guiding Principles say? Like the UN framework on Protect, Respect and Remedy, the UNGP's are also formulated in the same way that lies on the three main pillars. Namely, State responsibility to protect Human Rights, corporate responsibility to respect Human Rights andaccess to remedy at times of business related Human Rights violations[125].

The UNGuiding Principlescontain 31policy principles detailing foundational and operational guidance, andprovide a starting point from which cumulative progress can be made[126]. They describe the duty of States as including appropriate steps to prevent, investigate, punish

[125]Note: The state responsibility to protect human rights is to mean that governments have to make sure that businesses don't violate anyone's human rights in a way of their business activity. These involves the state must pass laws that prevent human rights violations and making sure that those laws are implemented properly. Most of the times, the world's largest multinational corporations are owned and at the same time operated by states. What the guiding principles are saying is that the government has to prevent those human rights violations by business even if the state itself is acting like one. The corporate responsibility to respect human rights is to mean that businesses have to refrain from violating human rights. This is a type of negative obligation that is imposed on corporates that they must not be a cause resulting human rights wherever and how ever they do business. In other way, it means it's not simply enough for business corporates to follow the law where they operate or may be audit a few of their supply chain. It is much bigger and wider than the situation stated above. That is to say, even in countries where the government failed and doesn't take up its own duty, companies are still obliged to know their human rights impacts and must take solid steps to improve them. In doing so, the corporates must talk to the peoples whose lives they might be affecting. The third and the last pillar of the guiding principles is about what happens when something goes wrong, which resulted the violation of human rights by business entities. Therefore if a business enterprises abuses human rights as a result of their business activity, then the government must allow such victims to file a complaint and redress such violation through judicial and non-judicial mechanisms. In fact this obligation works for companies too. This is because part of human rights due diligence requires allowing such peoples affected by the companies to file grievances and participating in the process to make them right. Whatever type of remedies they are, they must fit with the effectiveness criterion which is evidently defined by the Guiding Principle.

[126]HumbertoCantú-Rivera, 'Human Rights Due Diligence: A Developing Concept for Environmental and Human Rights Justice?' Review and Discussion Paper, P.5 <http://conference.unitar.org/yale2014/sites/conference.unitar.org.yale2014/files/2014%20UNITARYale%20Conference-Humberto%20Cant%C3%BA-Rivera.pdf> accessed on 21 August 2015.

andredress Human Rights abuse through effective policies, legislation, regulations andadjudication[127].

### 2.4 Corporate Social Responsibility vs. Business and Human Rights

Corporate Social Responsibility (CSR) and Business and Human Rights (BHR) are intertwined concepts focused on business enterprisesto engage in responsible and socially beneficial activities.

Some writers expressed their relation more clearly by stating that the two terms are like two close cousins.Both concepts have key differences and hence distinct identities based on their origins.CSR often emphasizes self-guided decision making rather than the imposition of new legally binding requirements and voluntary measures rather than state-sponsored regulation.

BHR also focuses not only on the role of the private sector but also on the role of states in overseeing company respect for human rights. Thus, BHR while linked to CSR, and in some cases mistaken by newcomers as being identical, is a distinct field with expectations that measure company actions in light of key universal Human Rights concepts not simply voluntary codes or principles.

### 2.5The Emerging Consensus

There is no doubt that much can be achieved by ensuring states live up to their main obligations to protect Human Rights but this might not be always the case. Sometimes when states are unwilling, or unable, to take effective action against companies, the question of direct accountability arises. At this point questions as to what extent international law imposes direct obligations on companies to respect Human Rights and how such obligations can be enforced surely will be raised.

As the international law is traditionally made by states and for states, it aims to bring inter-state relations. The issues dealt with by international law in the past were mainly of interest to states, such as land and sea boundaries, diplomatic privileges and immunities, legal disputes between

[127]Professor John Ruggie, Special Representative on Business and Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework ,unanimously adopted by the United Nations Human Rights Council, Principle 1 U.N.Doc. A/HRC17/31 (June 2011)

states, recognition of states and treaties[128]. Before the Second World War, it was thought that International law applied only to states and that only they could be the subjects of international Law.It has been widely accepted since the Second World War, however, that other actors, including individuals and companies, participate in the international legal system[129].

Although there is still gray area on the case of business and human rights, there exists an emerging consensus that Human Rights obligations are not only left to states for their protection which advocate that there can be no compromise over Human Rights or over companies' obligations towards them. The development of UNGP cannot be denied in this aspect[130].

These Guiding Principleshad overcome the kind of voluntarism that characterizes the UN Global Compact. They neither depend on the consent of the companies as that of UN Global Compact nor on that of their home states.Business enterprises are thought to be bound by the Guiding Principles irrespective of whether they optor not. Since the Guiding Principles don't offer any real accountability mechanisms, the accountability piece is left for the governments to figure out at the domestic level.

International documents, national legislation and court decisions around the world have proliferated[131]. So far, most European, Asian and some African countries have developed and are developing NAP for the implementation of Guiding Principles. Through their NAP, states like France are drafting a bill to make HRDD mandatory requirement at time of any business activity by state owned or private Business enterprises. Some legislatives relating to Business and

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[128] International Council on Human Rights Policy, Beyond Voluntarism Human rights and the developing international legal obligations of companies, 2002, P.55

[129] Id

[130] Note: The responsibility for all economic actors to respect human rights, whether derived from legal or societal norms, has been recognized by the SRSG.

131Australian Human Rights Commission, RightsTalk: Business and Human Rights - Whose Responsibilities?<https://www.eventbrite.com.au/e/rightstalk-business-and-human-rights-whose-responsibilities-tickets-20961111248>, accessed on January 10,2016.

Human Rights are currently developed by many states. In the case of France[132] and the US[133], this legislative action has been taken.In States like Finland, Denmark and Netherland have made HRIA is a mandatory requirement to run a business. In addition, these countries make is mandatory for corporation to report on Human Rights impacts in their reporting mechanism.

Currently there is been a move to develop international treaty to make TNC liable for violation of Human Rights. So far two resolutions were adopted by the Human Rights Council[134]. The first, drafted by Ecuador and South Africa, directs to establish an open-ended intergovernmental working group with the mandate to elaborate an international legally binding instrument on TNC and Other Business Enterprises with respect to human rights. The second resolution drafted by Norway received support from 22 other countries from all regions including Ethiopia.

The choice between soft-law and hard-law, as Nolan (2013)[135] shows, is not a binary one; the fact that soft-laws are not legally enforceable does not mean they cannot achieve a considerable level of binding force as well[136]. Many UN Human Rights initiatives designed to change state behaviour are non-legal in nature, but in almost all cases these are grounded in legal obligations[137]. Thus, one has to assume that some good will come out of the current activity to develop a treaty and if so, much can be achieved for those whose rights are violated by any profit making organization.

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[132]Note: A bill is progressing through the French Parliament that if passed, would require large French companies to undertake environmental and human rights due diligence.

[133]Note In July, a bill was introduced in the US which, if passed,would require companies to disclose efforts to address slavery, forced labour, and trafficking in theirsupply chains.

[134]A/HRC/26/L.22, Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights.

[135]Justine Nolan, The corporate responsibility to respect rights: soft lawor not law?,Deva and D Bilchitz (eds) Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect? Cambridge University Press, 2013,

[136] Florian Wettstein , Normativity, Ethics and the UN Guiding Principles on Business and Human Rights: A Critical Assessment, Journal of Human Rights 14/2 , 2015, P.8

[137] *Id*

## Chapter Three

## Human Rights Due Diligence

### 3.1.Introduction

History tells us that the very term and concept of due diligence trace back to the U.S Securities Act of 1933[138]. This law provides that the act "Due Diligence" can be used as a defense by those who are broker dealers at times of accusation of inadequate disclosure of material information to investors. The reason of doing so lies on protecting broker dealers if they couldn't demonstrate that there is missing information wasn't known regardless of having conducted in a good faith via due diligence on the issuer of securities.

The meaning of "Due Diligence" varies depending on the fields in which it is used. It can be found in international environmental law or law covering diplomatic protection or else in international investmentand others. Although the field in which such term is used differs, it has the samefeatures common to all of these definitions. I.e. it indicates that "due diligence" entails an obligation of means, requiring certain minimum standards of behavior though the evaluation of which remains broadly subjective one.

The Merriam Webster dictionary defines due diligence as "the care that a reasonable person exercises to avoid harm to others persons or their property"[139] therefore in the business context of such term, it refers to the research andanalysis of company or organization done in preparation for a business transaction. Thus it is a process undertaken by a business to prevent or mitigate actions that infringes the rights of others.

### 3.2.The Concept of Human Rights Due Diligence

The capacities of States to protect Human Rights have not kept pace with the expansion of global economic activity[140]. Due to globalization, businesses have gained greater economic rights,

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[138]Securities Act of 1933'. (May 27, 1933, ch. 38, title I, Sec. 1, 48 Stat. 74), Section 11, <https://www.sec.gov/about/laws/sa33.pdf> accessed on 14 August 2015.

[139]Merriam Webster Dictionary, <http://www.merriam-webster.com/dictionary/due%20diligence>, accessed on 4, July, 2015

[140]Supra note, 106, P.1

access to markets and also increased their mobility whereas governments have increasingly failed to find a balance between such power of business and their main duty which is to protect human rights. Due diligence has traditionally been used in the field of corporate governance as a standard to determine corporate risk and in international Human Rights law,as a standard to measure State compliance with international Human Rights obligations when addressing the conduct of non-State actors[141]. Concerning business related violation of Human Rights by non-state actors, mechanisms are being developed. The PRR Framework andGuiding Principles are part of a larger trend that explores new models of international regulation[142]. They have now being used as a reference to which the issue of Human Rights responsibility is no longer only states responsibility.

The corporate responsibility to respect Human Rights is a global standard of expected conduct that is acknowledged today in most major international CSR and soft law instruments, by companies themselves and by their stakeholders. It is a substantial element of the social pillar of sustainability[143]. In order to fulfill this responsibility, in line with the Guiding Principles, conducting a Human Rights due diligence is required. Business corporates, to be able to respect human rights, they must first need to understand their business's actual or potential impact on affected groups especially, on those vulnerable groups of the society.

Due Diligence reflects the theory of attribution for Human Rights responsibilities now recognized in international arena thought it is claimed as a soft-law type. Even with such a claim now days, practices are showing that the Guiding Principles are becoming effective as any legal document.In the long run, the Guiding Principles could be an important step towards a broader

[141]Olga Martin-Ortega, "Human Rights Due Diligence For Corporations: From Voluntary Standards To Hard Law At Last?",Netherlands Quarterly of Human Rights, Vol. 32/1, 2014, P.45.

[142]Jacob CornelisBastiaan de Lange, 'Understanding the Protect, Respect and Remedy Framework and Guiding Principles, Exploring the opportunities and limitations for operationalization of the PRR Framework and GP's in the context of Myanmar's extractive industry', Master Thesis in International Public Law 2013/2014, Tilburg University, August 2014, P. 2

[143]Global Compact Network Germany, 'Stakeholder Engagement In Human Rights Due Diligence', A Business Guide,<http://www.globalcompact.de/wAssets/docs/Menschenrechte/stakeholder_engagement_in_humanrights_due_diligence.pdf> accessed on 12 August 2015.

customarylaw process initiated several decades ago andconsolidated by treaties[144]. Indeed, when new values emerge they need first to be formulated as a pave the way for future developments in the form of binding instruments.

Therefore, Human Rights due diligence is a means by which business enterprises can identify, prevent, mitigate and account for the harms they may cause, and through which judicial and regulatory bodies can assess an enterprise's respect for human rights[145].

### 3.3.Due Diligence in the Human Rights Aspect

Human Rights are universal freedoms andprotections for all human beings provided under international law which are enshrined in many international covenants. As such they are normative standards for the dignified treatment of people by states andother organs of society to which business corporations are a part. In other words,Human Rights standards are universally accepted standard of care. Risk, in other case, is a functional concept that can be applied across in several types of disciplines ranging from finance to human development, which seeks to identify andmitigate a threat, or the potential for harm or damage[146]. Thus, Human Rights risk can be understood as actual or potential harm to people, where that harm constitutes a violation of internationally proclaimed human rights. It is this notion of harms andviolations that links the principle of respect for Human Rights with concepts of risk and due diligence[147].

Since an international treaty hasn't been adopted,at least taking the current status and development worldwide, a conduct of HRDD is not mandatory but is a good practice which helps to as a tool to manage potential impact that a business might have associated with business

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[144]Chetail, Vincent, ' The Legal Personality of Multinational Corporations, State Responsibility and Due Diligence: The Way Forward', Unity and Diversity of International Law Essays in Honour of Prof. Pierre-Marie Dupuy, 2013 P.119. < SSRN: http://ssrn.com/abstract=2364450> accessed on 26 June 2015.

[145]Note: Business enterprises should proactively identify and assess any actual and potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships.

[146]MB Taylor, L Zandvliet and M Forouhar "Due Diligence For Human Rights: A Risk-Based Approach" , A Working Paper of the: Corporate Social Responsibility Initiative,2009,p.5 <http://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_53_taylor_etal.pdf>accessed 12 August 2015

[147]*Id*

operations[148]. The recent UNHRC Guiding Principles on Business and Human Right recognizes andadvocates such practice[149]. In this guideline, there are nine operational principles of the corporate responsibility to respect Human Rights obligation. Out of these nine principles five of them are concerned with the issue of Human Rights Due Diligence which shows the centrality of the matter. Now days the approach of Human Rights Due Diligence has received increased attention from policy makers, businesses andcivil society groups.

### 3.4.Human Rights Due Diligence Under International Human Rights Law

The Special Representative on business andHuman Rights first referred to Human Rights due diligence in his 2008 report, andit was such a new concept. This notion of Human Rights Due Diligence is briefly defined under principle 17 of the UNGuiding Principles which has now become the new global standard. HRDD, if not the central element of the Guiding Principles, it is certainly the biggest single responsibility placed on businesses as a result of Ruggie's work[150].

It does address both the responsibilities of the state and business enterprises. While discussing this sense of HRDD, what is more relevant is the corporate responsibility of business enterprises to respect human rights[151]. But it doesn't mean that HRDD is not relevant with respect to sates duty to protect human rights. State's duty must be reminded here also. I.e. states obligation in terms regulation, providing incentives and policy oversight to protect human rights.

The corporate responsibility to respect Human Rights in essence mean business entities should act with Human Rights due diligence to avoid infringement of the rights of others[152].Thus Due

[148]Note: It's mandatory to note at this point that though there isn't an international treaty on Business and Human Rights, it's not a free zone either.

[149]Note: These are the Guiding Principles for States and Transnational Corporations and Other Business Entities on the Implementation of Ruggie's 'Protect, Respect and Remedy' framework.

[150]James Harrison, "Establishing A Meaningful Human Rights Due Diligence Process For Corporations: Learning From Experience Of Human Rights Impact Assessment", Impact Assessment and Project Appraisal, Published by Taylor and Francis, Vol. 31, No. 2, 2013, p.107

[151]Note: Corporate Responsibility to Respect Human Rights is the second pillar of Ruggie framework and the Guiding Principles.

[152]Note: According to the Report of the Special Representative of the Secretary-General on the issue of Human Rights And Transnational Corporations And Other Business Enterprises, John Ruggie, "Protect, respect and remedy:

diligence is the cornerstone of executing the corporate responsibility to respect human rights. The Guiding Principles sums up what companies should do by stating that

> *In order to identify, prevent, mitigate* and*account for how they address their adverse Human Rights impacts, business enterprises should carry out Human Rights due diligence. The process should include assessing actual* and *potential Human Rights impacts, integrating* and *acting upon the findings, tracking responses,* and *communicating how impacts are addressed*.

Under the same principle what the process should include in assessing Human Rights due diligence is set. Accordingly, HRDD:

A. Should cover adverse Human Rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
B. Will vary in complexity with the size of the business enterprise, the risk of severe Human Rights impacts, and the nature and context of its operations;
C. Should be on-going, recognizing that the Human Rights risks may change over time as the business enterprise's operations and operating context evolve.

In order to understand a business's specific human right impact, there must be a mechanism to find out what rights are negatively affected for a reason of business activity. That's when the issue of Human Rights due diligence steps in.

The business responsibility to respect Human Rights is in fact twofolded responsibility. The first responsibility lies on companies that they should not violate Human Rights which is a negative responsibility. This presupposes another responsibility which is to become aware and have the knowledge about those conducts of their own or business partner's which amounts to be Human Rights violations. This can be done through for example by way of undertaking Human Rights impact assessments.

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a framework for business and human rights", doing no harm "is not merely a passive responsibility for firms but may entail positive steps. (A/HRC/8/5)

The Second responsibility which lies on companies after becoming aware of such impacts on Human Rights by way of exercising “due diligence” or “duty of care” is to mitigate adverse impacts on Human Rights arising from their business activities.Thus the responsibility is to act on such information and do something in terms of prevention andremediation.

When dealing with business responsibility to respect Human Rights, the UN Guiding Principles recognize and sets a minimum standard that business needs to respect. I.e. at minimum, all rights in the UDHR; ICCPR; ICESCRandthe ILO Declaration of Fundamental Principles andRights at Work must be respected. Conducting Human Rights Due Diligence is conceived as an ongoing rather than a onetime action or exercise that will vary from company depending on the size, nature, andcontext of operations andseverity of Human Rights risk[153].

## 3.5.Components of Human Rights Due Diligence

The components of Human Rights due diligence processconsist of four elements. The first element is statement of policy or commitment or principles to respect human rights. The second element is periodic assessment of the actual and potential Human Rights impacts of company’s activities and relationships with third parties.

The third element is integrating these commitments andassessments in to the company’s internal oversight and control system. The fourth and the last element is tracking down and reporting the performance.

### 3.5.1 Human Rights Policy Commitment “SettingHuman Rights tone”

The starting point for the management of Human Rights issues is the creation of a policy[154]. A Human Right policy has no uniform definition but it can take many forms. At a minimum, it is a public statement adopted by the company’s highest governing authority committing the company

[153]Note: Human rights due diligence should cover adverse human rights impacts that the business enterprises may cause or contribute to through its own activities or which may be directed linked to its operations, products or services by its business relationships. Thus the process should be an ongoing process because human rights situations are dynamic and assessments of human rights impacts should be undertaken at regular intervals to be effective.

[154]DaanSchoemaker, 'Raising the Bar on Human Rights - The Ruggie Principles , What the Ruggie Principles Mean for Responsible Investors', 2011, P. 15

to respect international Human Rights standards andto do so by having policies andprocess on place to identify, prevent or mitigate Human Rights risks andremediate any adverse impact it has caused or contributed to[155]. It is one indicator of management quality to the extent that they demonstrate risk awareness and mitigation[156].The policy commitment is distinct from the operational policies and procedures referred to in subparagraph (e) of the Guiding Principle,which are typically not public, are more detailed in nature and help translate the high-level commitment into operational terms[157]

Adopting a Human Rights policy is front run to a company's Human Rights due diligence that business enterprises have to fulfill in order to meet their responsibility to respect human rights.More specifically, the corporate responsibility to respect Human Rights requires businesses to have Human Rights policy commitment to meet the responsibility as bases for embedding this responsibility throughout its operations[158]. Guiding Principles 16 states how a Human Rights statement of policy should be like[159]. Stating such commitment, signals that the company understands its universal responsibility to respect Human Rights and that it is willing to entrenchHuman Rights into its operational policies and proceduresand to know the Human Rights impacts of the business which might be positive or negative[160]. Developing a Human Rights policy is so important and yet many business entities failed to incorporate it without

[155]Lucy Amis, Anita Househam, A Guide for Business How to develop a Human rights Policy, united nations Global Compact office and office of the united nations High Commissioner for Human rights, 2011, P.5.

[156]Robert C. Birdand Lucien J. Dhooge,"Bridging The Credibility Gap Between Transnational Corporations And Human Rights", p. 4

[157]United Nations, United Nations Human Rights Office of the High commissioner, The Corporate Responsibility to Respect Human Rights An Interpretive Guide, New York and Geneva, 2012

[158]Note: In simple term Human Rights Policy is to commit oneself to this responsibility by way of human rights policy statement. The statements must be available to the public.

[159]Note: Human Rights Policy Statement must be (A) Approved at the most senior level of the business enterprise; (B)Informed by relevant internal and/or external expertise; (C)Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services; (D)Publicly available and communicated internally and externally to all personnel, business partners and other relevant parties; (E)Reflected in operational policies and procedures necessary to embed it throughout the business enterprise.

[160]See for example the coca cola company human rights policy on www.coca-colacompany.com/our-company/human-rights-policy.

giving due regard that it also has many relevance in making the road smooth for their activities[161].

To mention some of the fruits of having a Human Rights policy includes

- To be able to respond to relevant stakeholder expectations
- To identify policy gaps and to initiate a process that notifies the company to new areas of Human Rights risks
- To foster the development of internal learning management capacity and leadership on Human Rights issues
- To demonstrate international good business practice

While developing Human Rights policies companies need at a minimum must be able to explicitly commit themselvesandguarantee those rights which are referred as international Human Rights standards[162].

#### 3.5.1.1.Approaches to Human Rights Policy

Generally, Human Rights policies fall into two categories. Stand-alone or free standing Human Rights Policy andintegrated Human Rights Policy

A. **Stand-alone Human Rights Policy: -**Most of the time this type of policy statements are employed by companies that are developing Human Rights policy for the first time.This means that they allow the company to set out its Human Rights intentions while it goes

[161]Note : Human rights issues can generate numerous operational and physical risks for businesses, including project delays or cancellation caused by the denial or withdrawal of necessary operating permits; the loss of a social licence to operate; problematic relations with local labour markets; higher insurance, financing or security costs; lower production outputs; costs associated with challenging community consultation processes; damage to property; or costly lawsuits initiated by impacted stakeholders and others. Later on all of these risks can have a material impact on financial outcomes for investors.

[162]Note: The core internationally recognized human rights is contained in the International Bill of Human Rights consisting the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, coupled with the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work

about building the requisite in house knowledge and capacity to assess ad manage its Human Rights impacts

B. **Integrated Human Rights Policy: -**This type of Human Rights policy commitment is common by which integrating Human Rights in to the already existing company's policies.

### 3.5.2 Human Rights Impact Assessment "From Reactive to Proactive"

The second step which is at the heart of the Human Rights due diligence process enquiry which is outlined both in the UN's Framework andGuiding Principles for Human Rights and Business is, conducting a Human Rights impact assessment. The purpose is to understand the specific impacts on specific people; given a specific context of operations[163].Typically this includes assessing the Human Rights context prior to a proposed business activity[164]. While assessing Human Rights impacts, business enterprises will have to look for both actual andpotential adverse impacts.

Human Rights impact assessments are conducted based on those rights which are enumerated in the United Nations' UDHR, ICCPR, ICESCRandthe ILO core conventions[165]. Besides making sure that companies do not act in conflict with human rights, business enterprises should actively take preventative measures to avoid potential future negative Human Rights impacts therefore HRIAs are very crucial in this regards.

Whenever we talk about impact assessments, it means we are dealing with the negative fallouts that might follow as a result of a certain business activity by way of measuring such undesirable effects prior to running a business or before giving a go ahead instruction to a certain project. HRIA, as any kind of assessments, can be made to find out the negative consequence that might follow a business activity. Therefore, HRIA can be made alone or it can be made by incorporating it to the already existing impact assessment processes. What is more important to

[163]United Nations Guiding Principle on Business and Human Rights Commentary, Principle 18

[164]Note: Human rights context prior to a proposed business activity includes, identifying which specific part of the society are likely to be affected; classifying the relevant human rights standards and issues in connection; and making it noticeable how the proposed activity and associated business relationships could have adverse human rights impacts on those identified groups.

[165]Note: Guiding Principle 12 states that these documents are referred as an authoritative list of the core internationally recognized human rights.

note at this point is that conducting HRIA differs from other types of impact assessments in three ways.

First, it uses international Human Rights instruments as its benchmark framework. Second, it assesses risks to rights holders, not just the company, but as well as the capacity of duty bearersandlastly it highly requires a Human Rights expert. There could be an overlap of other risk andimpact assessments that often consider some Human Rights issues for example ESIA with HRIA. However, while other risks andimpacts assessments focus on some Human Rights concerns, they often do not address Human Rights issues in a systematic andcomprehensive way. A mere reliance on existing risk and assessments by a certain business corporation, without considering Human Rights in a comprehensive and systematic could result in the exposure or may be hidden Human Rights issues that could develop to significant Human Rights risk which later leave such company for legal, financial and reputational loss.

### 3.5.3 Integration "Walking the Talk"

The third step of Human Rights Due Diligence involves integration of Human Rightassessments into the organization. After the impact assessment has been carried out, companies should integrate the impact assessments findings across relevant internal functions andprocesses and take appropriate action.Once a business has an operational due diligence mechanism in place, the Guiding Principles outline three specific responses corporations should take for addressing adverse Human Rights impacts[166]. First, where an enterprise "causes or may cause an adverse impact, it should take the necessary steps to cease or prevent the impact."[167] Second, where an enterprise contributes or may contribute to the harm, it should act "to cease or prevent its contribution anduse its leverage to mitigate any remaining impact to the greatest extent possible"[168]. Lastly where a business enterprise has not contributed to an adverse Human Rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity, the business enterprise must use its leverage to prevent or mitigate the adverse impact.

[166]Robert c. Blitt, "Beyond Ruggie's Guiding Principles on Business and Human Rights: Charting an Embracive Approach to Corporate Human Rights Compliance", Texas International Law Journal Volume 48, Issue 1, 2012, p. 48

[167]United Nations Guiding Principles on Business and Human Rights, Principle 18

[168]*Id*

Adequate Human Rights Due Diligenceneeds to be carried out in two ways. Firstly, it must be carried throughout the company's own activities as well as those of its business partners which include its customers, clients andrelations with the other stakeholders including the government. Secondly, Human Rights due diligence needs to be applied to all business functions. This includes operations, recruitment, training and appraisals, andneeds to be sensitive to different operational contexts.

### 3.5.4. Tracking performance "Knowingand Showing"

The last stage of adequate Human Rights due diligence process is a step which requires business companies to track the effectiveness of their responses in relation to the Human Rights impacts they have identified at previous stages. This means that companies have to measure how they respond to the adverse Human Rights impacts, to be able to account for their success in respecting human rights. This is what it is meant by business are showing what they have known which actually means they are demonstrating that they are fulfilling their obligation to wards with respecting human rights. Whenever we are talking about due diligence, it must be clearly noted that there are key differences between due diligence in a commercial context and that of in a Human Rights context[169].

International Human Rights law provides a telling illustration of the normative potential of due diligence obligations with respect to private actors[170]. This means that states are not only ones who are obliged to respect the conventions with regard to acts of their own organs or agents.

[169]Note: The reason of knowing the difference is very critical since a blind importation of the due diligence idea might undermine the very idea of human rights. This is firstly because due diligence investigation in commercial context focuses on protecting interest of the company which is self-interest of the said entity. Whereas human rights due diligence is not about safeguarding the rights of companies but it is all about protecting the rights of peoples, that is, interest of external parties are the focus point. Secondly, when we look at the interest protected by resort to due diligence in a type of commercial deals which can be manifested through money or corporate reputation, are very much difference by its nature from what is at stake in the case of human rights which can be manifested through right to life or liberties. Thirdly, the targets of the due diligence enquiry in commercial matters are not definite in a human rights cases where as the case of human rights are the main targets of the due diligence enquiry. Therefore, companies may be able to foresee and identify certain section of society that are adversely affected, but again they might not able to able to apprehend all stakeholders who are aggrieved by some business decisions of said company. Fourthly, in case of commercial contexts of due diligence, companies employ due diligence not only as a strategy to asses and prevent risks but also as a defence at times of potential liability. However, in case of applying the human rights due diligence as a tool for protection of human rights, companies should never perceive human rights as a risk and due diligence as a merely as defence to ward off suits alleging human rights abuses.

[170]Supra note 144, p.126

There is more. States, in addition, are obliged to protect the rights. I.e., to ensure the rights are respected in the private sphere. By virtue of this duty, states must take the necessary measures to ensure that private persons or entities do not violate the rights of other individuals. When it comes to corporate responsibility to respect human rights, it means to avoid having adverse impact on other's Human Rights trough out company's activities andrelationships. The Guiding Principles provides andstipulates quite concrete steps that a business enterprise has to undertake in order to be able to know what is expected from itself and to demonstrate to its stakeholders that it is in fact meets these standards[171]. Therefore, for questions like how does a company avoid infringing the rights of others? Or how do companies know that they respect human right? Or how do they demonstrate that they do? The answer lies on the exercise of adequate Human Rights due diligence[172].

[171]United Nations Guiding Principles on Business and Human Rights, Principle 17-21.

[172]Note: It is very crucial to note at this point that a same due diligence procedure may not be applicable to all companies around the world. Rather the principles are ought to be universally applicable but the methodology and the tools that will be employed differ depending on circumstances and size of the company and even to some extent the industry sector.

## Chapter Four

## Labour Rights andForeign Direct Investment in Ethiopia

### 4.1. Introduction

Work is part of everyone's daily life and is crucial to a person's dignity, well-being and development[173]. Despite a range of different legal systems, the employment relationship is a universal concept which recognizes that workers are in a position of subordination anddependency to the person or enterprises towhom they perform work which inherently expose them to unequal power relationship[174]. It is for this reason that a distinct form of law (employment law or labour law) is formulated which seeks to balance this unequal power by creating a range of rights and obligations intended to protect the worker while recognizing the mutual obligations of both employers and employees[175]. This employment relationship remains one of the most important means by which society protects its interest in fairness and in the stability of economic relationships as well as in the respect for Human Rights at work[176].

### 4.2. Labour Rights in Ethiopia

Labour rights which encompass many work related rights includes the rights to work, just conditions of employment, the right to social security and social assistance and other rights. These and others rights are protected and guaranteed under Ethiopian Law. Development of labour relation was very much associated with the emergence of industries and industrial relations[177]. The current labour law and policy in Ethiopia came to existence due to the modern industrial development and with the rise of the employee as a wage earner[178].

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[173] RosenaNhlabatsi , 'Working together: The role of labour law harmonisation in improving the living standards of the poor in a globalised Africa' <http://www.consultancyafrica.com/index.php?option=com_contentand view=article and id=1681:working-together-the role-of-labour-law-harmonisation-in-improving-the-living-standards-of-the-poor-in-a-globalised-africa-and catid=57:africa-watch-discussion-papersand Itemid=263> accessed on 21 July 2015.

[174]International Trade Union Confederation Working Paper, The UN Guiding Principles On Business And Human Rights And The Human Rights Of Workers To Form Or Join Trade Unions And To Bargain Collectively'

[175]Note: The employment relationship has been, and continuous to be, the main vehicle through which workers gains access to the right and benefit associated with employment in the area of labour law and social security.

[176]Supra note 174.

[177]<http//:www2.warwick.ac.uk/fac/soc/law.elj/lgd/2013_1/redae>, accessed on 26 September, 2015

[178]<http//:www2.warwick.ac.uk/fac/soc/law.elj/lgd/2013_1/ute>accessed on 26 September, 2015

As a major duty bearer to protect Human Rights, Ethiopia like any other state has taken measures through enacting legislations and policy framework in order to protect such rights. This is in fact the first thing that is required from the state according to the UN Protect, Respect and Remedy framework along with its implementation Guiding Principles.

The basic forms of the labor law under which management and labor operate in Ethiopia today includes the FDRE Constitution, Labour Law Proclamation, ratified ILO Conventions, Supreme Court, Cassation Division Decisions,and Directives issued by the Ministry of Labor and Social Affairs.

### 4.2.1 The FDRE Constitution

The FDRE constitution dedicated its chapter three for fundamental rights and freedoms which are grouped under the headings Human Rights and Democratic Rights. Among the fundamental rights, wide range of general principles of labour rights is firmly guaranteed in the constitution. The Right of Security of a person (Article 16), the prohibition against inhuman treatment and the abolishment of slavery and servitude (Article 18 (2)) and forced and compulsory labour (Article 18 (3) and (4) of the Constitution) are some of the general principles provided in the constitution.

Article 42 is explicitly devoted guarantying labour right. Article 42 (1) a) reads as follows.

> *Factory and service sector employees, peasants, agricultural workers, other rural workers, government employees below a certain level of responsibility and the nature of whose employment so requires, shall have the right to form associations for the purpose of improving their economic andemployment conditions This right shall include the right to form trade union andother associations, and to negotiate with their employers and other organizations affecting their interests.*

Among other things, the FDRE constitution grants the right of association of workers including the rights to reasonable limitation of working hours, to rest, to paid leave and to healthy and safe working environment. The rights of equal enjoyment of constitutionally guaranteed rights along with men are the other right that is given for women in general and, in particular women are entitled to equal employment opportunity, promotion, pay and the transfer of pension entitlements as per Article 35(7), and42(1) d)). In addition, the Constitution grants the right to

maternity leave as well as prenatal leave with full pay, in accordance with the provisions of the law (Article 35(5) a) and b)).

The constitution also protects children from labour abuses. Pursuant to Article 36 on the rights of children, "every child has the right not to be subject to exploitative practices, neither to be required not permitted to perform work which may be hazardous or harmful to his or her education, health or well-being[179].

### 4.2.2 International Labour Rights Treaties / ILO Conventions

The FDRE constitution stipulates that all international agreements ratified by Ethiopia are an integral part of the law of the land[180]. The International Labour Organization (ILO) is the UN agency responsible for the development and application of international labour standards with the purpose of improving the working conditionsof workers through international cooperation of employers, workers, andgovernments. Accordingly, those conventions of International Labour Organization to which Ethiopia is party to, are in fact law of an integral part of the labor law of and thus are expected to be enacted as part of the labor law.

So far Ethiopia has ratified 22 ILO conventions. Eight of them are fundamental core conventions that protect freedom of association, the right to organize, prohibit forced labor, child labor, the worst forms of child labor anddiscrimination. Ethiopia has also ratified 13 technical conventions andthe most recent one, governance convention[181]. A convention concerning tripartite consultations to promote the implementation of International Labour Standards (convention No.144Tripartite Consultation).

### 4.2.3 The Labour Proclamation 377/2003(as Amended)

Unlike many countries, in Ethiopia there is one comprehensive labour law that is operating in order to address all aspects of ensuring labour relation to be governed with basic fundamental

[179]ILO, Ethiopia: Labour Law Profile, last accessed 12 July 2015

[180]Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, Art.9

[181]<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102950> last accessed on 12 September 2015

rights andobligation focusing on industrial peace in all work places[182]. In conformity with the international conventions and other legal commitments, Ethiopia has issued labour law to ensure the employee-employer relations be governed by the basic principles of rights and obligations with a view to enabling employees andtheir employers maintain industrial peace and work in sprit of harmony and cooperation.

The Labour Proclamation No. 377/2003(as amended) is the principal national legislation on labour issues[183].It is comprehensive legislation with provisions on rights, administration anddispute resolution processes notable for its strong emphasis on the creation andenforcement of OSH standards. As per its preamble, it is formulated in a way that is compatible with international conventions to which Ethiopia is a party[184]. It sets forth a range of general provisions on contracts, termination, wages, hours of work andrest, leave, working conditions, collective relations, andperiod of limitationsandpriority of claims, enforcement, and penalties[185].

### 4.2.4 Federal Supreme Court Cassation Division Decisions

It is clearly stated under Federal Courts Proclamation No. 25/1996, that in any cases where there has been a fundamental error of law, the FSC havethe power of cassation[186].Accordingly, the FSCCD has given many decisions regarding the interpretationof labor law articles which are considered to be laws of the country. Since the interpretations given on labor laws havebinding effect, business enterprises should obtain such decisions and use them as partof the labor law when they consider taking disciplinary or other measures[187].

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[182]DawitSeblework, 'Occupational Safety and Health Profile for Ethiopia', Ministry of Labour and Social Affairs, 2006, p.11

[183]International Labour Office**,** Labour Administration and Inspection Programme, http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/lab_admin/documents/publication/wcms_119248.pdf

[184]Preamble, Labour Proclamation No 377/2003, Federal NegaritGazeta of the Federal Democratic Republic of Ethiopia, 10th year, No. 12, Addis Ababa Ethiopia, February 26, 2003.

[185]Jeff Wheeler and Keith Goddard, 'Assessment of Ethiopia's Labour Inspection System', Bureau of International Labour Affairs, U.S. Department of Labour , 2013, P.6

[186]Federal Courts Proclamation No. 25/1996, Art. 10

[187]Getachew Minas and YaredBerhe, The Impact of Ethiopian Labor Laws on Business Efficiency and Competitiveness, 2011, P.14

### 4.2.5 Ministry of Labor and Social Affairs Directives

Ministry of Labor and Social Affairs (MOLSA) is given the power by the Labor Proclamation No. 377/2003 (as amended) to issue directives necessary for its implementation. These directives include occupational safety, health and protection of working environment, procedures for the registration of job seekers and vacancies as well as procedures for the reduction of work force.

Accordingly, the Ministry has issued directives on procedures of reduction of labor force, establishment of committees at enterprises which follow implementation of safety and health conditions, on works prohibited for young workers, works prohibited for pregnant women.Article 185(1) of the Labor Proclamation No.377/2003 (as amended) indicated that violation of directives issued in accordance with the proclamation is considered as an offence. Thus,it is important for business enterprises to get the directives that are issued by the Ministry.

## 4.3 Foreign Direct Investment in Ethiopia

One fact that is undeniable about Ethiopia is that there is a considerable progress in economic and social development as a result of implementation of favorable policies and strategies that are instrumental in improving the national economy. The current Ethiopian investment law is governed by Investment Proclamation 769/2012 as amended by Proclamation No. 849/2014 and Regulation No. 313/2014.

Out of 90 million populations, 70 % is below the age of 30[188]. This is an indicator that Ethiopia has enormous potential of aworking force. This is in fact one of the greatest cause to attract Foreign Direct Investment. The government's efforts to attract foreign direct investment into Textile sector have been highly successful, in effect placing the country as an emerging textile powerhouse on the global industry map, underlining its comparative advantages in terms of production factors and the attractive government policies[189].

Apart from formulating different policies, the Ethiopian government has also designed various strategies meant to implement those policies. One of the strategies which come at fore front is

[188]<http://www.allafrica.com>,accessed on 24 March, 2016.

[189]<http://www.mfa.gov.et/-/agro-industrial-parks-the-focus-to-transform-ethiopia-s-economy>, accessed on 16,March, 2016.

the Industrial Development Strategy which gives much attention to the textile industry among others.Textile and Garment industries by nature are labour extensive &capital intensive sectors in which Ethiopia can have comparative advantages in the world market[190]. It is also one of the major manufacturing activities which have gained priority area for the investment in Ethiopia. Thus for reasons of enabling environment including fiscal incentives, inexpensive & trainable labour force, a number of international companies has chosen such sector & started operation.

The fact that the sector is capital saving &labor intensive would contribute a lot towards reducing unemployment by creating job opportunities for a number of citizens which in turn boostup the economy of the country[191]. Presently, more than 230 large & medium-size factories & 11,800small-scale enterprises operate in this sector[192]. In 2011/12, their output accounted for 33% of manufacturing[193]. Total investment in the textile sector in the last five years has exceeded US$1.2 billion &has created more than 50,000 jobs[194].

### 4.4 Impacts of Labor Laws on Foreign Investment and Employment

Studies reveal that labor laws have impacts on the level and quantity of investment and employment. There are close linkages between labor regulations and investment climate and employment generation[195]. Investment is one type of economic activity. Economic activity, like any area of life, affects individual human beings and therefore impacts human rights, both positively and negatively[196]. This in a way affects labour rights as well.

Massive expansion of global economic activity is resulted for the reason of liberalization of trade which is also called deregulation. This promotes the growth of investment and production

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[190]Industry Development Strategy of Ethiopia, August 2002

[191]<http://www.tidi.gov.et/Background.html> last accessed on 2 September, 2015

[192]United Nations Industrial Development Organization, Programme for country partnership: Ethiopia, P. 11

[193]*Id*

[194]Inclusive And Sustainable Industrial Development And United Nations Industrial Development Organization, Programme For Country Partnership Ethiopia', 2012, p.12.

[195] Supra note, 187

[196]Cindy Holder and David Reidy (ed), Human Rights: The Hard Questions, (2013), P.153

drivenby international trade companies. Today, international trade and global production are increasingly organized in highly fragmented and geographically dispersed production networks where TNCs break up the production process in different parts and locate them in different countries on a global scale[197].Such transformations have important consequence for workers around the globe and on the protection of labour rights.

The 21st century is faced with many challenges. One of such challenge is to ensure that the increased flows of international investment and corporate activity don't contradict with state's commitment towards respecting human rights[198]. Globalization pits national governments against each other as they try to attract multinational firms to invest in their countries[199]. One of favorable condition globalization has provided is making the movement of capital flow across borders easier. In addition, the legal assurance for this cross border movement of capital has been secured by way of bilateral, regional and multilateral agreements played an important role in making easier of capital movement. From an economic point of view, globalization represents a process of increasing international division of labor and growing integration of national economies through trade in goods and services, cross-border corporate investment, and capital flows[200]. Labour, particularly unskilled or semi-skilled, on the other side, is less immovable. Owing to the mobility and threat of mobility, capital has gained strong bargaining leverage in its relation with host governments and trade unions[201]. This has resulted regulatory competition among states in in attracting and retaining investment through the provision of attractive policy and legal frameworks.

In order to attract and retain investments, countries demonstrate their political stability, infrastructural facilities and abundance of resource. But for the developing world, the offer in

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[197]Karin Lukas, Leonhard Plank, Cornelia Staritz, Securing Labour Rights In Global Production Networks: Legal Instruments And Policy Options, (2010), P 1.

[198]Note: The concern of human rights is no longer new to an investment activity which is conducted by an investor. The recent unprecedented acceptance of international principles on how to conduct a business states that companies have a responsibility to respect human rights.

[199]A. C. L. Davies, Perspectives on Labour Law, Second Edition, Cambridge University Press, (2009), p.58

[200]Dilip K. Das, The Economic Dimensions of Globalization, (2004) , p.1

[201]Asst. Professor MehariRedae, 'Globalization and Labour Rights' Module, p.2

attracting and retaining investment goes beyond this and includes, providing tax holidays, lose environmental regulations and low labour standards[202]. Governments are often tempted to lower labour standards believing that this could give them a comparative advantage in international trade[203].The incentive-based competition has resulted in some countries raising the level of generosity of their incentives in response to those offered elsewhere[204].For investors who rely on cheap labour, the incentive is the relaxation of labour laws in the host country, resulting in poor working conditions for employees[205].

### 4.5 The Nexus between Foreign Direct Investment and Human Rights

The prospective relationship between FDI andHuman Rights is a prominent issue within the global political economy[206]. Attraction of external capital or foreigner capital as it is believed by many in which FDI has positive impacts. Due to these positive impacts, such as technology transfer, increasing of job offer andone of the effects of economic globalization is directly connected with the issue of labour rights andstandards.The UN Committee on Economic, Social andCultural Rights adopted a Statement on Globalizationand Economic, Social andCultural Rights[207] stating that

> *Globalization risks downgrading the central place accorded to Human Rights by the Charter of the United Nations in general andthe International Bill of Human Rights in particular. This is especially the case in relation to economic, social andcultural rights. Thus, for example, respect for the right to work and the right to just and favorable conditions of work is threatened where*

[202]Note: In the bid to attract FDI, countries compete with each other by offering more favorable conditions to attract many investors.

[203]The benefits of International Labour Standards', International Labour Organization, <http://www.ilo.org> last accessed on 22 July, 2015.

[204]Christiansen ,H., 'Incentives-based competition for FDI in developing countries', OECD, May 2003, <http://www.oecd.org>, last accessed on 18 September 2015.

[205]*Id*

[206]Shannon Lindsey Blanton and Robert G. Blanton, "What Attracts Foreign Investors? An Examination of Human Rights and Foreign Direct Investment", The Journal of Politics,Vol. 69, No. 1, February 2007,P.143

[207]UN Committee on Economic, Social and Cultural Rights, 'Statement on Globalization and Economic, Social and Cultural Rights' (11 May 1998), reproduced in International Human Rights Reports, 6 (1999).

*there is an excessive emphasis upon competitiveness to the detriment of respect for the labour rights contained in the Covenant*.

As exemplified by the Statement, the most obvious link between economic globalization andHuman Rights is in the area of labour rights.The modern global economy poses challenges to a conception of Human Rights that channels all responsibility through the state, since much of the economic activity and entities that drive it are themselves disconnected from the state and beyond the regulatory control of any one state[208]. Facing intense competition to attract and maintain foreign investment,developing states find it necessary to lure TNCs with cheap labor and relaxed human rights enforcement[209].

Human Rights in the other way are universal legal guarantees protecting every individuals andgroups against actions andomissions that interfere with fundamental freedoms, entitlements andhuman dignity.One way of positive impact of FDI is that it can be a significant element in economic development strategies to raise working people's economic andsocial welfare. In other way it could also result in a serious devastation causing violations of rights.

### 4.6. Labour Rights in Human Rights Lens

Human labour decides the economic, cultural and moral development of persons and their families including the society[210]. The rights inherent to human labour, so explicitly and universally recognized, reflect the centrality of the human being in all working relations[211]. This understanding is important in two ways. First it gives a great credit to the intrinsic value of human labour. Second and most important, it advocates the importance of organizing economic and social systems which acknowledges a respect for Human Rights.

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[208]Supra note. 196,

[209]TianaO'konek," Corporations And Human Rights Law: The Emerging Consensus And Its Effects On Women's Employment Rights", Cardozo Journal Of Law and Gender vol. 17,2011, p. 261

[210]Adriana Opromolla, CRIDHO Working Paper, 'Enhancing Labour Rights in a Globalized World: A Comparative Transatlantic Perspective', 2007, P.5

[211]*Id*

Labour rights are entitlements that relate specifically to the role of being a worker[212]. These rights are a critical component of Human Rights helping to protect and promote the social and economic well-being of the human being.For many years, the international community has acknowledged the importance of recognizing and protecting the rights of workers[213] .

In 1998, in response to the new era of globalization, ILO endorsed a list of labour rights as human rights[214]. The Declaration makes it clear that these rights are universal and that they apply to all peoplein States regardless of the level of economic development[215].

In other way, Human rights, apply to all societies and to all the peoples. They can't be in any way excluded from any sphere of a human life which may include the economic world of production, services or markets. It is impossible to say for instance, that Human Rights have to do with politics or administration but not with economics or with business. Human Rights can now be said to have a tangible, palpable existence, which gives them a social objectivity in an institutional facticity that enhances their de facto credibility[216]. They have thus acquired a global institutionalized authority on which we can draw to work out the moral obligations of all actors, be they individuals or organizations[217]. Coming to international trade companies, the minimum duties of such corporations in relation to labor rights should be grounded on "core" labor rights, as expressed in Article 2 of the ILO Declaration on Fundamental Principles and Rights at Work.

One thing that can't be missed whenever talking about labour rights visa vis international Human Rights law is international labour standards. This is because International Human Rights law includes international labour standards. These are the combination of Conventions and

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[212]Virginia Mantouvalou, "Are Labour Rights Human Rights?"European Labour Law Journal, 2012, P. 2

[213]Note: For example, UDHR, ICCPR, ICESCR.

[214]Note :The ILO Declaration on Fundamental Principles and Rights at Work was adopted. It obliges Member States to respect and promote principles and rights in four categories, whether or not they have ratified the relevant conventions.

[215]ILO Declaration on Fundamental Principles and Rights at Work<http://www.ilo.org/declaration/lang--en/index.htm>, last accessed on 16 August, 2015.

[216]Tom Campbell and Seumas, Miller, Human Rights and the Moral Responsibilities of Corporate and Public Sector Organizations, 2005, p.12.

[217]*Id*

Recommendations which are codified under the ILO. These Conventions of ILO are treated as international treaties that bind member States which ratified them. They cover a wide range of topics, for example, trade union rights, working hours, annual leave provisions, minimum working age standards for employment, prohibitions on forced labour, workplace discrimination, and more[218].

Included in the ILO system, there is also the Indigenous and Tribal Peoples Convention[219]which contains a number of important provisions on the rights of Indigenous Peoples; and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy [220](1977, revised in 2009). The ILO formulates international policies to help improve working and living conditions and creates international labour standards[221]to serve as guidelines for national authorities in putting these policies into action[222].

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[218] Nora Götzmann and Claire Methven O´Brien, Business and Human Rights :A Guidebook for National Human Rights Institutions, International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, p. 12

[219]Note: ILO Convention No.169, 1989. The Convention No.169 is a unique Convention. It was adopted by the International Labour Conference (ILC) at its 76thSession in 1989, in cooperation with the UN-system, it represents a consensus reached by ILO tripartite constituents. Indigenous and tribal peoples are among the vulnerable groups of concern to the ILO as it pursues its mission to promote social justice, internationally recognized human and labour rights and Decent Work.

[220]Note: In the 1960s and 1970s, the activities of multinational enterprises (MNEs) provoked intense discussions that resulted in efforts to draw up international instruments for regulating their conduct and defining the terms of their relations with host countries, mostly in the developing world. Labour-related and social policy issues were among those concerns to which the activities of MNEs gave rise. The ILO's search for international guidelines in its sphere of competence resulted, in 1977, in the adoption by the ILO Governing Body, of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy or the MNE Declaration.

[221]Note: The ILO created certain basic international labour standards including the Forced Labour Convention ( No. 29), the Convention on the Freedom of Association and Protection of the Right to Organize Convention( No.87), the Right to Organize and Collective Bargaining Convention( No 98) and the prohibition of discrimination. It also adopted the Equal Remuneration Convention,(No 100) the Abolition of Forced Labour Convention, (No 105) the Discrimination (Employment and Occupation) Convention( No. 111) and the Minimum Age Convention (No 138).

[222]Guer Aras and David Crowther (ed), A Handbook of Corporate Governance and Social Responsibility , p.510.

# Chapter Five

## Ethiopian Textile Industry and Human Rights Due Diligence at Bole Lemi Industrial Park

### 5.1. Introduction

Textile is one of the manufacturing industries that range from small to large-scale production. Economic history shows that the clothing and textile industry played an important role in the industrialization of today's developed countries[223]. This is because of the industry's unique characteristics of being labour intensive and its links with other sectors of the economy such as agriculture[224]. The Textiles and Garments sub-sector already offers one of the best demonstrations of the process of industrialization[225].

This sector is now set to make Ethiopia an important hub for the manufacturing and is showing export revenues of nearly US$100 million as a result of the continuous improvement in the production capabilities of domestic textile, garment, knitting and weaving firms[226].

The case of worth mentioning while talking about Ethiopian Textile industry is AGOA[227] since it has brought exports, investment and Jobs. In this case, Ethiopia became the 18 beneficiary countries in terms of textiles and garments. This Act enabled Ethiopia to enjoy the privileges to export garments made of fabrics from any other countries to the U.S. market, duty-free and quota free. Taking advantage of the renewed Africa Growth and Opportunity Act, U.S. investments in Ethiopia climbed to $4 billion[228].

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[223]Supra note 22

[224]*Id*

[225] Supra note, 189.

[226]*Id*

[227] The African Growth and Opportunity Act (AGOA) is a trade development act passed by United States (U. S) in May 2000. The Act enables about 6500 items of commodities imported from Sub Saharan African (SSA) countries to enter to U.S. market on a quota and duty free arrangement.

[228]<http://agoa.info/news/article/6037-agoa-us-investments-in-ethiopia-climb-to-4-billion-in-2015.html>, accessed on 22, March, 2016.

### 5.2 Regulatory Approaches to Human Rights Due Diligence

It's stated in the previous chapters that under international Human Rights law, the responsibility of business enterprises to respect Human Rights is manifested by the conduct of HRDD to avoid violating such rights. In this regard international Human Rights law requires States to ensure this responsibility is complied with by any businesses enterprises. This, for example, can be demonstrated from wide range of measures. Some measures include providing effective guidance to business enterprises on how to respect Human Rights & implement laws requiring business enterprises to respect human rights[229].

There are at least four main regulatory approaches through which in general states can ensure HRDD activities by business enterprises[230].

1. Requiring or setting Due Diligence as a matter of regulatory compliance

The first approach imposes a due diligence requirement as a matter of regulatory compliance. This means that States can enact rules and regulations that require business enterprises to conduct due diligence. This can be done by setting a direct legal obligation formulated in the rule, or indirectly by offering companies the opportunity to use due diligence as a defence against charges of criminal, civil or administrative violations. In this case for instance courts can use business due diligence to assess business compliance with environmental, labour and other laws. Similarly, regulatory agencies regularly require business due diligence as the basis upon which to grant approvals and licenses for business activities. For example, investment law.

More or less this kind of regulatory approach does exist in Ethiopia when we refer the Environmental Protection and investment legislations.

2. Incentivizing Companies practicing Human Rights Due Diligence

The second regulatory approach provides incentives and benefits to companies in return for their being able to demonstrate due diligence practice. This for example can be done by States requiring business enterprises to conduct due diligence on environmental or social risks in order

[229] Supra note 106, P.8

[230] Supra note 107. P.5

to be able to get state support for qualification or incentive which could for instance be export credit.

In general, Ethiopia offers a comprehensive set of fiscal and non-fiscal incentives to encourage investment into priority areas[231]. Textiles and Textiles Products Industry is also one of the priority area which is eligible for incentive.

Although there exists non fiscal incentives, the researcher couldn't find an investment incentive based on the conduct of due diligence.

3. Due Diligence through transparency & disclosure mechanisms

Social and environmental reporting is an established practice in an increasing number of countries.In line with this trend, the final step called for by the Guiding Principles' due diligence process is, for businesses to communicate on how they are addressing their Human Rights impacts[232]. In relation to this, the third approach used by for States to encourage due diligence through transparency and disclosure mechanisms.In this approach, States implement rules that require business enterprises to disclose the presence or absence of due diligence activities and any identified harms that their activities may create, such as the presence of child labour in a company's supply chain[233]. For example, securities laws, consumer protection laws and reporting requirements for corporate social responsibility operate on the logic that information serves the interests, and will prompt action by consumers, investors, regulators, and people who might be adversely affected by a business activity.

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[231]Note: The incentive includes Customs duty exemptions of up to 100% on imports of capital goods for eligible areas of investment; Income tax exemptions for a period ranging between 1 and 9 years, depending on the specific activity and the location of the investor; Loss carry forward for business that suffer losses during the income tax exemption period for half of the tax exemption period; With the exception of a few products, no export tax is levied on Ethiopian export products; Duty Drawback Scheme, Voucher Scheme and Bonded Factory and Manufacturing Warehouse Schemes Various non-fiscal incentives for exporters Guaranteed remittance of capital for foreign investors.

[232]United Nations General Assembly (2011) Addendum: Human rights and corporate law: trends and observations from a cross-national study conducted by the Special Representative - Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, A/HRC/17/31/Add.2, 23 May 2011, available at http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31-Add2.pdf .

[233]*Supra note 230*

This kind or regulatory approach does not exist in Ethiopia. With regard to reporting by business enterprises in industrial parks, there is Monthly Report Form prepared by Industrial Parks Development Corporation (IPDC). This reporting form requires business enterprises to report on many issues including Total Import and export Value of each month's transaction. But then again nothing is mentioned which encourage companies to disclose responsible business practices.

4. Combination of the above approaches

A fourth category involves a combination of one or more of these approaches. States regularly combine aspects of these approaches in order to construct an incentive structure that promotes respect by business for the standards set down in the rules and ensures that compliance can be assessed in an efficient and effective manner[234].For example, administrative rules governing environmental protection, labour rights, consumer protection or anti-corruption may require business due diligence as the bases for a license or approval, and may also require regular reporting disclosure of due diligence activities by business. Enforcement of such rules can combine administrative penalties, such as fines, and criminal law sanctions; and the possibility of civil action[235].

Although the specific target of the thesis is to stay up on the responsibility of business enterprises in general &Textile &Garment companies on particularly located at Bole Lemi Industrial park, to respect Human Rights, it also touches up on Ethiopia's main duty in protecting Human Rights in general and labour rights in particular.

### 5.3 Industrial Parks in Ethiopia

Among the sectors to which the second Growth and Transformation Plan gives emphasis is manufacturing and industrialization to provide the basis for economic structural change; and a central element in this strategy for transforming the industry sector is development and expansion of industrial parks and villages around the country[236].To this effect a new Industrial Park Proclamation was enacted last year; Proclamation No.886/2015. So far, it is planned to

[234] *Id*

[235] *Id*

[236] Supra note 189

develop nine industrial parks across the country. Many of the industrial parks will be manufacturing textile and apparel products for export.

As it is stated in the Proclamation, 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 FDI thereby upgrading industries and generate employment opportunity.The proclamation alsorecognizes that there is a need to enhance export promotion, protection of environment and human wellbeing, economical land use and establishing and expanding planned urban centers.

One of the objectives of the proclamation is creating ample job opportunities and to achieve sustainable economic development[237]. With a view of creating such a numerous employee who will be working in industrial parks, the proclamation declares that all the protection given by the Labour proclamation No. 377/2003 (as amended) will be applicable to those employees working at any industrial park. This can be taken as a positive feature that the state guarantees the protection of labor rights in industrial parks where by many business enterprises including TNC run their business employing many peoples. Although there exists this positive aspect in setting that labour laws should be respected, additional measures should be taken regarding the non-obedience of such laws by business enterprises. Bold steps must be taken when there occurHuman Rights violations.

### 5.4 Business and Human Rights in Ethiopia

Ethiopia already implements measures that will help to ensure respect for human rights. For example, through the enactment & enforcement of labor, environmental & certain criminal laws & by ensuring those victims of Human Rights abuses have access to courts. This State practices often encourage or require due diligence activities by businesses enterprises as a way to respect for Human Rights & to guarantee standards set by law[238]. For instance, Ethiopian Environmental

[237]Article 4 of Industrial Park Proclamation, Proclamation No. 886/2015, Federal NegaritGazeta of the federal Democratic Republic of Ethiopia, 21th year, No. 39, Addis Ababa Ethiopia, 9th April 2015

[238]Note: For example, by imposing civil and criminal liability on business enterprises for a failure to properly act with due diligence to prevent violation that are directly relevant to protection of human rights.

Protection legislations[239] can be considered here as a legislation that require due diligence as it sets environmental impact assessment as standard to be able to get approval to operate in business activity.

However, so far there is no legislation that requires business enterprises to conduct HRDD before it starts to operate in Ethiopia or while in its operation. In addition, there hasn't been a formulation of National Action plan on business &Human Rights for the implementation of Guiding Principles on business & Human Rights.

National Action Plan to implement the Guiding Principles are action plans that set and articulate States' forward-looking policy agenda to progress implementation of the UN Guiding Principles, which includes legislative and other regulatory measures to promote, support and or require business to respect human rights[240]. They address the role of government's trade and investment activities in the management of Human Rights challenges.

Some countries like Tanzania have concluded the business and Human Rights agenda in their National Human Rights Action Plan[241] and setting objectives from increasing the current number of signatories to the Global Compact, and more so to operationalize the Framework of Protect, Respect and Remedy, including its Guiding Principles on Business and Human Rights. For comparison purpose, the Ethiopian National Human Rights Action plan that has expired last year and which was the first National Human Rights Action plan the state has ever made, though it was very critical in addressing Human Rights in Ethiopia, it did not include an agenda on business and human rights.So far 17 small and medium scale Ethiopian business enterprises which incorporates banks, industrial transportation oil and gas producers are signatories to the United Nations Global Compact.

National Human Rights institutions and civic societies are some of the stakeholders that their engagement is needed in the development of NAP. For the research purpose, the researcher has

[239]Environmental Impact Assessment Proclamation No. 299/2002, Environmental Pollution Control Proclamation No. 300/2002

[240]Clifford Chance, Global Business Initiative on Human Rights, Briefing note, October 2015, P.1

[241]http://www.ohchr.org/Documents/Issues/Education/Training/actions-plans/Excerpts/Tanzania_en%202013-2017.pdf

interviewed AtoFirewDemeke[242] from Ethiopian Human Rights Commission and Ato Dan Yirga[243] from Human Rights Council. Both interviewees reply that there has not been a move towards developing NAP on Business and Human Rights yet.

There is Network of African National Human Rights Institution. This institution has identified three priority areas for actions to be undertaken by individual NHRI with in the Africa Region as critical to making progress towards fulfillment of their mandates to address business related Human Rights issues. The priority themes of the plan of action are Labor rights and working conditions, land and Environment related human rights.Although the Ethiopian Human Rights is a member to this network, it is unfortunate that no concrete development and progress made.

### 5.5. Human Rights Due Diligence Practice in Bole Lemi Industrial Park

Bole Lemi Industrial Park which is already operationalized is Ethiopia's first industrial park that is developed by IPDC[244]. Bole Lemi Phase 1 (156 hectares) has started operations in 2014, with all pre-erected factories already rented-out to more than 12 different corporations[245].

In this Industrial Park, there are several investors from Taiwan, India China and South Korea and others which are currently engaged in textile and garment production. These business corporates in the industrial park created job opportunities for about 10,000 women and men[246]. According to the agreement made with the investors 95 % of the products are supplied to foreign markets[247]. This thereby enriches the nation's foreign currency earning capacity.

Practicing Human Rights Due Diligence involves asking basic questions about Human Rights risk at all the appropriate decision-making moments of any business enterprise in the business's

[242] Studies and Research team leader at Ethiopian Human Rights Commission.

[243] Senior Human Rights Expert at Human Rights Council

[244] Note: The Ethiopian Industrial Parks Development Corporation (IPDC) was established in 2014, as one of the public enterprise Inspired from the full support of government, IPDC is becoming an engine of rapid industrialization that nurture manufacturing industries, to accelerate economic transformation, promote and attract both domestic and foreign investors.

[245]<http://www.ipdc.gov.et/index.php/en/industrial-parks/bole-lemi-i> accessed on 12 April,2016

[246]<http://www.ethpress.gov.et/herald/index.php/technology/item/3004-industrial-parks-attracting-foreign-investment>, accessed on 22 March, 2016.

[247]*Id*

processes. It also includes conducting in-depth investigations into identified sources of risk which includes Human Rights risk. It is through this due diligence that such risks are to be identified & assessedthenlater prevented risks from materializing as harm.

For the purpose of conducting the assessment, Bole Lemi Industrial Zone was the target area. There are numerous Textile & Garment factories in this first Ethiopian industrial park. Ethiopia is said to be targeting US$1 billion of annual investment in industrial parks over the next decade to boost exports &make the country one of Africa's top manufacturers[248.] For the assessment purpose, five large Textile &Garment factories were taken. They have a number of employees ranging from 800 to 2000 plus. These are Shin Textile Solutions Co, (South Korean owned), JJ Textile &Garment factory (Indian Owned), Vestis Textile &Garment factory (Sri Lanka Owned), Arvind Textile &Garment factory (Indian owned) & Aston Apparel Textile &Garment factory (Indian Owned).

By virtue of their particular position as employers, TNCs' policies and practices have the most immediate impact on the enjoyment of labour rights[249].

Workplace and supply chain issues such as labour conditions, the health and safety of employees and the right to organize are all Human Rights issues for which companies have direct responsibility[250]. For a company's employees, Human Rights in the workplace are particularly important. The right to participate in collective bargaining and the right to form or join free trade unions, ensuring non-discrimination in personnel practices are examples of such right

One of the aims of this thesis is finding out how Textile & Garment factories in the industrial park give attention with respect to respecting labour rights as a matter of responsibility. Labour rights, in general incudes numerous rights that give protection for workers. The vulnerability of labour rights violation through investment is very high which necessitates the creation & protection of safe & responsible working environment for employees.

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[248]<http://aethiopien-botschaft.de/?p=2930> last accessed on 2 September, 2015

[249] David Kinley and Junko Tadaki, "From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporations at International Law", Virginia Journal of International Law, Vol.44, 2004, P. 933

[250] Geoffrey Chandler, "The evolution of the business and human rights debate" 2003, P.22

The conditions for companies' efforts to respect Human Rights vary depending on their size, the countries and regions they operate in and their line of business, but the common goal is to prevent the companies' activities from leading to Human Rights abuse in general and labour rights in particular.

All companies in the assessment have replied positively in support believing that they understandthere is a business case of respecting Human Rights &respecting such rights at a company level would be beneficial. They give explanation on how respecting their employees right would do good in their business[251]. Though there exists this understanding, there is an upsetting truth &that is none of these businesses enterprises have an idea about United Nations Guiding Principles on Business &Human rights. This in other way means that lack of such awareness results in non-fulfillment &violation of human & major labour rights. Not knowing that there exist obligations of business enterprises towards respecting Human Rights is the greatest issue of all since implementation &being abided by such standards presupposes knowledge.

In those factories where assessment been made as to the existence of Human Rights due diligence, it was impossible to get a company with stand-alone Human Rights policy or even fully integrated Human Rights policy. Some of the textile &garment companies though it is not strictly Human Rights policy, have lookalike policies that mention some of the aspects of Human Rights concept. As per the financial manager of vests Textile Factory[252] the manufacturing P.L.C has developeddifferent policies concerning health & safety policy[253], child free labour policy[254]&grievance policy[255].

[251]According to HR department manager of ShintsEtp Garment, if the company won't t respect human right, no workers will stay in the company and without workers the company is not company. Workers human right is the basic thing for the company. In addition some of the companies officials said they are giving more attention to labour rights and international labour standards in order to sell their products in the foreign market since respecting such rights are said to one of the requirements to transact in the international market.

[252]Interview with Mr.SunilcSuraweera.,

[253]Provide instructions to maintain a standardized Health care and Safety programs, An awareness programmed to note the oncoming hazards and dangers in the work place to provide own security for workers Safety and to undergo training, To obtain a certificate of competence on the machinery you make use of by maintaining a record on their usage, To their utmost to make good the loss they incur over sudden accident and health hazards,

There researcher found out there exists misconception among the business enterprises in understanding international Human Rights standards. Some take the policies of international non-governmental organizations policies as international Human Rights standards. This kind of policies may derive their content from international Human Rights instruments but they are not the same for many reasons. For example, rather than referring Universal Declaration of Human Right, ICCPR ICESCR or that of the ILO core labour rights conventions & declarations, some companies refer the policy of international NGOs.

According to Human Resource manager of Shints Textile & Garment factory, they follow a policy of Fair wear foundation[256] as a Human Rights Standards. This foundation is an independent, non-profit organization that works with companies & factories to improve labour conditions for garment workers[257]. The researcher has also found that some of the business enterprises use the same policy as a Human Rights policy & Corporate Social Responsibility policy at the same time. Some in other way replied that they have Human Rights policy that refers all kinds of International Human Rights Standards[258]. According to them, this means that they have given more attention to the rights &freedoms than that of UNGP which also mean they have a Human Rights Policy comprising & referring nine core International Human Rights

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Drinking water facilities available for all free of charge. Free health care facilities. Under any emergency; Fire and First aid trained employees are available on call and all such groups will help in the health Care and safety matters.

[254]Hiring employees who are 16 years and above, Exploitation in terms of financial benefits not permitted and their due rights to be up held at all times, Awareness of the occupational / industrial health hazards to children and young workers, Implements and follows a thorough checking process with regard to hiring of young workers and their age, Maintain all records of young workers details as per the labour law.

[255]To encourage employees to address their grievances the managements has setup a Workers Council comprising of fellow workers through which he or she can air their grievances, or use the suggestion box placed in the canteen where workers could drop their written grievances /complains /suggestions which an Executive Officer from the Head Office will open to note its contents on a monthly basis., and take necessary action to address the issue.

[256]Fair Wear Foundation is an independent, non-profit organization that works with companies and factories to improve labor conditions for garment workers.

[257]<http://www.fairwear.org/22/about/>last accessed on 4th October 2015

[258]Interview with Aston Apparel Financial Manager , MrAnanat

Conventions[259]. The researcher thinks that this kind of thinking is a result of misunderstanding on what International Human Rights Standards truly are.

Arvind Textile & Garment's factory Human Resource manager[260] has explained saying that though there hasn't been a Human Rights policy, they are currently developing it. The researcher also has been able to see the draft policy. This draft policy tries to cover a lot of areas which are directly linked to Human Rights issues which includes women's rights in the employment arena. The human resource manager[261] at the factory has explained that the company is building a maternal care center in the factory for those women workers who just gave birth so that those women workers continue performing their work. The manager also explained that such center is used by those women who got back to their post after their maternity leave.

As a basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meeting this responsibility through a high-level public statement, making that commitment a clear, overarching policy that will determine their actions[262]. It has to be noted that a Human Rights policy commitment is different from the operational policies &procedures necessary to embed the commitment throughout the business enterprise. It is true that existence of such procedures in other way helps to translate the high-level commitment into operational terms in advance.

All sampled Textile & Garment factories are product exporting companies in the international market. Mainly they export their items to Asia, Europe &America. Operating in the international market has its own qualification. To stay in the business, a company has to meet some international standards that include quality. These international standards on most cases are related with environment, labour&social management. Though not all of them, some Textile & Garment factories use Higg Index. This index is groundbreaking suite of self-assessment tools

[259]Note: The nine treaties address economic, social and cultural rights, civil and political rights, the elimination of racial and gender discrimination, protection against torture and forced disappearance and the rights of women, children, migrants, persons with disabilities.

[260]Interview with YoditTeshome

[261]*Id*

[262]Supra note 29, Para 22

empowers brands, retailers & facilities of all sizes, at every stage in their sustainability journey, to measure their environmental & social & labor impacts & identify areas for improvement[263]. In general, this index is an apparel &footwear industry self-assessment for assessing environmental &sustainability throughout the supply chain. According to Human resource manager of JJ Textile & Garment factory[264], they have been using this index since last year.

According to AtoBizuayehuTadege[265], now days, business enterprises have come to the path of giving more attention to labour rights as a result of impositions of international quality standards that they have to meet to be able to compete in the international market. Since then a lot can be said that the international market has helped a lot in making business enterprises to respect labour rights[266]. According to him when comparing the case of labour rights violations in the last 20 plus years, globalization has played important role in making the world market a single place where everyone has to look or fulfill labour rights standards in order to run international business which in effect affect the national treatment of labour standards by everyone including business enterprises.

AtoFikadu who is also labour inspector in working conditions has also identified that in relation to chemical section the textile & garment sector is one of the most affected sector where by chemical usage in most cases affecting the health of workers

One major labour rights that is much susceptible to violation here in our case is freedom of association &collective bargaining. Of the five Textile and Garment factories to which many employees are found ranging from 700 to 2500, it is only three of them that have worker's association &the rest two doesn't have such associations. It is more upsetting to know that it is in those factories which have more number of employees that such associations are absent. This in other way creates escape in giving attention to those workers' rights by the employer &it is impossible for the employees to ask for the respect of their rights in such situations. As a result of this, it is highly possible that clash between employer & employee will exist.

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[263]<http://apparelcoalition.org/the-higg-index/>, last accessed on 3 September 2015

[264]Interview with Ato Lemma Tegegne

[265]በአዲስአበባየሰራተኛእናማህበራዊጉዳይቢሮየስራሁኔታዎችቁጥጥርየስራሂደትመሪ

[266]*Id*

Up on the reply of some employees at the industrial park, the researcher comes to know that there is violation and negligence in respecting labour rights by the business enterprises. Accordingly, the most violated labour rights which are also at the same time Human Rights includes, Sex based discrimination, attacking employees who ask about their rights and oppression which creates fear among other employees.

Some of the interviewed employees said that their 2 day's salary cuts down for any reason ranging from lateness to a permitted leave. They said that their salary cuts off even when they are permitted for a leave be it annual leave or sick leave. They also said that they are allowed to take only three days' sick leave. If they take more than three days their pay will be cut down.

The other interviewed employees consider their treatment by their employers as that of slavery. Some have the perception that they are living in lawless country. The reason they give is that they are mistreated and are not being treated with dignity.

Regarding a fair wage, the employees replied that their salary ranged from 500 to 700. They said that they are being underpaid that their salary doesn't sustain them. Due to this the employees said that they are forced to live in a rented house as roommates.

Because of the low and unfair wage they receive, some of the interviewees replied that they wish they had a chance to migrate to Arab countries whether lawfully or not since according to them it makes no difference being a slave here in their country or in foreign country as quoted by the interviewees.

Because most of the business enterprises in the industry park don't support the creation of labour association, employees are unable to get heard what they had to say or ask about their rights. Some of the interviewed employees said that, if someone tried to question an action of its employer, he/she would me marked as someone disturbing industrial peace which would result dismissal. On the same talk, the employees the researcher interviewed replied that their employers terminate their contract of employment as they please and without giving due notice.

It is impossible to accomplish rapid industrial development if grievance exists in the day to day work relation between the employer & the employees and therefore the existence of employee's association is very crucial in alleviating such problem.

Finally, the employees replied that there is no fair complaint mechanism that addresses their question. One of the three pillars of the Ruggie frame work and the UN Guiding Principles lies on the Access to remedy in which case business enterprises must have internal grievance mechanism whereby violations and wrong doings can be redressed by. But according to the interviewed employees, there is no internal remedial mechanism.

Thus, it can be concluded that there is a great concern of protection and the respect of labour rights and Human Rights in Bole Industrial Parks which necessitates a measure which promotes sound labour protection by the business enterprises that can be applied to all industrial parks across the country.

## Conclusion

The issue of business &Human Rights is certainly a complex one. It involves several opposite interests and serious legal problems could arise if not properly taken care of. The worst scenario can be pictured in a case where there is clearly a lack of any initiative from the state perspective. States approach to the matter certainly is one of the major issue that is connected with their main duty to protect. When the aim of business enterprises is only to make profit at any cost, including violation of Human Rights in general and labour rights in particular, there has to be such a mechanism formulated by the state as it is the main protector of its individuals from violation from state & non-sate actors. Thus the state approaches in guiding how businesses enterprises should go side by side in running their business and not violating human rights, is crucial since in most cases businesses won't be happy to engage in high-cost Human Rights risk assessment procedures where there is absence of stable legal environment. As this approach of state to Human Rights is given go-ahead, then the notion of a state duty to protect & promote Human Rights will be of use.

The thesis tried to discuss how the case of business &Human Rights is being entertained internationally with a great focus on the UNGuiding Principles since they provide a global standard for preventing & addressing the risk of adverse impacts on Human Rights linked to in any type of business activity in any sector & in any size. In general, the UNGuiding Principles have a potential to be normative platform & policy guidance in addressing business &Human Rights governance gaps. They also have the power of driving the case of business &Human Rights into the policies of states, business corporations or other social actors.

The thesis also tried to show that business enterprises have the obligation to respect Human Rights and how such obligation can be demonstrated through a proper conduct of Human Rights Due Diligence. Thus, respecting Human Rights means that businesses should act with due diligence to avoid infringing the rights of others &to address negative impacts with which their business is involved.Through this due-diligence effort, business enterprises here in Ethiopia have to examine whether they might contribute to abuse of Human Rights connected to their business activities.

It is very important to understand how an investment activity impacts Human Rights in general and the Ethiopian case in particular especially on labour rights in the textile &garment industry

sector. Taking the above international Human Rights development on Business & Human Rights, the researcher tries to find out where foreign business enterprises in Ethiopia are in implementing international standards while being on Textile & Garment sector.

Foreign investment is, for many states, including Ethiopia is, a major component of development strategies, & is too obviously that it is one of economic activity that the state's development plans lies on. Thus, it has a direct effect on the economic & social welfare of not just the investor, but also on the communities in which the investment is made & on those people living on such surrounding which also includes employees and local communities.

From the perspective of Human Rights dimensions of FDI, investments must not only results in the positive aspect which includes economic benefits in the community, but the investment must go beyond & includes the prevention of negative economic consequences & also for the protection of rights of the people around them as well.

Doing no harm is the baseline expectation for all companies in all situations. Therefore, business enterprises in general must respect &be supportive towards protecting Human Rights.In general, the researcher has found out that there is no awareness on Human Rights due diligence on those business enterprises where the assessment has been made. Therefore, businesses are expected to look at Human Rights not only from a business risk perspective which could be potential reputational, legal & transactional risks as a consequence of adverse Human Rights impacts but also they are expected to take Human Rights in general & labour rights in particular in to account from the rights-holder's perspective.

As we discussed in the previous chapters the responsibility to respect Human Rights through is not a legal duty that is imposed on companies by treaty, it is not a law-free zone. The provisions of many international Human Rights treaties are rather embedded in national laws of Ethiopia. A great example to our case would be to look at our Labour proclamation which has derived its provision from ILO conventions. This means that the duty to respect Human Rights in general and labour rights in particular falls on those who might have any connection with such rights by way of running their business. Therefore, there is a need for a deeper understanding of the role of the private sector in supporting respect for human rights& labour rights.

**Recommendations**

1. Ethiopia must develop a National Action Plan for the implementation of the UNGP in a way that set and articulate it's forward looking policy which includes legislative and other regulatory measures to promote, support and require business to respect human rights.
2. Most stakeholders, including government actors, the business community, civil society, the public and the media are not fully aware of the global initiative and the Framework on business and Human Rights agenda. This will necessitate awareness creation on the issue.
3. The state should provide corporations with clear instructions on Human Rights Due Diligence requirements & adopt legislative provisions containing reporting obligations & constraining corporations to present a human rights due diligence.
4. The Ethiopian government must make sure that investment policiesand its implementations are carried out in accordance with Ethiopia's obligations under international Human Rights law.
5. The Ethiopian government must appreciate business corporates by creating strong incentives to encourage companies to design ways of taking Human Rights concerns. This is to say in addition to requiring business entities to respect Human Rights through the implementation of Human Rights due diligence, the State should use regulation to create incentives for business to implement Human Rights due diligence.
6. All types of investors should Respect Human Rights by ensuring that any applicable investments do not infringe on its employees' rights &Human Rights of communities which in a way give them a social license to operate.
7. Exercise due diligence by conducting impact assessments both prior to &during investment activity in order to mitigate &address potential adverse Human Rights impacts.
8. Business enterprises should respect & supports Human Rights & employees' rights in line with the legitimate role of business.

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