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

**LABOUR RIGHTS OF SECURITY GUARDS IN THE
ETHIOPIAN PRIVATE SECURITY INDUSTRY: CASE STUDY
IN ADDIS ABABA**

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**A THESIS SUBMITTED TO SCHOOL OF GRADUATE STUDIES,
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LAWS (LL.M IN HUMAN RIGHTS)**

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Addis Ababa, Ethiopia

DECLARATION

I, **KENNA TARIKU EJETA**, hereby declare that the thesis entitled as ‘**Labour Rights of Security Guards in the Ethiopian Private Security Industry: Case Study in Addis Ababa**’ is my original work and has never been presented in any University. And to the best of my knowledge and belief, I also declare that the primary and secondary sources that I used for this thesis are duly acknowledged.

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LIST OF ACRONYMS

AACALSAB -Addis Ababa city Administration Labour and Social Affairs Bureau
ACHPR-African Charter on Human and Peoples' Rights
CEDAW-Convention on Elimination of Discrimination against Women
CETU-Confederation of Ethiopian Trade Unions
CRC- Convention on Rights Child
CRPD- Convention on Rights of person Disabled
ETCC-Ethiopian Tele Communication Corporation
FAG- Federal Attorney General
FDRE-Federal Democratic Republic of Ethiopia
FPC- Federal Police Commission
FSCCD-Federal Supreme Court Cassation Decision
ICERD-International Convention on Elimination of Racial Discrimination
ICESCR- International Convention on Economic Social Cultural Rights
ICOC- international Code of Conduct for Private Security service Providers
ICRMW- International Convention on Rights of Migrant Workers
ILO-International Labour Organization
LRB-Labour Relations Board
MNCD - Ministry of National Community Development
MLCR- Minimum Labour Conditions Regulation
MOFPDA- Ministry of Federal and Pastoralist Development Affairs
MOLSA-Ministry of Labour and Social Affairs
MOT- Ministry of Trade
NGO-Non-Governmental Organizations
TEA-Temporary Employment Agency
TGE -Transitional Government of Ethiopia
UDHR-Universal Declaration of Human Rights
UN-United Nations

ABSTRACT

The primary concern of this thesis is to examine whether adequate legal frameworks for private security industries and adequacy of law that set wage and minimum wage for private employment sector particularly private security industries in Ethiopia. And what are the effects of these laws on labour rights of private security guards.

At international level there is a legal gap to establish the legal status of private security service providers. The absence of binding international law for private security industries at international level has its own impact on effective control of potential private security service providers at national level.

ICOC is the only self regulation law that aimed to set minimum international standards for the private security industries and to provide the legal framework at national level. However, some states like South Africa and India have laws effectively regulate domestic private security service providers operating within their territory.

In Ethiopia, there is no legislation that is comprehensively and separately enacted to regulate private security service providers.

Federal Democratic Republic of Ethiopia Government has not ratified the ILO conventions such as Convention No.95 of 1949, and No.26 of 1928, No.99 of 1951 and No.131 of 1970 on wage and minimum wage protection respectively.

Even though Ethiopia has ratified the ICESCR which recognized the minimum wage protection law, unlike for public servants, there is no law setting minimum wage protection for private employment relationships in the Ethiopia. This instrument is an integral part of the law of Ethiopia, and shall be interpreted in a manner conforming to these instruments that entails the Ethiopia has duty to respect, protect and promote the minimum wage protection. Thus, absence of laws that set minimum wage protections in Ethiopian labour laws result to violation of labour rights of private security guards.

Wage of Private security guards in Ethiopia private security industries are unduly low. And the amount of salary private security industries contracted with organizations for each security guard per month and actual amount of salary paid to security guards per month by private security industries in Addis Ababa is unfair. This shows private security industries are exploiting a monthly salary of security guards.

Key Words: - Private security industry, private security guard, minimum wage, unduly low and exploitation of wages.

CHAPTER-ONE

INTRODUCTION AND OVERVIEW OF THE STUDY

1.1. BACKGROUND OF THE RESEARCH

The privatization of security has been a fast growing phenomenon over the years. From the seventh century people were not fully convinced that security remains the monopoly of the state rather in addition to what the state does, there were private actors in the security sector.¹

The current trend of private security system was rooted in the history of self-help and protection.² These concepts are considered as a base for the enforcement of law and guarantee of social order.³ This shows that the existence of the ideology of self-help and self-protection is rooted in every ‘human civilization’. For instance, in the common law legal system, self-help and self-protection in England and USA are derived from what is socially and justifiably acceptable in terms of private and communal protection of life and property.⁴ Particularly, it was in the area of protection of one’s property that English law first recognized the right of self-help and it is now even considered as a natural right for oneself to defend and protect one’s property and life to the extent of using proportional force.⁵

In countries of civil law legal system, like Greek and Roman legal traditions, the maintenance of law and order were primarily the function of the military and its command structure, signifying the role of the state in protecting the security of the community. However, the word ‘police’ as we know today as metropolitan police forces has its origin in the Greek word ‘politeuein’ which means ‘to act as a citizen of a polis’, but it did not exist in the antique in the sense of public policing.⁶ This shows that, in civil law legal system there has been the existence of the concept of private security services.

¹Solomon Hassen, (2010). *An Anthology of Peace and Security Research: ‘The Status of Private Security Companies in Ethiopia: The Case of Addis Ababa’*, Ethiopia, Addis Ababa: Institute for Peace and Security Studies in collaboration with Friedrich Ebert Stiftung. p. 122.

²Nemeth, Ch. (2005). *Private security and the law*, 3rd edition, USA: ElsevierButterworth–Heinemann, p. 1.

³Ibid.

⁴Holdsworth, W. (1927). *A History of English Laws*. p.313.

⁵Perkins,RM. (1969). *Perkins on Criminal Law 1926–1927*.

⁶Nemeth, Ch. supra note 2.

In middle age Europe, an idea of the need and design for law enforcement and security did originate.⁷ ‘In the then feudal system, the vassal–lord relationship had developed a reciprocal self-help approach to the security of one’s life and property. The vassal was remunerated from the feudal lord in return for the protection services provided by him.’⁸ Accordingly, each feudal lord has his own system of security within a feudal territory. In this sense, the relationship between lord and vassal resembled the present day system of contract of private security industry.

The emergence and proliferation of private security industries in recent times reflect a global trend in which non-core security functions of the state are increasingly being outsourced to the private sector. In Africa, the privatization of security since the turn of the 1990s has generated serious concerns within the academic and policy communities about the impact this trend is having on human security.⁹ A major security concern has been that while powerful states are able to retain core security functions within the public sphere and regulate the private security sector effectively, African countries do not have the same prospects and this weakness of the state makes it possible for the expanding scope of privatization to encroach upon states’ core security functions.¹⁰ The regulation of private security industry by African states and the international community have been almost non-existent, with a few exceptions, which include leading efforts by South Africa.¹¹

In Ethiopia there is a long tradition of employing watchmen which was so-called ‘Zebegnas’. However, while there is no written document that states when exactly uniformed private security guards were seen for the first time in the country, it could be said that the development of private security industries in Ethiopia is a post-socialist regime phenomenon.¹²

Private security is essential to ensure the security and safety of persons and property as well as intellectual property and sensitive corporate information.¹³ Private security

⁷Ibid, p.2.

⁸Id.

⁹Institute for Security Studies(2007). *Conference Report on the Regulation of the Private Security Sector in Africa*: ‘The Need for Reform of the Private Security Sector’. South Africa, Pretoria : Institute for Security Studies. p.10.

¹⁰Ibid.

¹¹Id.

¹²Solomon Hassen, Supra note 1, p.138.

¹³Strom, K. et al (2010), *The Private Security Industry*: ‘A Review of the Definitions, Available Data Sources, and Paths Moving Forward’, Report Document No. 232781, Date Received: December 2010 and Award Number: 2009–BJ–CX–K045, p.1.

officials are responsible for protecting many of the nation's institutions and critical infrastructural systems, including industry and manufacturing, utilities, transportation and health, and educational facilities. Today, companies are also heavily investing in private security by hiring security firms to perform functions such as store security, private investigations, pre-employment screening, and information technology security.¹⁴ These services are used in a wide range of markets i.e. from commercial to residential. Some companies hire their own security personnel, whereas others contract with security firms for these services or use a mix of services for both proprietary and contract staff.¹⁵

The works of security guards in private security industry are classified under service sector which has social and economic importance in development of a country.¹⁶ It has emerged as the fastest growing sector in the world economy, making enormous contribution to output and employment.¹⁷

In private security service sector, the private security guards play the most important role in providing security services for client firms. The adequate and effective security is the bedrock for the socio-economic development of any society,¹⁸ i.e. private security has importance in criminal justice system and protection of nations' safety, life and property of a country. Although private security industry's primary mission is to respond to the security needs of their clients, their roles have direct implications on the country's security infrastructure as they complement the services of the public security force. However, the private security guards in private security industry face a large number of challenges in terms of risk to their life, lack of social security and extremely poor wages and working conditions.¹⁹

To make the private security industries and private security guards more reliable and accountable security actors and to make them contribute to the overall security of the country, they need to be well regulated, and become more professional. Lack of separate and comprehensive law regulating private security industry, and wages of

¹⁴Ibid.

¹⁵Id.

¹⁶Upadhyaya , Dr. S. (2011). Plight and Predicament of Security Guards Engaged by Private Security Agencies in India. *International Journal of Management Sciences*. Vol. 7, No.1, ISSN0973-2101, Noida: Fellow V.V.Giri National Labour Institute, p.1.

¹⁷Ibid.

¹⁸Labour Research & Policy Institute Ghana Trades Union Congress (2011). *Wages and Working Conditions of Private Security Workers in Ghana*, Friedrich Ebert Stiftung Ghana p.11.

¹⁹ Upadhyaya,Dr.S, Supra note 16.

individual security guards are unregulated in Ethiopia became a root cause for violation of human rights of security guards.

1.2. STATEMENT OF THE PROBLEM

Private security industry is one of the major service sectors at global level and increasingly at the national level too. The security guards engaged by private security industries play a great role in crime prevention and keeping peace and security in a given country. In terms of size, conservative estimates that there are approximately 1 million security and intelligence service agencies operating in various countries of the world and these agencies engage almost 18 to 20 million private security guards.²⁰ Eight of the major countries of the world- India, Germany, China, Canada, Russia, UK, Australia and Nigeria alone have more than 60,000 private security services agencies and engage approximately 12 million private security guards mainly working as security guards, arms security and security supervisors.²¹

The size of private security industries and private security guards in African countries has also grown rapidly. For example, in South Africa there are over 20, 000 registered private security companies and over 1.3 million registered security guards²²; in Nigeria, the number of existing private security companies is estimated to be more than 1200 and almost 100,000 security guards.²³; in Zimbabwe, about 438 private security firms and around 65, 000 security guards²⁴; in Ghana, in 2006 about 438 registered private security industries²⁵; in Kenya, 2000 private security companies.²⁶ In Ethiopia, number of private security companies is estimated to be about 130-160; out of these, around 120 are based Addis Ababa, and has employed 400,000-500,000

²⁰Ibid.

²¹Id.

²²Private Security Industry Regulatory Authority Annual Reports in 2011, available at: <http://www.psira.co.za> (accessed on 20 May, 2016).

²³Kasali, MA. (2011) Analyzing the Evolution of Private Security Guards and their Limitations to Security Management in Nigeria: Dept. of Political Science & International Relations Crescent University, Abeokuta, Nigeria: *African Journal of Criminology and Justice Studies: Vol.5, #s1 &2*, page-42.

²⁴Mariwo, Ts. (2008). *Working Conditions and Labour Relations in the Private Security Industry in Zimbabwe: A Research Paper*, Zimbabwe, Harare, ILO Sub-Regional Office for Southern Africa, Issues Paper No 2. p.5.

²⁵Labour Research & Policy Institute Ghana Trades Union Congress, supra note 18, p.15.

²⁶Dr. Abrahamsen, R. et al. (2005). *The Globalization of Private Security: Country Report, Kenya*. Aberystwyth: University of Wales, Department of International Politics, P.3.

private security guards.²⁷ These show that the private security industry is among the fastest growing and job creating industries in the rest of world as well as in Ethiopia.

At international level there is international code of conduct for private security providers (ICOC) which sets minimum international standards within which private security providers operate.²⁸ As such, this framework could be developed and adjusted to the needs of private security providers within the territory of states as a national standard. For example, in countries like India²⁹ and South Africa³⁰ there are separate and comprehensive law which govern private security providers.

The problem of poor working conditions, including exploitation in terms of low wages; appears to be one of the leading factors militating against efficiency in private security activities. For example in countries like Ghana³¹, Zimbabwe³², and Nigeria in spite of cost of living, many private security guards earn salaries less than US\$40 per month.³³ From the experiences of these countries where private security industry has been better regulated and controlled than in Ethiopia, there are problems of exploitations of security guards by security companies which pay low of wages and fails to provide a just and favourable working conditions.³⁴ For example in Ethiopia, the Oromia National Regional State's Labour and Social Affairs Bureau has banned over 120 private employment agencies who hire security guards, drivers, cleaners and others because these agencies were exploiting their employees' labour.³⁵ The Bureau

²⁷Munira Yassin, (2016). *Private security company in Ethiopia: in the case of Addis Ababa Activities, challenges and opportunities*. Ethiopia, Addis Ababa university, Institute for Peace and Security Studies, unpublished, p.16 & 40.

²⁸International code of conduct for private security providers was developed by Swiss confederation in September 2010, available at: <http://www.icoc-psp.org/> (accessed on 25 March, 2016).

²⁹Republic of Indian Private Security Agencies Act, No.29/2005.

³⁰Republic of South African Private Security Industry Regulation Act, No.56/2001.

³¹Labour Research & Policy Institute Ghana Trades Union Congress, Supra note 18, p.48.

³²Mariwo, Ts., Supra note 24, p.32.

³³Kasali MA, Supra note 23, p.44.

³⁴Labour Research & Policy Institute Ghana Trades Union Congress, supra note 18, p.48, see also Tsitsi Mariwo, (2008). *Working Conditions and Labour Relations in the Private Security Industry in Zimbabwe: A Research Paper*, Harare, Zimbabwe, ILO Sub-Regional Office for Southern Africa, p.32 and, Monsuru Adegboyega Kasali Analyzing the Evolution of Private Security Guards and their Limitations to Security Management in Nigeria: Dept. of Political Science & International Relations Crescent University, Abeokuta, Nigeria: *African Journal of Criminology and Justice Studies, Vol.5, #s1 & 2*, p.44.

³⁵Tesfaye Getnet, (2017). Oromia agents banned for exploiting cheap labour available at <http://www.enlba.org/more-news/2890-oromia-agents-banned-for-exploiting-cheap-labor> (accessed on 20 March, 2017).

stated that private employment agencies were making a huge profit by withholding some of the salary intended for the worker for themselves.³⁶

Ethiopia has ratified International Convention on Economic, Social and Cultural Rights (ICESCR) since 1993. The UN body monitoring and supervising the domestic implementation of ICESCR, the Committee on Economic, Social and Cultural Rights recommended that ‘States parties should prioritize the adoption of a periodically reviewed minimum wage, indexed at least to the cost of living, and maintain a mechanism to do this.’³⁷ The African Human and Peoples’ Rights under its Principles and Guideline indicate that “access to equitable and decent work which respects the fundamental rights of the human person and the rights of workers in terms of remuneration can also be critical for both survival and human development.”³⁸

However, Ethiopia has not ratified the International Labour Organization (ILO) Convention No.95/1949 on wage protection, or Conventions No.26/1928, No.99/1951 and No.131/1970³⁹ on minimum wage protection. Ethiopian Labour Proclamation No.377/2003 did not set minimum wage standards for private employment sectors.⁴⁰ The Ethiopian government has not enacted a law which regulates private security industries or security guards operating in the country. Also no Ethiopian private security company has signed the International Code of Conduct for private security providers⁴¹ Thus, the absence of law governing minimum wages and adequate law regulating both private security industries and security guards are root cause for violations of security guards’ human rights, specifically poor and exploitation of wages of security guards in Addis Ababa.

³⁶Ibid

³⁷General Comment No. 23 by Committee on Economic, Social and Cultural Rights, (2016) on the Right to just and favorable conditions of work on article 7 of the International Covenant on Economic, Social and Cultural Rights, paragraph 20.

³⁸African Commission on Human and Peoples’ Rights, (2010). Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights, para.57.

³⁹ILO Conventions that ratified by Ethiopia available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102950(accessed on 25 March, 2016).

⁴⁰Articles 53-60 of the Ethiopian Labour Proclamation No. 377/2003, (amended by Proc. No. 466/2005 & Proc. No. 494/2006).

⁴¹Complete List of Signatory Companies to the International Code of Conduct for Private Security Service Providers as of 1 September 2013 – Version with Company Details available at: <https://business-humanrights.org/sites/default/files-+/media/bhr/files/Signatories> (accessed on 16 October, 2016).

1.3. RESEARCH QUESTIONS

The research seeks to answer the following research questions.

1. How are the works and responsibilities of private security industries and rights of private security guards regulated in Ethiopia?
2. What is the extent of legal protection of the wages of private security guards in Ethiopia in general? How their wages regulated in Addis Ababa? and
3. Are there adequate legal frame works protecting the minimum wage of private security guards in Ethiopia?

1.4. OBJECTIVE OF THE RESEARCH

1.4.1. OVERALL OBJECTIVE

The overall objective of this research is to examine the adequacy of legal framework which deals with the role and responsibility of private security industries, and protecting labour rights of private security guards working in the Ethiopian private security industries. To that end, the research examines the protection of wages as an example.

1.4.2. SPECIFIC OBJECTIVES

The study specifically aims to analyze the adequacy of the legal framework of private security industries in line with ICOC. The study also aims to show best practices of model countries having comprehensive legal frameworks on private security industries by taking South Africa and India as examples.

Also, absence of laws governing minimum wage protection for private employment relationships sectors, specifically for private security guards engaged by private security industry. The study intends to analyze whether or not the exploitation of wage, problem of poor wage in Addis Ababa.

1.5. SIGNIFICANCE OF THE RESEARCH

Due to fast growing of economic activities in Ethiopia in general and the service industry in particular, there is high demand for the provision of security by private security industries. In order to regulate the rights and responsibilities of private security service providers as well as the rights of their employees, there should be comprehensive regulatory legal framework in place.

Most academic literature written in the area of the private security industries in Ethiopia have concerned on the ‘role and the relationships of private security industry with public security institution’⁴² and ‘activities, challenges and opportunities of private security in Ethiopia, especially in Addis Ababa’⁴³ as well as the ‘status they have in Ethiopia.’⁴⁴ However, it is rare to find literature focusing on the legal framework for private security industry and labour rights of private security guards in Ethiopia. Thus, this research examines the adequacy of the regulatory regime governing the private security industry, and explores the presence of exploitation of private security guards by the private security companies in Ethiopia. In main, it demonstrates problems of wage protection for private security guards working in Addis Ababa.

This research is therefore significant as it contributes to show whether there is adequate legal frameworks that regulate the role and responsibility of private security industry, and rights of private security guards in Ethiopia. This would be accomplished by analyzing the existing Ethiopia’s legal framework that have relevance with private security issues in line with the ICOC as well as discussing experiences of countries that well experienced in the area of private security provision. As such, it shows inadequate legal framework for private security industry in the Ethiopia.

Moreover, the research is also significant for right holders and the primary duty bearer for human rights, that is, the Ethiopian state. For right holders, the study creates awareness whether or not private security industry are exploiting and violating their labour rights. This would be identified by analyzing the realization of the labour rights of private security guards working in Addis Ababa. This helps them enforce their rights, and the government and employers accountable when they fail to take steps to respect rights of private security guards. It assists government as duty bearer to appreciate the gap of legal framework, and violation of the labour rights of private security guards by private security industry.

⁴²Desta Asmelash, (2011). *The role of private security companies in enhancing human security and their relationships with public security institutions: the case study of Addis Ababa*. Ethiopia, Addis Ababa University Institute for Peace and Security Studies, unpublished.

⁴³Munira Yassin, Supra note 27.

⁴⁴Solomon Hassen, supra note 1.

Furthermore, it would aid monitoring bodies like ILO, African Commission on Human and Peoples' Rights, UN Committee on Economic, Social and Cultural Rights, donor states and other stake holders to monitor the protection of the labour rights of private security guards in Addis Ababa.

As a whole, this research helps any concerned body that seeks to give solutions on problems of poor wage and absence of minimum wage regulations for private security guards in private sectors, and absence of comprehensive legal frameworks to regulate private security industry and their workers in Addis Ababa.

1.6. SCOPE OF THE RESEARCH

This research examines both legal frameworks and practical aspects of labour rights of private security guards. The thesis assesses the legal frameworks, and regulation of private security industries and wage protection private security guards in Ethiopia. This study is essentially not a labour law study which uses the triangular approach of employee-employer and government. It is an essentially human rights research, and uses a human rights framework which links rights of rights holders, on the one hand, and human rights duties of the state. In other words, the approach emphasizes the state's duty towards rights holders in the framework of the quartet layers of 'respect-protect-promote-fulfill obligations.'⁴⁵

The practical part covers wage and minimum wage protections of private security guards working in Addis Ababa. As a result, the study is limited to focusing on legal frameworks, and wage and minimum wage protections of private security guards working in Addis Ababa. The study does not deal with every right of private security guard works in Ethiopia private security industry.

Also, the research focuses only on private security industry rather than a governmental agency involved in the activities of providing security services such as public police and security guards directly employed by organizations.

⁴⁵General comment 3 on ICESCR, the nature of States parties obligations (Art. 2, par.1): 14/12/90. Contained in document E/1991/23, G.A. Cornia, R. Jolly and F. Stewart, eds. Oxford, Clarendon Press, 1987, Oxford, Oxford University Press, 1990. See also paragraphs 4-12 of African Commission on Human and Peoples' Rights, (2010). Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights. Also the SERAC case vs. Nigeria where African Commission stated that the duty to respect, protect, promote and fulfill apply to all charter rights.

Private security guard whose rights this research focuses upon is those who are outsourced by private security industries and deployed to give security services for client firms.

1.7. RESEARCH METHODOLOGY

1.7.1. ANALYTICAL FRAMEWORK

This research analyzes the existing FDRE Constitution, Labour Proclamation No.377/2003 and Employment Exchange Services Proclamation No.632/2009, the ILO Convention No.95/1949 on wage protection, Conventions No.26/1928, No.99/1951 and No.131/1970⁴⁶ on minimum wage protection, Convention No.181/1997 on Private Employment Agency, African Charter on Human and Peoples' Rights(ACHPR) and its Commission Principles and Guides line, ICESCR and General Comment No.23 of 2016 on the right to just and favorable condition of work on article 7, General Comment No.3 on the nature of States parties obligations on article 2 of ICESCR which Committee on Economic, Social and Cultural Rights commented.

In doing so, the research seeks to shed light on obligations of government from a labour rights perspective. An international obligation is incumbent upon the Federal Democratic Republic of Ethiopia (FDRE) to accomplish its duty to respect, protect and fulfill the rights of private security guards. Also the study examines the practical aspects of the wage protection of private security guards working in Addis Ababa in line with the above international and national law standards.

1.7.2. RESEARCH METHOD

The research has employed qualitative research method to collect and analysis data.

1.7.2.1. DATA SOURCES

The data sources employed are both primary and secondary sources. The primary data were collected from Private security guards, private security industries, Addis Ababa city Administration Labour and Social Affairs Bureau (AACALSAB), and Confederation of Ethiopian Trade Unions (CETU). Questionnaire and interview are used as data collection technique to collect the primary data. The research also relies

⁴⁶ILO Conventions that ratified by Ethiopia, Supra note 35.

on international, regional and national human rights instruments and other laws which have relevance for this research.

Secondary sources that are employed for this research are books, journals and other relevant published and unpublished materials found in library and on line.

1.7.2.2. DATA COLLECTION TECHNIQUES

To get the relevant primary data the researcher used key informant, questionnaires and interviews.

1.7.2.2.1. QUESTIONNAIRES

The first data collection technique used was distributing questionnaire to study Participants to get full information on issues of research. The researcher randomly selected 45 private security industries out of 120 private security industries which found in Addis Ababa to distribute structured questioners to undertake this research, and selected two private security guards from each of these private security industries. Thus, the questionnaires were distributed to 90 private security guards who work in Addis Ababa.

1.7.2.2.2. INTERVIEWS

The second data collection technique used was conducting interviews with managers of private security industries, AACALSAB, private security guards themselves and CETU. The interviews were undertaken to gather personal attitudes, opinion, values, and perceptions of interviewees regarding the working conditions of private security guards generally and their wages specifically. Fifteen key informants were from different research participants (nine from security guards, four from officials of private security industry, one from AACALSAB and one from CETU).

1.7.2.3. DATA SAMPLING AND ANALYZING TECHNIQUES

The research used both random and non-random sampling system. The random sampling was used in selecting the representation of private security guards in distributing questionnaires and the non-random(purposive) used to undertake interviews with private security industry officials of Commercial Nominees, Agar, Addis and Lion private security industries, AACALSAB and CETU experts. This choice is made in order to get real opinions from informants than doing it in a random manner. The reason why four private security industries selected is that they have

some of the largest number of employees and long experiences in the area of outsourcing private security guards in Addis Ababa.

Table 1: Name of agency, Year of establishment and Number of employees (security guards)

| No. | Name of Agency | Year of establishment | Number of employees (security guards) |
|-----|-------------------------------|-----------------------|---------------------------------------|
| 1 | Commercial Nominees Plc | 1958 | 12,682 |
| 2 | Agar private security agency | 1992 | 7,000 |
| 3 | Lion private security agency | 1998 | 5,021 |
| 4 | Addis private security agency | 1996 | 2,500 |

Source: Data collected through interviews from managers of the agencies.

Thus the study analyses the data collected by questionnaires and interviews during the research undertaking concerning the exploitations and unduly low wages of private security guards working in private security industries in Addis Ababa.

1.8. LIMITATIONS OF THE RESEARCH

The major limitations that the study faced are lack of valuable materials needed for this research in library and on line, and absence of sufficient fund to reach more private security companies and security guards. Another limitation is the unwillingness of most of private security companies for various reasons, provide full information. At times during the interviews I have had with them, they acted as if they were defending themselves as not violating labour rights of security guards. In effect, they tend not to give full information for the researcher to carry out this research are challenges.

To overcome limitations mentioned above, the researcher dedicated to give more time to do research, use data from different bodies to overcome data barriers, and choose Addis Ababa as area of case study to save time and fund which expend on transport and others.

1.9. STRUCTURE OF THE RESEARCH

This thesis is divided into five chapters. Accordingly,

The first chapter has introduced general back ground of private security idustry, the objectives of the research and states a statment of the problems, research questions, and methodology of the research, significances, scope, and limitations of the research.

The second chapter deals with development of international and national labour rights and laws that deals with labour rights issues, specifically, current Ethiopian labour laws which have relevance with labour rights.

The third Chapter deals with the legal frameworks on private security industry from international and national perespectives.

The fourth Chapter assesses legal frameworks on labour rights of private security guards specifically on the wage and minimum wage protection and their practice in Ethiopian private security industries, Addis Ababa.

Finally, chapter five comes up with conclusions and recommendations.

CHAPTER-TWO

INTERNATIONAL AND NATIONAL DEVELOPMENT OF LABOUR RIGHTS AND LAWS

INTRODUCTION

This chapter seeks to deal with the development of labour rights both at international and national level which aimed to show that progressive development of labour rights was took in long time and is essential human rights issue. Also, it deals with international and national labour laws to shade light on legal protection given for labour rights.

Foremost, there is a debate whether labour rights are human rights or not. Some scholars support the character of labour rights as human rights confidently, while others view it with doubt. Concerning this issue, firstly, labour rights are human rights because one can be sure that labour rights are human rights by undertaking survey of international human rights instruments. For example labour rights are found in human rights instruments such as in UDHR articles 23 and 24, ICESCR articles 6, 7 and 8, ICERD article 5, CEDAW article 11, CRC article 32, ICRMW article 25, CRPD article 27 and ACHPR article 15, and at national level under FDRE Constitution Article 42 of FDRE Constitution, Proclamation No.1/1995. Secondly, since 1998, ILO adopted the Declaration of Fundamental Principles and Rights at Work.¹ The Declaration binds all ILO Member States, irrespective of whether they have ratified the relevant conventions, and contains four core rights: freedom of association and the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in employment. Thus ILO stated these labour rights as fundamental human rights. Also, since all human rights are indivisible, interdependent and interrelated, and cannot be enjoyed in isolation from each other², labour rights are human rights.³ The right to work is fundamental to human dignity and central to the survival and development of human

¹H Kellerson,(1998). The ILO Declaration of 1998 on Fundamental Principles and Rights: A Challenge for the Future, *137 International Labour Review* 223.

²Article 5 of the Vienna Declaration and Program of Action (1993) about the universality, indivisibility and interdependence of all human rights.

³Mantouvalou, V. (2012). Are Labour Rights Human Rights? UCL Labour Rights Institute On-Line Working Papers – LRI WP X/2012. Forthcoming in the 2012 *European Labour Law Journal*, page 1-27

personality.⁴ The labour rights are the everlasting nature that impose condition of human existence.⁵ Work is one of the most universal conditions of human existence, i.e. social activity where an individual or group puts in effort during a specific time and space, sometimes with the expectation of rewards in cash or kind, or with no expectation of reward, but with a sense of obligation to others.⁶

Juan Somavia, the former Director General of the ILO outlined three principles underlying the notion of decent work. Firstly, he argued that Labour is not simply a commodity, which like any other commodities on the market can be bought and sold. Rather it is human activity which cannot be reduced to something that can merely be bought and sold.⁷ Secondly, the notion of decent work has to be context based and defined on the premise established by people themselves within their social context.⁸ This is because decent work in developing and developed countries is not similar.⁹ The Decent Work Country Programme of the ILO serve as a vehicle through which decent work can be adopted in various countries based on their specific socio-economic climate. Thirdly, work often becomes part of our identity and a fundamental source of meaning, particularly when considering our contribution to society.¹⁰ Work is a source of dignity and it is linked to a person's sense of identity and self-worth.¹¹ The social value of work is realized not only by the employed, but also by those in their community. Work can help to decrease crime, enhances family and community cohesion, strengthen security, better education, healthcare and childcare.¹²

⁴The Michigan Guideline on the Right to Work available at: www.refugee.org.nz/Michigan/Work.html (accessed on September 25, 2016).

⁵Dillion, M.(2010). *Introduction to Sociological Theory: Theorists, Concepts and their Applicability to the Twenty-First Century*. Southern Gate: Wiley- Blackwell. p. 290.

⁶Webster, E. et al (2003). *Work and Organizations*, Cape Town: Oxford University Press. p.7.

⁷ILO (1999). *Report of the Director General: Decent Work to the 87th Session*. Geneva: ILO.

⁸Ibid.

⁹Webster, E. et al (2009). *A draft policy framework for the progressive realization of the goal of decent work in Gauteng*, SWOP, University of the Witwatersrand, assisted by the Department of Economic Development, Gauteng. p.4.

¹⁰Svendsen, L. (2008). *Work, Stocks field: ACUMEN*.p.29.

¹¹Webster, E. Supra note 6, p.4. See also General comment 18, by Committee on Economic, Social and Cultural Rights, on article 6 of ICESCR: the equal right of men and women to the enjoyment of all economic, social and cultural rights (Thirty-fifth session, 2006), U.N. Doc. E/C.12/GC/18 (2006).

¹²Ibid.

2.1. INTERNATIONAL DEVELOPMENT OF LABOUR RIGHTS

The development of labour rights came about gradually and before it acquired its contemporary status. The Industrial Revolution was the basis for the development of labour law and labour movement worldwide.¹³ During this period, major changes in agriculture, manufacturing, and transportation occurred and these changes had a profound effect on the social, economic, political and cultural lives of the people of Great Britain, and subsequently to the world society.¹⁴

In terms of social structure, the Industrial Revolution witnessed the triumph of a middle class of industrialists and businessmen over a landed class of nobility and gentry.¹⁵ Ordinary working people found increased opportunities for employment in the new mills and factories, but these were often under strict working conditions with long hours of labour dominated by a pace set by machines.¹⁶ However, harsh working conditions were prevalent long before the Industrial Revolution took place as well i.e. Pre-industrial society was very static and often cruel child labour, dirty living conditions, poor wage and long working hours were prevalent.¹⁷ The movement of people away from agriculture to industrial cities brought great stresses to many people in the labour force i.e both skilled and unskilled labourers lost their jobs as new machines replaced them.¹⁸ In the factories, people had to work long hours under harsh conditions, often with few rewards.¹⁹ Factory owners and managers paid the minimum amount necessary for a work force, often recruiting women and children to tend the machines because they could be hired for very low wages.²⁰ During that time

¹³Lewis Hackett,(1992). *Industrial Revolution*. Available at : <http://historyworld.org/Industrial%20Intro.htm> (accessed on 23 June, 2016). See also Industrial Revolution available at: http://en.wikipedia.org/wiki/Industrial_Revolution (accessed on 26 June, 2016).

¹⁴Ibid.

¹⁵Id.

¹⁶Id.

¹⁷Id.

¹⁸Industrial Revolution available at:http://encarta.msn.com/encyclopedia_761577952_2/Industrial_Revolution.html (accessed on 23 June,2016). See also Lewis Hackett, (1992). *Industrial Revolution* Available at <http://historyworld.org/Industrial%20Intro.htm> (accessed on 23 June, 2016).

¹⁹Ibid.

²⁰Id.

there were critics to stop this exploitation and the harsh working conditions for many in the mills was prevalent.²¹

To improve harsh working conditions and long work hours, the International Working men's Association took up the demand for an eight-hour day at its convention in Geneva in August 1866 declaring the legal limitation of the working day as a preliminary condition without which all further attempts at improvements and emancipation of the working class must prove abortive and the Congress proposes eight hours as the legal limit of the working day.²² Although there were initial successes in achieving an eight-hour day in New Zealand and by the Australian labour movement for skilled workers in the 1840s and 1850s, most employed people had to wait to the early and mid twentieth century for the condition to be widely achieved through the industrialized world legislative action.²³ The Eight hour day movement forms part of the early history for the celebration of Labour Day, and then 'May Day' in many nations and cultures.²⁴

On 21 April 1856, Stonemasons and building workers on building sites around Melbourne, Australia, stopped work and marched from the University of Melbourne to Parliament House to achieve an eight hour day. Their direct action protest was a success, and they are noted as the first organized workers in the world to achieve an eight hour day with no loss of pay.²⁵ In New Zealand, groups of workers had achieved the eight hour working day since the beginning of organized British settlement in 1840.²⁶

²¹Id.

²²Origin of the Eight-hour day available at: <http://ergo.slv.vic.gov.au/explore-history/fight-rights/workers-rights/origins-8-hour-day> (accessed on June 26, 2016). See also Eight-hour day available at: http://en.wikipedia.org/wiki/Eight_hour_day (accessed on June 25, 2016).

²³Ibid.

²⁴Ibid.

²⁵History of Labour Day available at: <https://www.dol.gov/general/laborday/history> (accessed on June 26, 2016). See also Labour Day, available at: http://en.wikipedia.org/wiki/Labour_Day (accessed on June 26, 2016).

²⁶Origin of the Eight-hour day, supra note 19.

In African countries, private employment sector covers 55 percent of working age people.²⁷ According to an ILO report, the African labour force in 2006 was approximately 368.8 million persons representing participation rate of 68.6 percent and African countries account for 11.9 percent of the world's economically active population.²⁸ Regardless of whether workers are employed in the formal or informal economy in African countries, there is a need for legislative protection. Labour laws exist in African countries to protect workers' rights, specifically in protecting wage payments to workers for work done. However, there are challenges when it comes to ensuring that all workers, regardless of their position, are properly paid. For example, non-payment or delayed payment of wages has been a severe problem in a number of African countries for over three decades.²⁹ Research in 2003 noted that severe wage debts concerns for workers were found in the Central African Republic, Benin, Chad, Ivory Coast, Guinea-Bissau, Madagascar, Niger, Senegal, and Togo.³⁰ A recent example of this was reported in Nigeria, where members of the Nigerian Legion Corps in rural outposts went 18 months without payment of wages and salaries.³¹ This is hardship for the workforce and their families, while it can also have consequences for local and national economies as these workers lose their ability to consume. This may then have a profound impact on economic development in the medium and long term in many of these countries.

2.2. NATIONAL DEVELOPMENT OF LABOUR RIGHTS

2.2.1. DEVELOPMENT OF LABOUR RIGHTS IN ETHIOPIA

In Ethiopia, development of trade and commerce, and manufacturing and industries are emerging phenomena for labour rights. Historically in Ethiopia, labour rights issues started to get recognition since early 20th century. Emperor Menelik II issued a Proclamation in 1908 which states:

²⁷Stampini, M. et al (2011). *How Large is the Private Sector in Africa? Evidence from National Accounts and Labor Markets*, IZA Discussion Paper 6267, Bonn, Institute for the Study of Labor.

²⁸ILO, (2009). *The informal economy in Africa: Promoting transition to formality: Challenges and strategies*, ILO Geneva.

²⁹ILO, (2003). *General Survey of the reports concerning Wages Convention (No. 95) and the Protection of Wages Recommendation (No. 85), 1949, International Labour Conference, 91st Session*, Geneva.

³⁰A. Linard (2002/3). *Wage debt – Africa's other plague in Labour Education*, No. 128, p.17-24.

³¹Daily Trust Newspaper, (2009). *Rebrand of Nigerian ministry to succeed only if wage arrears paid*.

Let those who insult the worker on account of his labour cease to do so. You, by your insults and insinuations, are about to leave my country without artisans who can even make the plough. Hereafter anyone of you who insults these people is insulting me personally.³²

During Emperor Haile Sillase I, the Revised Constitution of 1955 declared that every Ethiopian citizen has the right to engage in any occupation and to form and join any type of occupational association in accordance with the law.³³ Ethiopian Civil Code also enshrines provisions with regard to contract of employment in general and specifically covered conclusion of contract of employment and collective agreements, work of employee, wages, leave, safety precautions, accidents arising from work, occupational diseases, termination of contract of employment and compensation to be paid in the event of dismissal without good cause.³⁴ In 1962, the Labour Relation Decree was promulgated by the imperial government in accordance with article 92 of the Revised Constitution which gave the Emperor power to promulgate a decree during a parliamentary vacation.³⁵ The Decree as could be understood from its preamble, was promulgated to enhance higher standard of living for the people of Ethiopia through harmonious and voluntary cooperation of labour and enterprise, create conducive labour conditions, provide provisions for the settlement of labour disputes through collective bargaining between employers and employees or their lawfully established representatives, and create an institutional framework for the settlement of labour disputes. The Decree granted power to the Ministry of National Community Development (MNCD) to fix labour conditions which should not be less favorable than that provided in the Civil Code of 1960. The Decree also established a new procedure for the registration and legislation of employers' associations and labour unions, and set up conflict-resolving machinery, called the Labour Relations Board (LRB), and utter that strike in essential public service undertakings is unfair labour practice.

³²King Menelik- Proclamation of 1908. See also Mahari Redae, (2012). *Introduction to Employment and Labour Law*, available at: <http://www.abysinialaw.com/study-on-line/item/459-introduction-to-employment-and-labor-law#> (accessed on 26 June, 2016).

³³Article 47 of Revised Constitution Empire of Ethiopia Proclamation No. 149/1955.

³⁴Articles 2512-2593 of 1960 Civil Code of Ethiopia.

³⁵Labour Relations Decree No. 49/1962.

In 1963, parliament introduced certain amendments to the Decree of 1962 and passed it as the Labour Relations Proclamation.³⁶

The MNCD in 1964 issued Minimum Labour Conditions Regulation(MLCR) which provided detailed provisions on annual leave, public holidays, regular hours of work, compensation for overtime, and severance pay up to six months' salary in case of dismissal without good cause.³⁷

During the Dergue regime, Labour Proclamation No.64/1975 explicitly repealed Labour Proclamation No.210/1963.³⁸ In its preamble Proclamation No.64/1975 stated its purpose to improve the standard of living of the worker by freeing them from exploitation, expanding employment opportunities and eradicating unemployment, organizing workers in trade unions in line with socialist principles, attaining higher production through improved efficiency and systematic work methods as well as the participations of workers in the management of undertakings.

As private businesses were nationalized by the military government a year before the promulgation of the proclamation, the terms 'employer and employers association' were not included in the proclamation. The proclamation required undertakings to notify vacancies and employ workers through employment offices.³⁹

Proclamation No.64/1975 contained provisions on contract of employment, probation, transfer, severance pay and compensation, employment of Ethiopians abroad and employment of foreigners in Ethiopia, contract of apprenticeship, minimum labour conditions, trade unions, collective agreement, and trade dispute settlement.⁴⁰

In 1993, the Transitional Government of Ethiopia (TGE) promulgated Labour Proclamation No.42/1993 that repealed Labour Proclamation No.64/1975.

³⁶Labour Relations Proclamation No. 210/1963.

³⁷Minimum Labour Conditions Regulation 1964 and Legal Notice No. 302/1964.

³⁸Articles 111 and 114(1) of Labour Proclamation No.64/1975.

³⁹Ibid, articles 3-5.

⁴⁰Ibid

The FDRE Constitution Proclamation No.1/1995 was promulgated and recognized labour rights under article 42. Then, Labour Proclamation No. 377/2003 was repealed Labour Proclamation No.42/1993 is in operation now.

In Ethiopia, there is progressive development of labour laws which shows about labour rights issues. Even though Ethiopia has concerned to solve the problems of labour rights by revising their labour laws from time to time, still today there are problems of labour rights that have not acquire solution. For example, the right to setting minimum wage protection is one of the area has not acquired solution both by law and practice.

2.3. INTERNATIONAL LABOUR RIGHTS' LAWS

The international treaties are recognized the right of everyone to the enjoyment of just and favourable conditions of work under the ICESCR articles 6, 7 and 8, Universal Declaration of Human RIGHTS (UDHR) articles 23 and 24, International Convention on Elimination of Racial Discrimination (ICERD) article 5, Convention on Elimination of Discrimination against Women (CEDAW) article 11, Convention on Rights Child (CRC) article 32, International Convention on Rights of Migrant Workers (ICRMW) article 25, Convention on Rights of person Disabled (CRPD) article 27, ACHPR article 15, and ILO Conventions.

ILO deals with labour rights. The ILO was created in 1919 by Part XIII of the Versailles Peace treaty at the end of First World War⁴¹ and specialized agency of the United Nations family which intended to set international labour standards and bring governments, employers and trade unions together for united action in the cause of social justice and better living conditions everywhere.⁴² These ideas were grew out of nineteenth-century labour and social movements which culminated in widespread demands for social justice and higher living standards for the world's working people.⁴³

The ILO Constitution's Preamble states “The High Contracting Parties were moved by sentiments of justice and humanity as well as by the desire to secure the permanent

⁴¹History of ILO, available at:http://nobelprize.org/nobel_prizes/peace/laureates/1969/labour-history.html (accessed on 24 June, 2016).

⁴²Ibid.

⁴³Id.

peace of the world.” There was keen appreciation of the importance of social justice in securing peace, against a background of exploitation of workers in the industrializing nations of that time.⁴⁴ There was also increasing understanding of the world's economic interdependence and the need for cooperation to obtain similarity of working conditions in countries competing for markets.⁴⁵ Reflecting these ideas, the Preamble states universal and lasting peace can be established only if it is based upon social justice, and conditions of labour exist involving such injustice hardship and privation to large numbers of people as to produce unrest.⁴⁶ Thus, the peace and harmony of the world are jeopardized; and an improvement of those conditions is urgently required.⁴⁷ Also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries.⁴⁸ The areas of improvement listed in the Preamble remain relevant today, for example: Regulation of the hours of work including the establishment of a maximum working day and week, regulation of labour supply, prevention of unemployment and provision of an adequate living wage, protection of the worker against sickness, disease and injury arising out of employment, Protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, Organization of vocational and technical education, and other measures.⁴⁹

In addition to what the ILO Conventions mandated the International Code of Conduct for Private Security Providers a multi-stakeholder initiative convened by the Swiss Government that aims to clarify international standards for the private security industry, especially when it operates in complex environments, and improve security companies’ oversight and accountability.⁵⁰ In addition to providing the framework for

⁴⁴ILO mandate, available at: <http://www.ilocarib.org.tt/oldwww/misc/history.html> (accessed on 25 June, 2016).

⁴⁵Ibid.

⁴⁶Id

⁴⁷Id

⁴⁸Id.

⁴⁹Id.

⁵⁰The text of the International Code of Conduct and all related information on the initiative, available at: <http://www.icoc-psp.org/> (accessed on 27 June, 2016).

overall governance of the initiative, they will introduce a process for certifying that a company's systems and policies meet the ICOC's principles and standards; in-field monitoring of company performance; and a grievance mechanism to ensure that, should state or company mechanisms prove inadequate, individuals alleging human rights abuses involving ICOC signatories will have access to effective remedies.⁵¹ In addition, it also has an obligation to uphold the principles enshrined in the 1998 Declaration on Fundamental Principles and Rights at Work, which encourages ILO member states to respect the eight core Conventions, with or without ratification.⁵² ILO Conventions place an obligation on the government to respect, fulfill and refrain from violating the socio-economic rights of men and women in respect of decent and fair working conditions.⁵³ The ILO Conventions set international minimum standards of application and states those ratify them are expected to report on the progress of their implementation.⁵⁴

Many states of the world have been a member and ratified the ILO Conventions. Similarly, Ethiopia has been a member of the ILO since 1923, and up to 2006 ratified 22 out of 188 ILO Conventions which administered by the ILO.⁵⁵ Twenty-one are still in force, including eight Fundamental Conventions.⁵⁶

As per article 9(4) of FDRE Constitution which says "Any international agreement ratified by Ethiopia is an integral part of the law of the land." Therefore, these ILO Conventions have had a significant influence on Ethiopian labour legislations. This research revealed that Ethiopia still not ratifying ILO Conventions which set

⁵¹Ibid.

⁵²Ibid.

⁵³The ILO Constitution which established in 1919 that has been modified by the amendment of 1922 which entered into force on 4 June 1934; the Instrument of Amendment of 1945 which entered into force on 26 September 1946; the Instrument of Amendment of 1946 which entered into force on 20 April 1948; the Instrument of Amendment of 1953 which entered into force on 20 May 1954; the Instrument of Amendment of 1962 which entered into force on 22 May 1963; and the Instrument of Amendment of 1972 which entered into force on 1 November 1974.

⁵⁴Ibid.

⁵⁵ILO Conventions ratified by Ethiopia, available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::no:11200:p11200_country_id:102950 (accessed on June 25, 2016).

⁵⁶Ibid.

minimum wage⁵⁷, and although the government has ratified and domesticated some ILO Conventions, their implementation in the private security industry remains a major challenge. The ILO has adopted 188 conventions and out of these Ethiopia ratified only 21 conventions. From 21 conventions except seven of them all others are ratified before the coming of FDRE Government.⁵⁸ These show that FDRE Government has no attention for ILO Conventions.

2.4. NATIONAL LABOUR RIGHTS' LAWS

2.4.1. ETHIOPIAN CURRENT LABOUR RIGHTS' LAWS

Current Ethiopian Labour Laws which govern the labour rights issues include the FDRE Constitution, Labour Proclamation No.377/2003(amended by Proc. No. 466/2005 & No. 494/2006), ILO Conventions those ratified by the country, FDRE Supreme Court Cassation Division Decisions, Directives issued by the Ministry of Labour and Social Affairs, Collective Agreement and Work Rules.

Firstly, the FDRE Constitution which is the supreme law of the land does expressly provide for the realization of socio-economic rights such as 'Labour Rights.'⁵⁹ Ranges of general principles of Labour Rights are stated in the FDRE constitution. Such principles are the right of the security of the person⁶⁰, the prohibition against inhuman treatment and the abolishment of slavery and servitude⁶¹, forced and compulsory labour⁶², freedom of association⁶³, and also specifically article 42 of the FDRE Constitution provide Labour Right which says:-

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 and employment conditions. This right shall include the

⁵⁷ILO Conventions not ratified by Ethiopia, available at: http://www.ilo.org/dyn/normlex/en/f?p=normlexpub:12100:0::no:12100:p12100_instrument_id:312226:no (accessed on 25 June, 2016).

⁵⁸Desset Abebe Teferi, (2013). Trade Union Rights of Government Employees in Ethiopia. *Long Overdue, Ethiopian Journal of Human Rights*. Published by the Center for Human Rights School of Governance Studies of Addis Ababa University. Vol. I, p. 118-119.

⁵⁹Article 42 of FDRE Constitution, Proclamation No.1/1995.

⁶⁰Ibid, article 16.

⁶¹Id, article 18 (2).

⁶²Id, article 18 (3) and (4).

⁶³Id, article 31.

right to form trade union and other associations and to negotiate with their employers and other organizations affecting their interests.

The Right to Strike is explicitly mentioned in article 42 (1) (b) of the FDRE Constitution. Article 42(2) of FDRE Constitution provides Workers have the right to reasonable limitation of working hours, to rest, to leisure, to periodic leaves with pay, to remuneration for public holidays as well as healthy and safe work environment.

Generally, FDRE Constitution is among other things that grants rights to labour such as reasonable limitation of working hours, rest, periodic leave with pay, remuneration for public holidays as well as healthy and safe work environment, form associations, bargain collectively with employers, and express grievances including the right to strike.⁶⁴ However, the Constitution does not say anything about minimum wage protection for all employees, specifically for private employment sectors employees including private security guards.

The Labour Proclamation No.377/2003 and other labour laws should observe and be consistent with the labour rights enshrined in the FDRE Constitution. If they infringe the Constitutional rights, they would be declared unconstitutional and would have no legal effect.⁶⁵ Accordingly, the proclamation covers labour rights such as contract of employment, duration, obligation of parties, unlawful activities, suspension, termination of contract of employment with notice and without notice, severance pay, reinstatement or compensation, home work contract, contract of apprenticeship, hours of work and overtime, leave, working conditions of women and young workers, occupational safety and health measures to be observed, occupational injuries and occupational disease, trade unions and employers' associations, collective agreement, labour Courts and the Labour Relation Board, strike and lockout, period of limitation, labour administration, employment service and labour inspection service, and penalty provisions. This coverage of the labour proclamation shall be applicable to employment relations based on contract of employment that exists between an employee and an employer. The proclamation shall not be applicable to contracts made for the purpose of upbringing, treatment,

⁶⁴Id, article 42.

⁶⁵ Id, article 9(1).

care or rehabilitation, contracts made for the purpose of educating or training other than apprenticeship, contracts made with managerial employees, contracts made for personal service for non-profit making purposes, contracts relating to employees of state administration and contracts relating to independent contractors.⁶⁶

ILO Conventions and others international conventions ratified by Ethiopia and have connection with labour rights, as indicated in article 9(4) of the FDRE Constitution all international agreements ratified by Ethiopia are an integral part of the law of the land. Accordingly, ILO conventions which are ratified by Ethiopia are an integral part of the labour law of country and thus are expected as part of the FDRE labour laws.

In case of cassation decisions where the lower courts decisions have fundamental error of law, the FDRE Federal Supreme Court shall have the power of cassation over (1) final decisions of the Federal High Court rendered in its appellate jurisdiction; (2) final decisions of the regular division of the Federal Supreme Court; and (3) final decisions of the Regional Supreme Court rendered as a regular division or in its appellate jurisdiction.⁶⁷

Thus, when one of the parties to a case petitions to the Federal Supreme Court Cassation Decision (FSCCD) on the ground that the final decision rendered on the case contains fundamental error of law, and when it is determined that the case be heard in cassation, the case shall be heard by the FSCCD with not less than five judges sitting.⁶⁸ Interpretation of a law rendered by court shall be binding on federal as well as regional courts found at all levels. Accordingly, the court has given many decisions regarding the interpretation of labour law articles.

Labour Proclamation No.377/2003 article 170(1) gives power to the Ministry of Labour and Social Affairs (MOLSA) to issue directives necessary for the implementation of the proclamation, i.e. directives regarding occupational safety, health and protection of working environment, standards of working conditions, procedures for the registration of job seekers and vacancies as well as procedures for the reduction of work force, etc. MOLSA has issued directives on procedures of reduction of labour force, establishment of committees at enterprises which

⁶⁶Article 3(2) (a-f) of FDRE Labour Proclamation No.377/2003.

⁶⁷Article 10 of FDRE Federal Courts Proclamation No.25/1996.

⁶⁸Ibid, article 21(2)(c).

follow implementation of safety and health conditions, on works prohibited for young workers, works prohibited for pregnant women and guidelines on work and working procedure of the Labour Advisory Board. This board is established by the Ministry to study work conditions, the safety and health of workers and the labour law in general and give advisory opinion to the Ministry. Under articles 185 and 186 of the Proclamation, it is indicated that violation of the proclamation and directives issued in accordance with the proclamation is considered as an offence.

According to article 124(1) of the Proclamation collective agreement means an agreement concluded in writing between one or more representatives of trade unions, and one or more employers or agents or representatives of employer organizations on 'conditions of work.'⁶⁹ As stated in article 133(2) of the Proclamation, a collective agreement shall have a legal effect on the parties as from the date of signature. Thus, enterprises that have concluded collective agreements with trade unions should observe the agreements as part of the labour law.

Article 2(5) of the Proclamation defines work rule as internal rules which govern working hours, rest period, payment of wages and the methods of measuring work done, maintenance of safety, prevention of accidents, disciplinary measures and its implementation as well as other conditions of work.

Private Organization Employees' Pension Proclamation No.715/2011 has been promulgated as part of the country's social policy to expand the social security system to cover employees of private organizations who are Ethiopian nationals. According to article 10(1) of the proclamation, employers of private business enterprises are obliged to contribute 11 percent of the monthly salaries of their employees to the Private Organization Employees' Pension Fund established in accordance with the proclamation.

The ILO adopted a Convention 181/1997 to regulate the triangular employment relationship.⁷⁰ This convention though seems at odds with workplace realities in designating the Temporary Employment Agency(TEA) as the employer of the workers it provides for its client, has contributed towards the protection of employees involved in triangular employment relationships. To mention some of

⁶⁹ FDRE Labour Proclamation No.377/2003, supra note 66, art.124(2).

⁷⁰Private Employment Agency Convention No.181/1997.

its provisions: the convention requires member states to take measures to ensure that workers placed by TEA are not denied their right to freedom of association and bargain collectively and are not subjected to discrimination.⁷¹ The convention also requires states to take measures to adequately protect workers placed by TEA with regard to minimum wage, working time and other working conditions, statutory social security benefits, access to training, safety and health, compensation and maternity protections.⁷² To implement ILO Convention No.181/1997 in national level, the FDRE Government enacted the Employment exchange services proclamation No.632/2009, and Ethiopia's Overseas Employment Proclamation No.923/2016.

The employer has obligation under article 12(8) of the Proclamation No.377/2003 to observe the provisions of the proclamation, regulation, collective agreement, work rules, directives and orders issued in accordance with the law. Private security industry in Ethiopia private security industries are employers that have an obligation to observe FDRE Constitution, international laws that Ethiopia ratified, FSCCD, proclamations, regulations, collective agreements, work rules, directives and orders as per article 12(8) of Proclamation No.377/2003 to respect the labour rights of private security guards.

CONCLUSION

The upshot of the discussion in this chapter is that there was the development of labour rights and laws at international level and at national level in Ethiopia which includes labour rights of private security guards. All international labour laws ratified by Ethiopia are integral part of Ethiopian laws and national labour laws enacted by Ethiopia have effect on labour rights of private security guards in Ethiopian private security industry. Current Ethiopia labour laws governing employment relationships such as article 3(2) of Labour Proclamation No.377/2003 has not excluded the applicability of Proclamation on private security guards, and also article 2(1) (b) of Employment Exchange Services Proclamation No.632/2009 and Ethiopia's Overseas Employment Proclamation No.923/2016 allow triangular contract of employment relationship which include employment relationships among private security industries(as employers), private security guards(as employees) and organizations

⁷¹Ibid, articles 4 & 5.

⁷² Id, article 11 (a-j).

where security guards work(as clients) in Ethiopia. The Ethiopian courts have jurisdiction to adjudicate cases relating to violations of labour rights of private security guards in the same manner that they adjudicate violations of labour rights of other workers governed under Labour Proclamation No.377/2003 and other laws. This research revealed that Ethiopia still not ratifying ILO Conventions which set minimum wage protection, and although the FDRE Government has ratified the ICESCR which recognized the minimum wage protection law, Ethiopia yet promulgate the rights of minimum wage protection for private sectors employees such as private security guards working in private security industries in their national labour laws governing private employment relationships. Therefore there is no law that set minimum wage protections in Ethiopian labour laws.

CHAPTER-THREE
THE LEGAL FRAMEWORKS FOR PRIVATE SECURITY
INDUSTRY

INTRODUCTION

This chapter seeks to explain available legal frameworks both at international and national levels that were aimed at ensuring the accountability of private security service providers while providing security services. In doing so, frequent references and reliance will be made to any attempt, if any, made by the international community to crystallize international law regime in the field of private security providers regulation. Besides, the experiences of countries with a strong private security legal framework such as South Africa and India have been consulted. Finally, legal analyze whether adequate legal framework upon which private security providers base their legitimacy to exercise and provide security services within the Ethiopian legal context.

3.1. INTERNATIONAL LEGAL FRAMEWORK FOR PRIVATE SECURITY
INDUSTRY

To begin with international legal frameworks, ICOC was finalized in September 2010 and opened for signature on 10 November 2010.¹ As of September 2013, 708 companies had become signatories.² Most of the signatory companies are from UK, USA, Sweden, Canada, South Africa and India.³ Neither private security industries from Ethiopia signed the ICOC⁴ nor did Ethiopian government still enact proclamation or regulation as of South Africa and India which regulate both private security industries and private security guards operating in the country.

¹Jerbi, S. (2013). *The International Code of Conduct for Private Security Service Providers*, Geneva Academy of International Humanitarian Law and Human Rights, Academy Briefing No.4, p.1.

²Ibid.

³Complete List of Signatory Companies to the International Code of Conduct for Private Security Service Providers as of 1 September 2013 – Version with Company details available at: <https://business-humanrights.org/sites/default/files/media/bhr/files/Signatories>(accessed on 16 October, 2016).

⁴Ibid.

The preamble of ICOC affirms the fact that in providing security services, the activities of Private Security Companies can have positive and negative consequences for their clients, the local population in the area of operation, the general security environment, and the enjoyment of human rights and the rule of law.⁵ The signatories to this code are private security service providers.⁶ The code is by itself creates no legal obligations and no legal liabilities on the signatory companies, beyond those which already exist under national or international law.⁷ The Signatory Companies affirm that they have a responsibility to respect the human rights, and fulfill humanitarian responsibilities towards all those affected by their business activities, including personnel, clients, suppliers, shareholders, and the population of the area in which services are provided.⁸

The purpose of the code is also clearly outlined as a commonly agreed set of principles for private security service providers and to establish a foundation to translate those principles into related standards as well as governance and oversight mechanisms.⁹ Particularly, to operate in a manner that recognizes and supports the rule of law; respects human rights, and protects the interests of their clients; to take steps to establish and maintain an effective internal governance framework in order to deter, monitor, report, and effectively address adverse impacts on human rights.¹⁰ ICOC sets minimum international standards within which private security providers operate. In this regard, this framework could be developed and adjusted to the needs of private security providers within the territory of states as a national standard.

Therefore, a closer scrutiny is required in controlling or watching private security providers that whether their operation really conforms to the ICOC at least as a minimum international standard.

⁵International code of conduct for private security providers which developed by Swiss confederation in September 2010.

⁶Ibid.

⁷Id, paragraph 14.

⁸Id, paragraphs 4 and 5.

⁹ Id, preamble.

¹⁰Id, paragraph 6.

3.2. NATIONAL LEGAL FRAMEWORKS FOR PRIVATE SECURITY INDUSTRY: EXPERIENCES OF TWO COUNTRIES

The reason for focusing on the experiences of South Africa and India is that most of Private security industries from South Africa and India signed ICOC, and South Africa and Indian law which deals with private security industries has incorporated general principles and standards of ICOC, and also has issue of minimum wage protection.

Also South Africa and India have long experiences on private security industry. For example South Africa amended private security industries law five times from 1987 to 2001. Indian laws on private security industry is deliberately established controlling authority, delimited and delineated security activities, clearly defining duties of private security industries in regulating the conduct of their private security guards.

3.2.1. LEGAL FRAMEWORK FOR PRIVATE SECURITY INDUSTRY IN SOUTH AFRICA

As global trends for the rapid growth of private security service providers, the South Africa is no exception in this sector. The most important factor behind such rapid growth of private security was crime explosion which was attributable to the inability of the criminal justice agencies to reduce crime and punish offenders.¹¹ Especially, the reduction of quality of police service due to reduction of personnel and lack of resources necessitated the public to look at private security providers for assistance.¹² As crime increased throughout the country, private security providers have begun to provide selected services to township residents for whom able to afford them.¹³ As a result, many individuals and corporate sectors who can afford to do so, engage the services offered by the private security industry. Due to gaps created in public policing sector, South African private security providers engaged in increasingly performing functions which used to be the sole preserve of the police.¹⁴

¹¹Louw, A. (1997). Surviving the transition: trends and perceptions of crime in South Africa, *Social Indicators Research. Vol. 41*, page-137-168.

¹²Ibid.

¹³Id.

¹⁴ Id.

In the late 1980s, South Africa had already become conscious of the explosion of the private security providers and the fact that it was largely remained unregulated.¹⁵ In addition, there was an alert on the part of the government that the existing security providers were increasingly performing duties previously within the ambit of the public police and therefore, needs greater degree of accountability.

Accordingly, different legislations were enacted in South Africa to primarily regulate private security providers. For instance, the Security Officer's Act 92/1987 was enacted and then amended several times to respond to certain shortcomings i.e. the Security Officers' amendment Act No.25/1990, No.119/1992, No.104/1997 and finally the Private Security Industry Regulation Act No.56/2001. These legislations are applicable to all industries and individuals providing 'Security Services' for wages in South Africa.

In its preamble, the Act provides for the important role of private security providers in 'safeguarding the adequate protection of fundamental rights to life and security of the person as well as the right not to be deprived of property, as a fundamental right to the well-being and to the social and economic development of every person.'¹⁶ However, it also clearly mentioned the necessity to achieve and maintain a trustworthy and legitimate private security industry which acts in terms of the principles contained in the Constitution and other applicable law, and is capable of ensuring that there is greater safety and security in the country.¹⁷

Furthermore, important features are also incorporated within the body sections of the Act. For instance the duty of private security company and 'private security officer to be registered'¹⁸ controls bodies that sees the enforcement of the Act.¹⁹ List of activities were outlined as security services falling within the realm of private security providers. Particularly, the provision of security to a client by means of monitoring electronic equipment, installing alarm systems and providing an armed response

¹⁵Berg, J. (2007). *The accountability of South Africa's Private Security Industry: Mechanisms of control and challenges to effective oversight*, Published by the Criminal Justice Initiative of the Open Society Foundation of South Africa, page.8.

¹⁶Preamble of Private Security Industry Regulation Act No.56/2001 of Republic of South Africa.

¹⁷Ibid.

¹⁸Id, section 20(1)(a).

¹⁹Id, section 4.

service are important security services that private security providers share with the public police as a security aspect of crime prevention.²⁰

Also, the Act aimed to promote the protection and enforcement of the rights of security guards and other employees in the private security industry.²¹ For instance, through inspection the Act is to ensure the payment of minimum wages and compliance with standards aimed at preventing exploitation or abuse of employees in the private security industry, including employees used to protect or safeguard merely the employer's own property or other interests, or persons or property on the premises, or under the control of the employer.²²

In South Africa, Private Security Sector Minimum wages differ based on areas and grades. For example Alberton, Bellville, Benoni, Boksburg, Brak pan, Camper down, Chatsworth, Durban, Germiston, Good wood, Inanda, Johannesburg, Kempton Park, Krugersdorp, Kuils River, Mitchell's Plain, Nigel, Oberholzer, Paarl, Pinetown, Port Elizabeth, Pretoria, Rand burg, Randfontein, Roodepoort, Sasolburg, Simon's Town, Springs, The Cape, Uitenhage, Vanderbijlpark, Vereeniging, Westonaria, Wonder boom and Wyn berg are grouped under area one and under these areas the minimum wage for private security guards for grade 'A' is R4,896(US \$384.9), grade 'B' R4,387(US \$344.88), grade 'C' R3,797(US \$298.50) and grade 'D' and 'E' R3,792(US \$298.11).²³

Bloemfontein, East London, Kimberley, Klerksdorp, Pietermaritzburg, Somerset West, Stellenbosch and Strand are grouped under area two and under these areas the minimum wage for private security guards for grade 'A' is R4, 474(US \$351.72), grade 'B' R4, 004(US \$314.77) and grade 'C' R3,489(US \$274.29).²⁴Maximum permissible working hours per week for each respective category of employee is 48 hours.²⁵

²⁰Id, section 1.

²¹Id, section 3(m).

²²Id, section 28(3)(b).

²³Private Security Sector monthly salary rates for year 2 which effect from 1 September 2016: What workers and employers should know about minimum wages and conditions of employment, the Department of Labour Available at: www.labour.gov.za (accessed on February 25, 2017). Emphasis added that 1 US dollar =12.72 South African Rand on March 18, 2017.

²⁴ Ibid

²⁵ Id

More importantly, Criminal Procedure Act No.51/1977 of South Africa gives the National Commissioner of the South African Police Service to delegate in certain circumstances the powers of a police officer to private security officers. These delegations of powers may raise certain questions in South Africa with regard to private security provision. Such questions are: First, is it private security providers become involved in traditional policing activities, or in a subsidiary capacity? Second, may the unavailability of public police to provide security to the public, major concern was raised on the feasibility of delegating or outsourcing public police power to private security providers to fill such policing gap? Such issues may appear to be at the root of much of the problems, resentments and distrust between public and private security.

The position in this regard is confirmed on grounds of constitutional responsibility incumbent upon public police as stipulated under South African constitution. To use the language of the constitution says:

The objectives of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.²⁶ South African Constitution clearly stated the issues of 'security services' as: The security services of the Republic consist of a single defense force, a single police service and any intelligence services established in terms of the Constitution.²⁷

Thus, the Constitution is very clear and it is the responsibility of the public police to prevent crime, maintain order, protect and secure inhabitants and their property within the territory of South Africa without any distinction of being poor or rich, government buildings or private business organization i.e. the power to ensure the security and safety of persons and property is not given for private security industry from the whole reading of South African constitution. At this point two questions must be addressed concerning South African public and private security sector debate. The first question is what is the constitutional status of private security providers who are engaged in crime prevention and combat that was constitutionally reserved to public police? This question even challenges the very constitutionality of granting license to private security industry to provide security service as defined by Private Security

²⁶Section 205 (3) of the Republic of South African Constitution Act No.108/1996.

²⁷Ibid, section 199(1).

Industry Regulation Act. The second question is what solution is available for individuals and corporate sectors who are dismayed by the inefficiency of public police in preventing and combating crimes if such area of security is constitutionally monopolized by the same? Can individuals or business organizations who can afford be forced to pay for their private security? Therefore, these are important questions to address the 'grey area' in the context of South Africa regarding private security, particularly, given the greater opportunity of private security providers in combating crimes amid crime explosion and public police inability. Conceivably, one possible solution may be provided to address the concern. That is privatization of certain sector of criminal justice to private security providers under the guise of efficiency. Such opportunity provides private security providers a legitimacy to render security service. It also gives private individuals an opportunity to shop security service that fits to their demands without any restriction from anybody.

Generally, in the South African context there was an early realization that the growing private security industry could not be allowed to operate unregulated and only being controlled entirely by market forces. There has been also uneven acceptance of private security personnel involvement in policing and crime prevention activities with certain quarters showing a great deal of opposition with a number of arguments for and against private security playing any role whatsoever. A final position was that stricter regulating was needed to reign in and control a powerful and growing industry which it was feared posed a threat to the developing democracy.

3.2.2. LEGAL FRAMEWORKS FOR PRIVATE SECURITY INDUSTRY IN INDIA

Like any country, the proliferation of private security providers in order to address the increasing demand for security, particularly, 'the growing tendency to hire security guards from private sources by an industrial or business has created a worry.'²⁸ Particularly, there has been a growing concern about the manner of functioning of private security providers, many of which seem to conduct their operations without due care for verifying the experiences of the personnel employed as private security guards and supervision.²⁹

²⁸Preamble of Republic of Indian Private Security Agencies Act No.29/2005.

²⁹Ibid.

Furthermore, the establishment of private multi-national security providers has created a serious security implications necessitating for their proper regulation.³⁰ The dangers are also posed by the employees of private security providers in many ways.³¹ For instance, encroaching upon the duties of the police, using weapons in an illegal manner and wearing uniforms which resemble those of the police, involving in criminal activities are few to mention.³² In order to address the above challenges, India enacted controlling authority that regulates whether private security providers are running within the legal parameters and are accountable to regulatory mechanism. This regulatory authority is empowered to grant or revoke licenses of private security providers as the case may be. Therefore, in India, it is illegal to practice private security service without holding license. Indian private security regulation Act defines:-

Private security as ‘security provided by a person, other than a public servant, to protect or guard any person or property or both and includes provision of armoured car service’³³, also, ‘private security guard’ as ‘ a person providing private security with or without arms to another person or property or both and includes a supervisor’³⁴ and ‘private security agency’ means ‘a person or body of persons other than a government agency, department or organization engaged in the business of providing private security services including training to private security guards or their supervisor or providing private security guards to any industrial or business undertaking or a company or any other person or property.’³⁵ The Act also provides verification of experiences as an eligibility criterion for license. Particularly, it provides for list of persons who are not eligible for license on grounds of criminal conviction and misconduct. It also provides for eligibility criteria to be a private security guard such as minimum and maximum age requirements, conduct and criminal conviction.

The Act also imposes a duty on private security agency to provide trainings and skills to its private security guards and supervisors. Especially, the agency is duty bound to assign supervisory power preferably to those individuals who have not less than three

³⁰Id.

³¹Id.

³²Id.

³³Id, section 2(f).

³⁴Id, section 2(h).

³⁵Id, Section 2(g).

years experience in serving in Army, Navy, Air Force, Police Force and Home Guards.

The conditions under which the license of private security agency is suspended or cancelled are outlined in the Act. The Controlling Authority may cancel the license of Private Security Agency on the following grounds. That the license holder is or has willfully failed or refused to render the services agreed to any person, that there have been repeated instances when the private security guard or guards provided by the private security agency-

- (i) failed to provide private security or were guilty of gross negligence in not providing such security; (ii) committed a breach of trust or misappropriated the property or a part thereof which they were supposed to protect; (iii) were found habitually drunk or undisciplined; (iv) were found to be involved in committing crimes; or (v) had connived or abetted a crime against the person or property placed under their charge; or (l) that the license holder has done any act which poses a threat to national security, or did not provide assistance to the police or other authority in the discharge of its duties or acted in a manner prejudicial to national security or public order or law and order. Also, issues of suspension, appeal are provided in this Act.³⁶

Concerning minimum wage regulation for private security guards employed by private security agency in India, Act No.29/2005, under section 13(1) (j) refers the minimum wage regulation for security guards to Act No.11/1948 which says the Controlling Authority may cancel the license holder that violated the provisions of the minimum wages Act 11/1948 i.e. the minimum wage protection for private security guards in India regulated by Act 11/1948. Accordingly minimum wage for private security guards in India is 15,000 Indian Rupees (US \$229.07) per month.³⁷ For highly skilled security guards minimum wage is 25,000 India Rupees (US \$ 381.79) per month.³⁸

In general, Indian regulatory legal framework for private security industries shows how government pays attention to regulation and accountability of private security providers by identifying the magnitudes of problems posed by the sector. Especially,

³⁶Id, section 13.

³⁷Security Guards Minimum Monthly Wage. Available at:<http://indianexpress.com/article/india/india-news-india/security-guards-to-get-minimum-monthly-salary-of-rs-15000-says-bandaru-dattatreya/> (accessed on 26 February, 2017). Emphasis added that 1 US dollar =65.48 Indian Rupee on March 18, 2017.

³⁸ Ibid

Indian experience is worth consulting as it deliberately established controlling authority, delimited and delineated security areas that can be provided by private security, clearly defining duties of private security agencies in regulating the conduct of their private security guards, and in improving their skills through trainings and etc. Finally, license is used to regulate the quality of security services provided by private security providers. That means, only those licensed private individuals are allowed to provide security service, and measures of cancellation or suspension of license is used to force private security providers to live up to the standards of the law.

3.3. LEGAL FRAMEWORKS FOR PRIVATE SECURITY INDUSTRY IN ETHIOPIA

In this section, first to explain factors that contributed to the proliferation of private security service providers in Ethiopia.

Second, it clarified the fragmented powers and functions of different federal ministries that supposedly have a stake in regulating private security service providers despite the absence of clear legal frameworks in this regard. The role and appropriateness of these federal executive organs in regulating private security service providers is also equally important to give a clear account of regulatory framework in Ethiopian context.

Thirdly, discussing general legal tools within which private security service providers drive their legitimacy to render security service as the overall package of crime prevention and business venture.

The first issue, the momentum for the growth of private security providers in Ethiopian context is attributable to different factors. First, currently the tendency and opportunity of private individuals to be involved in business activity is ever increased compared to previous regimes. In this regard, globalization has played its role in introducing certain areas of business endeavors to Ethiopia which is no exception to private security service business. Secondly, purpose of outsourcing is to improve companies' services deliver by focus on core function i.e. it enables managers of originations to focus on core functions and strategies.³⁹ Thus, the context of private security service in Ethiopia must be seen in light of these developments and reasons

³⁹ Abebe Maru Feleke, (2015). *Challenges and Prospects of Outsourcing: The Case of Commercial Bank of Ethiopia*, Addis Ababa University College of Business and Economics Department of Public Administration and Development Management, unpublished thesis.p.54.

that major private hotels, private banking, insurance sectors, public higher education institutions in Addis Ababa has opted for outsourcing security service to private security providers.

The next task is identifying whether there is any legal framework within which private security providers are regulated in Ethiopian context? Who is an appropriate authority to regulate private security providers? Given the nature of the security service business, what are the controlling mechanisms? Thus, in order to answer these questions a closer scrutiny was done in to legislative frameworks of powers and functions of Federal Democratic Republic of Ethiopian executive organs.

The role of Federal Attorney General (FAG) and Federal Police Commission (FPC) is relevant as private security providers are actively engaged in crime prevention within Ethiopian criminal justice system. At federal level, the FAG has the power and duty as a supervisory authority, to supervise the overall activities of crime prevention, investigation and prosecution by directing the Federal Police force.⁴⁰ In this regard, FAG may play its role in deciding who must or must not engage in the service of crime prevention as an appropriate executive organ directly involved in enforcement of criminal law.

Under the FAG, the FPC was also organized by law as a strong civil institution with the power and duty to serve the public, respects, ensures the observance of human and democratic rights, and maintains peace and welfare of the public.⁴¹ Among other things, the FPC was entrusted with the general objectives to maintain peace and security of the public by complying to, and enforcing the Constitution and other laws of the country, and by preventing crime through participation of the people.⁴² Further powers and functions of the FPC which has particular relevance to the context of security service are also enumerated in proclamation No.720/2011. For instance, safeguard institutions of the Federal government; provide security protection to higher officials of the Federal government and dignitaries and diplomats of

⁴⁰Article 6 of Federal Attorney General Establishment Proclamation No.943/2016 of Federal Democratic Republic of Ethiopia Negarit Gazeta 22nd year No. 62. See also Article 16 Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 916/2015 22nd year No.12.

⁴¹The Preamble of Ethiopian Federal Police Commission Establishment Proclamation No. 720/2011 of Federal Democratic Republic of Ethiopia (amended by Proc. No. 944/2016).

⁴²Ibid, article 6.

foreign countries and install C.C.TV cameras at appropriate places to facilitate the prevention and investigation of crime.⁴³

The most relevant provision of the FPC Proclamation to the discussion at hand is the concepts of delegation. Under proclamation 313/2003, FPC is entrusted to delegate its powers and functions for execution such functions to other organs or civil servants when it deems necessary.⁴⁴ Thus, a closer look at article 7(16) of this proclamation is essential to establish, at least, the legitimacy within which private security providers drive the authority to prevent crime within the context of Ethiopian Criminal Justice System. What does the phrase ‘by preventing crime through participation of the people’ in article 6 show? Is it aimed at recognizing the role of private security providers in crime prevention? Similarly, what does ‘other organs’ under article 7(16) shows? Does ‘other organs’ signify the necessity of delegating public police powers and functions to private security providers? Within the context of out-sourcing, delegation of certain police powers and function to capable and trustworthy private security service providers are also relevant. Delegating certain police powers to private security providers that are more unlikely to affect the interest of the government could be one dimension to understand the role of private security service providers as ‘other organs’. Conceptually, delegating such police powers is only means to help public police to focus on more important policing issues in defending a more important interest of the government and the public in criminal matters. In this sense, there is clear security service issues provided in Federal Police Proclamation that were traditionally reserved to private security providers. For instance, safeguard institutions of the Federal government; provide security protection to higher officials of the Federal government and dignitaries and diplomats of foreign countries are the specialties of private security service providers in South Africa and India as noted before. It must be in this context that private security service providers in Ethiopia are providing security services to vital institutions of the federal such as Federal Public Universities, and to private business organizations like banks and insurance companies, hotels, different industrial sectors etc. Thus, the effect and positive understanding of these articles is important and what it means to private

⁴³Ibid, articles 5 and 6.

⁴⁴Article 7(16) of Ethiopian Federal Police Commission Establishment Proclamation No.313/2003 of Federal Democratic Republic of Ethiopian Negarit Gazeta 9nd year No.30.

security providers in Ethiopian context i.e. indirectly recognize the role of private security providers and their legal legitimacy in Ethiopian law.

Under the presently functioning Proclamation No.720/2011 of FPC establishment, the Proclamation has no phrase ‘other organs’ instead of that it says ‘governmental offices’⁴⁵ which means completely reverse the inference of the existence of legal frameworks for private security providers in Ethiopian perspective. However, article 6(28) state that Ethiopian FPC issue certificates of competence to private institutions wishing to engage in providing security service.⁴⁶ This shows the recognition of the role of private security providers and their legal legitimacy in Ethiopian law. Therefore, the positive understanding for crime prevention with the coordinated effort of the public and within such context recognizing the role played by private security service providers will tempt someone to declare the possibility of legal room within which private security service providers legitimately function. In this sense, recognizing the role played by private security service providers in combating and preventing crime at least within a confined area is meant no less than providing a greater opportunity to the government in mobilizing the resources of citizens to help the efforts of the public police in the maintenance of peace and order. This is what one can easily understand from the role of private security providers in the context of South Africa and India as noted before.

There was no clear rule to decide what and what not police powers and functions must or must not be delegated to private security service providers. It all dependent on its legal and policy implications on the overall effort to attain policing objectives as clearly defined at the outset. Be it the sole effort of public police, be it the coordinated effort of the public, and be it the role played by private security service providers, all issues boils down to the prudent answer to the question, what are the efficient ways of combating and preventing crimes to ensure peace and order? In this regard consulting the best practice of countries like South Africa and India as done in this research is important to understand the magnitude.

Understanding the powers and functions of Ministry of Trade (MOT) is also relevant as it is empowered to license and register any business activity within the federal

⁴⁵Federal Police Commission Establishment Proclamation No.720/2011 of Federal Democratic Republic of Ethiopia, supra note 41, Article 23.

⁴⁶Ibid, article 6(28).

jurisdiction.⁴⁷ Every Ethiopian has the constitutional right to choose his or her means of livelihood, occupation and profession, including the business of security service.⁴⁸ Thus, as a business venture, Ethiopian commercial and trade laws require such activity to be registered by MOT at the federal level.

In this regard, the powers and functions of MOT is sole related with its business aspect and bear no relevance within the context of crime prevention. However, its licensing power could be harnessed within the context of controlling mechanisms in cancelling or suspending the license of private security providers in violations business ethics and appropriate regulatory laws. But once again, given the nature of security service business, MOT is not appropriate executive organ to regulate private security service providers in Ethiopia.

Ministry of Labour and Social Affairs (MOLSA) has also the mandate to register private service providers and regulate social and labour relations.⁴⁹ Here, with regard to regulatory aspects of social and labour relations that may possible arise within the context of private security service providers, the role played by this Ministry may be important. Particularly, as noted before, private security service providers are motivated by profits and as such strict regulation of employer–employee labour relationships is important to maximize the efficiency of the sector. For instance, private security providers gain profit at the expense of security guards labour and financial exploitation.

Ministry of Federal and Pastoralist Development Affairs (MOFPDA) has a stake on the maintenance of peace and order within the Ethiopian territory.⁵⁰ Unlike MOT, and MOLSA, the MOFPDA shares security aspects of private security service providers with that of FAG and FPC. Especially, as a political watchdog of peace and order within Ethiopia, the role of the MOFPDA is essential to regulate private security service providers. As noted before, one opposition against the prevalence of private

⁴⁷Article22(6) Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 916/2015 22nd year No.12, see also article 3(1) of Federal Government Commercial Registration and Licensing Council of Ministers Regulations N0.13-1997(amended by No.87/2003).

⁴⁸Art. 41(2) of FDRE Constitution Proclamation No.1/1995.

⁴⁹Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No.916/2015, Supra note 47, article 34.

⁵⁰ Ibid, article 14.

security service providers in certain state is their implication on the national security. The number of private security guards and the bearing of arms have its own security implications that may adversely threaten peace and order. Therefore, in this context MOFPDA has a lot of job to do, especially in cooperation with the FAG and FPC to regulate and control private security service providers across regions.

Another important task is related to establishing the legal regimes within which private security personnel derive their legitimacy or legal authority to provide security service especially that of protecting property and personal security of private individuals, or government institutions as an aspect of crime prevention. In this regard there is pertinent issues must be clear from the point of legal authority relevant to legitimizing private security service. As discussed in the preceding section, the issue is concerned with the power to legitimately exercise or practice security service business in a certain country. It means that private security providers must secure a lawful permission to exercise private security service in certain locality or territory from an appropriate regulatory authority. For instance, license and registration is a means to the permission of practicing private security service business as seen in Indian and South African Private Security Regulation Acts. Thus, yet comprehensive and separate laws that adequately govern private security industry and private security guards in Ethiopia as of South Africa and India but there is a legal room for their legitimately functioning security services as of any business undertakings i.e. in Ethiopia, there is no legislation that is adequately enacted to regulate and control private security providers as it was done in South Africa and India.

CONCLUSION

Private security industries and their employees have great role in maintaining peace and security of given state and secure the government from expenses on employing public police officers.

Presently at international level there is a legal gap to establish the legal status of private security providers. The absence of binding international law for private security industries at international level has its own impact on effective control of potential private security providers at national level. ICOC is the only self-regulation law that signed by private security industries and aimed to set minimum international standards for the private security industries and to provide the legal framework at national level.

In Ethiopia there is no legislation that is comprehensively and separately enacted to regulate and control private security service providers. The only possible legal room for private security industry legitimately function in Ethiopia is FDRE Proclamation No.720/2011 that FPC establishment article 6(28) state that FPC issue certificates of competence to private institutions wishing to engage in providing security service. These lacks of adequate legal framework within which private security service providers are effectively regulated as was done in South Africa and India rise the argument against the prevalence of private security service providers in a given state is their implication on the national security and private security guards have its own security implications that they may adversely threaten peace and order of a country. The absence of adequate laws regulating private security service providers may give gaps which enable private security service providers to gain profit at the expense of security guards labour.

The presence of comprehensive and separate laws for private security industries in South Africa and India can be a lesson for those who has no law governing private security industries like Ethiopia. Such lessons are the existence of comprehensive laws enables the government to control the threat posed by private security providers on peace and order of a country, and to prevent violation of human rights such as exploitation of wages of private security guards by their employers. And also South African and Indian laws on regulation of private security industries and private security guards have issues of minimum wage protection.

Thus, closely controlling private security industry is important to reign on and control powerful, and growing private security industries who were feared posed a threat to the developing democracy, relevant to legitimizing private security service providers, and enable both the government and private security providers to prevent the violation of labour rights of private security guards as human rights.

In Ethiopia, because of the absence of clear legal frameworks for private security service providers, the executive branch of government that was supposed to have a stake in regulating private security service providers has fragmented power and function, and futile to effectively control and regulate private security service providers given the nature of security service in contrast to other kinds of services.

Therefore, given their proliferation as a business venture, the need of enacting comprehensive legislative framework that specifically address the private security service sector ensure their accountability and thereby maximize their role in crime prevention and protect the labour rights of security guards employed by private security industries.

CHAPTER-FOUR

ASSESSMENT OF WAGE PROTECTIONS OF PRIVATE SECURITY GUARDS WORKING IN ADDIS ABABA

INTRODUCTION

This chapter discusses wage protections of private security guards working in Addis Ababa. In doing so, the discussion analyzes both international and national laws that have relevance with minimum wage rights and their effects on rights of private security guards working in private security industries in Ethiopia. Besides, the chapter undertakes the practical analysis of wage rights of private guards working in Addis Ababa. Up on the process of analyzing the existing international and national laws, and practices, the research reveals the failures of both the Ethiopian Government and the private security industries on wages protection of private security guards in Addis Ababa.

The usual duty of private security industries is to provide security services for governments, international organizations, and other private and public companies operating in many industry sectors such as oil and mining, construction, factory, transport, trade and commerce.¹ In some countries, private security industries employ more people than any other private sector firms.² However, private security industries have allegedly violated the labour rights of their own employees; for example denial of labour rights of their employees such as failure to pay adequate salary, forcing the guards to work long hours under difficult conditions, failure to give different types of leaves, social security, and protections guaranteed for them by international and national labour laws.³ Such violations against employees may cause harm to the employees themselves and their families, the client they serve, government, and also to private employment agencies that employed them because wage and working time are at the core of any form of employment relationship,⁴ i.e. wage and working time have direct and tangible impact on the organizations that employ workers and in the

¹The Business & Human Rights Resource Centre, (2007). Privatization of Security and Warfare and Impacts on Human Rights, available at: www.business-humanrights.org (accessed on October 20, 2016).

²Ibid.

³Id.

⁴Ghosheh, N. (2012). *Conditions of Work and Employment Branch*. 'Wage protection legislation in Africa'. Geneva: Switzerland: Geneva, the International Labour Office. p.9.

lives of the workforce.⁵ To avoid violations of labour rights, the government has the duty to respect, protect, and fulfill⁶ all human rights; also the government has the duty to respect, protect, promote and fulfill labour rights of private security guards like as any other fundamental rights. The duty to respect human rights requires the state to refrain from the violation of the existing enjoyment of rights.⁷ The duty to give domestic effect to the rights requires the state to protect individuals and groups against rights infringements through the commissions or omissions of non-state actors.⁸ The duty to promote involves the facilitation of the enjoyment of rights through awareness rising, provisions of legal protections and procedures that pave the way for the enforcement of the rights and through the removal of domestic obstacles.⁹ Thus, the government has obligations that force the private security industries not to violate the labour rights of private security guards and facilitate the leeway through which the labour rights of guards protected at national level. For example, the government can and shall promote and protect the right to minimum wage protection. However, governments are at times unwilling or may be unable to put into effect the international and regional labour laws that it ratified, but also unwilling to ratify some international labour laws. On the other hand, the private security industries that employed the private security guards too have the duty to respect the labour rights of guards. The failures of the duty to protect, respect and fulfill the labour rights of private security guards cause great violations of human rights of laboures such as payment of under minimum wages, long working hours and absence of leaves.

⁵Ibid.

⁶General comment 3 on ICESCR, the nature of States parties obligations (Art. 2, par.1): 14/12/90. Contained in document E/1991/23, G.A. Cornia, R. Jolly and F. Stewart, eds. Oxford, Clarendon Press, 1987, Oxford, Oxford University Press, 1990. See also paragraphs 4-12 of African Commission on Human and Peoples' Rights, (2010). Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights. Also the SERAC case vs. Nigeria where African Commission stated that the duty to respect, protect, promote and fulfill apply to all charter rights.

⁷Dr. Takele Soboka Bulto, (2010). The Indirect Approach To Promote Justiciability of Socio-Economic Rights of the African Charter on Human and Peoples' Rights, *AHRAJ. CASE BOOK SERIES-VOLUME 3*, P.159.

⁸Ibid.

⁹Id.

4.1. GENERAL OVERVIEWS ON WAGE PROTECTIONS

Wage is the aspect of work that has the most direct and tangible impact on everyday lives of workers and their dependents.¹⁰ In most employment relationships, wage is obtained in the form of remuneration paid for the work that is performed and are set either on individual contract or through collective agreements.¹¹ Wages can also determine job choice, the number of hours worked, and inform workers' decision making on when they might prefer not to work. To make the life of employee as well as societies stable and to maintain a reasonable standard of life, the payment of wage to the employee should be adequate.¹² However, the level of wage in many parts of the world remains low and become global problem.¹³ As a result, wage protection is part and parcel of social protection and requires that contracts of employment should contain issues like rate of wages, method of wage calculation, manner and periodicity of payments, and advances.

To protect the violation of wage rights, various states set the minimum wages at national level, and have ratified ILO and other international conventions, and regional human rights instruments. The minimum wage is fixed in most countries of the world to ensure that workers earn wages that are considered 'decent' at a particular time and place¹⁴ i.e. minimum wages are often fixed by law in order to set the least amount to be paid in order to ensure a minimum living wage to all employed particularly those in need of such protection. It is also to ensure the elimination of exploitation, reduce poverty, remove unfair competition, ensure equal pay for equal work; preserve purchasing power to the worker, prevent industrial unrest, and also to promote economic growth and stability.¹⁵ The term 'minimum wage' is used by the ILO to denote a legally enforceable lower limits to wages fixed by a process involving the authority of the state. The concern of ILO towards minimum wages is so fundamental that the organization has specially mandated member states to ensure the

¹⁰Assefa Bersoufekad. (2003). *Ethiopia Trade Union Country Report*, Friedrich Ebert Stiftung, Addis Ababa, p.13.

¹¹Ibid.

¹²ILO (2003) .General Survey of the reports concerning Wages Convention No. 95/1949 and the Protection of Wages Recommendation No.85/1949, International Labour Conference, 91st Session, Geneva.

¹³General Comment No. 23 by Committee on Economic, Social and Cultural Rights, (2016) on the Right to just and favorable conditions of work on article 7 of the International Covenant on Economic, Social and Cultural Rights, paragraph, 2.

¹⁴ILO, (1986). *Minimum Wage Fixing and Economic Development: Student and Report* (New series No 72) Geneva: ILO.

¹⁵Ibid.

payment to the employed, adequate wage to maintain a reasonable standard of life. Over all, the national minimum wage is the lowest wage legally payable in an economy and it must have the backing of the law and cannot be set aside by individual contract or collective agreement.¹⁶ To implement this in all member states, the ILO provided the minimum wage fixing machinery conventions No.26/1928, No.99/1951 and No.131/1970.

The origin of the minimum wage regulation was generally considered to have come from New Zealand and Australia as part of the procedure for the prevention and settlement of industrial disputes.¹⁷ It was between 1894 and 1911, most states in New Zealand and Australia had systems of wage boards while protection against unduly low wages took the form of direct legislative actions.¹⁸ Soon after, many other countries carefully study the practice in Australia and New Zealand and consequently adopted, and provided against unduly low wages through the minimum wages legislation.¹⁹ The minimum wage legislation was adopted by UK in 1909, USA 1912, France 1915, Canada 1917, Norway 1918, Germany 1923, Spain 1926, India 1927, Mexico 1937, and Brazil 1938.²⁰

In Africa, minimum wages were introduced through colonies soon after the first world war in order to prevent abuses in the living of indigenous workers under forced labour arrangement.²¹ For example, the British colonial office commanded the minimum wage fixing machinery convention No.26/1928, to the governments of the overseas territories and urged the adoption of simple legislation in every colony empowering the government interest in any case where illiterate workers were receiving unduly low wage.²² This means the idea of minimum wages were exist in Africa before long period of time.

¹⁶Abudu, F. (1987). *Minimum Wage Legislation: 'An issue in public sector Collective Bargaining'* In T. Fashoyin (Ed) collective Bargaining in the public sector in Nigeria. Lagos: Macmillan (Nig.) Publishers.

¹⁷Kester K.O. et al. (2002). National Minimum Wages Trends, Issues and perspectives in Nigeria, Department of Adult Education Unibadan. *The African Journal of Labour Studies* Volume-5 No.1&2, p.2.

¹⁸Ibid.

¹⁹Id.

²⁰Id, p.3.

²¹Starr, G. (1981). *Minimum Wage Fixing*. Geneva: ILO, p.2.

²²Ibid.

4.1.1. INTERNATIONAL LABOUR LAWS ON WAGE PROTECTION

International labour laws can be important in providing legislative definitions, determining institutional responsibilities, and addressing the rights and responsibilities of social actors. In countries where wage protection legislation may not exist or is underdeveloped, international labour laws can also provide a framework for developing these laws and institutions.

Owing to the importance of wages in the employment relationship, ILO, since its inauguration in 1919, has considered fair labour remuneration practices and standards for protecting the wages of workers as part of its core mandate. The ILO Constitution refers to the ‘provision of an adequate living wage’ as one of the improvements urgently needed to promote universal peace and combat social unrest.²³ This position was reinforced in the 1944 Declaration of Philadelphia in which the ILO emphasized the need for world programmes which achieve “policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all and a minimum living wage to all employed and in need of social protection.”²⁴

However, while the ILO did create an international standard to outline the machinery necessary to set up minimum wages, the ILO Minimum Wage-Fixing Machinery Convention No.26/1928²⁵, it was not until the end of the 1940’s that an international standard was needed to specifically protect wages.

A report prepared for the 26th Session of the International Labour Conference in 1944 emphasized that “A Convention or Recommendation on methods of wage payment dealing with periodicity of wage payments, deductions from wages, advances in wages, the prohibition of the system, the adequacy of remuneration in kind, the protection of wages in legal proceedings, and similar subjects would also be of great value in relation to many parts of the world.”²⁶ The results of these reports and debates by ILO constituents were the ILO Protection of Wages Convention No.95/1949 and the Protection of Wages Recommendation No.85/1949. These international labour instruments were the first to deal in a comprehensive manner with

²³Id

²⁴Id

²⁵ILO Convention No.26/1928 has since been updated by the ILO Minimum Wage Fixing Convention No.131/1970.

²⁶ILO (1944). *Report I, International Labour Conference, 26th Session*, Geneva, p.51.

dimensions of wages such as the form and manner of payment, and sought to accord the fullest possible protection to workers' remuneration.²⁷ The premise is to protect the wages intended for workers and their families. These international standards are intended to provide guidance and a framework for the key principles that underlie wage protection and their incorporation into national legislation. The provisions in these standards are united by a common principle, which is to ensure prompt payment of wages directly to a worker. As such, many of the provisions in these standards focus on the employer's obligations to pay wages while also allowing the worker the individual freedom to decide how to dispose of their wages.

The main aim of ILO Convention No.95/1949 is to ensure comprehensive wage protection. As such the articles which make up ILO Convention No.95/1949 are interrelated and designed to create a coherent system of wage protection. This system is made up of five key elements: - '1) form and method of wage payment; 2) freedom of workers to dispose of their wages; 3) duty of information; 4) wage guarantees; and 5) enforcement.'²⁸ With regard to form and method of payment, the Convention sets out a number of principles as to where, when, and how remuneration is to be paid, including alternative methods of payment. Other provisions are meant to guarantee the workers' discretion with regard to disposing of their wages as they see fit. A central component of ILO Convention No.95/1949 is the importance attached to keep workers informed in an appropriate and easily understandable manner of the wages they can expect before commencing employment and what they have been paid during each pay period. Further provisions of the convention are designed to guarantee total payment of wages and protect workers from arbitrary, unfair, or unpredicted decreases in remuneration. Finally, this ILO convention has provisions which outline the need for enforcement and emphasizes the need for laws to carry effective sanctions to prevent and punish legal infringements.

The ILO Minimum Wage Fixing Convention No.131/1970 and Recommendation No.135/1970 are addressed issue of underpayment wage, and to help ILO member

²⁷ILO (1948). *Record of Proceedings International Labour Conference, 31st Session*, Geneva, p.459-469.

²⁸ILO (2003). *General Survey of the reports concerning Wages Convention No. 95/1949 and the Protection of Wages Recommendation No. 85/1949, International Labour Conference, 91st Session*, Geneva, p.8.

states establish a system of minimum wages.²⁹ The key objective of this convention and recommendation is to give wage earners the necessary social protection in terms of minimum permissible levels of wages.

In addition to establishing minimum wages, these standards address an important issue not addressed by ILO Convention No.95/1949, namely underpayment of a minimum wage which is addressed in ILO Convention No.131/1970.³⁰ Article 2 Paragraph 1 of ILO Convention No.131/1970 addresses this and further suggests that ‘appropriate penal and other sanctions’ be applied in national law to address any failures to pay the minimum wage.

ILO Convention No.95/1949 and the accompanying ILO Recommendation No.85/1949 on wage protection are both silent on data collection. However, other ILO conventions, such as the ILO Labour Inspection Convention No.81/1947 and the ILO Labour Administration Convention No.150/1978, might provide guidance on how this gap might be filled. In addition to the central part that labour inspection plays in ensuring accurate wage payments, article 21 of ILO Convention No.81/1947 requires that the labour inspection service compile a report on all investigations conducted during a calendar year. Article 6 of Convention No.150/1978 obligates the labour administration to coordinate functions and information to help to determine national labour policy. Thus, these provisions can be adopted in national law regardless of ratification of ILO standards, though that would ultimately be the most beneficial.

Globally, ratification of Convention No.95/1949 and No. 131/1970 those addressing wage compliance is reasonably high i.e. Convention No. 95/1949 has been ratified by 96 ILO member states³¹ and Convention No. 131/1970 has been ratified by 51 ILO member states.³² In Africa, also 31 countries have ratified ILO Convention No.95/1949, but only 9 countries have ratified ILO Convention No.131/1970.³³ When ratifications of ILO Convention No.95/1949 and No.131/1970 are considered

²⁹Article 1, paragraph 1 of Convention No.131/1970.

³⁰Article 2, Paragraph 1 of ILO Convention No. 131/1970 states that ‘Minimum wages shall have the force of law and shall not be subject to abatement, and failure to apply them shall make the person or persons concerned liable to appropriate penal or other sanctions’.

³¹The United Kingdom denounced Convention No. 95/1949 in 1983 and has not since reversed its position.

³²List of minimum wages by country available at: https://en.wikipedia.org/wiki/List_of_minimum_wages_by_country (accessed on October 25, 2016).

³³Ibid.

together, only 8 countries in Africa have ratified both. Ethiopia has not ratified either ILO Convention No.95/1949 on wage protection or 131/1970 on minimum wage protection.

Also in addition to ILO Conventions, several international instruments recognize the right to a decent wage. Article 23 paragraph 3 of the UDHR provides that everyone who works has ‘the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection’. Article 7 of the ICESCR recognizes the right of ‘everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:(a) remuneration which provides all workers, as a minimum, with:(i) fair wages and equal remuneration for work of equal value without distinction of any kind...; (ii) a decent living for themselves and their families in accordance with the provisions of the present Covenant’. In its monitoring of the implementation of the Covenant, the Committee on Economic, Social and Cultural Rights has criticized the minimum wages in force in the States parties under examination. In some cases, it has considered that the minimum wage in force does not allow workers and their families to live in dignity.³⁴

³⁴The Committee on ICESCR has adopted the conclusion past decade; with respect the following State parties: Afghanistan (E/C.12/AFG/CO/2-4, Para. 23); Algeria (E/C.12/DZA/CO/4, para. 10); Angola (E/C.12/AGO/CO/3, para. 21); Plurinational State of Bolivia (E/C.12/BOL/CO/2, paras 14 (b) and 27 (b)); Bulgaria (E/C.12/BGR/CO/R.4-5, para. 12); Cameroon (E/C.12/CMR/CO/2-3, para. 15); Canada (E/C.12/CAN/CO/4 – E/C.12/CAN/CO/5, paras 11(f), 18 and 47); Chile (E/C.12/1/Add.105, paras 17 and 38); Cyprus (E/C.12/CYP/CO/5, para. 17); Dominican Republic (E/C.12/DOM/CO/3, para. 16); El Salvador (E/C.12/SLV/CO/2, paras 12 and 30); Estonia (E/C.12/EST/CO/2, para. 16); Hungary (E/C.12/HUN/CO/3, paras 14 and 37); India (E/C.12/IND/CO/5, paras 22 and 62); Kenya (E/C.12/KEN/CO/1, para. 18); Latvia (E/C.12/LVA/CO/1, paras 19 and 44); Republic of Moldova (E/C.12/MDA/CO/2, para. 11); Nepal (E/C.12/NPL/CO/2, paras 11, 20 and 39); Nicaragua (E/C.12/NIC/CO/4, para. 16); Philippines (E/C.12/PHL/CO/4, para. 22); Russian Federation (E/C.12/RUS/CO/5, para. 18); Slovakia (E/C.12/SVK/CO/2, para. 15); Tajikistan (E/C.12/TJK/CO/1, paras 22 and 53); Turkey (E/C.12/TUR/CO/1, para. 17); Ukraine (E/C.12/UKR/CO/5, paras 15 and 38); Uruguay (E/C.12/URY/CO/3-4, para. 12); Uzbekistan (E/C.12/UZB/CO/1, paras 19 and 49) and Zambia (E/C.12/1/Add.106, Para 18 and 41). Specifically, in context of the global economic crisis, the Committee expressed its concern in the case of Spain that the minimum wage has been frozen since 2011 at a level that does not guarantee an acceptable standard of living (E/C.12/ESP/CO/5, Para. 18).

4.1.2. REGIONAL LAWS ON EMPLOYEES' WAGE PROTECTION

Several regional instruments recognized wage protection for right holders. Such instruments are: In Europe, article 4 of the European Social Charter of 1996 recognizes the right of workers to fair remuneration.³⁵ More specifically, State parties undertake to recognize the right of workers to remuneration sufficient to ensure for them and their families a decent standard of living.³⁶ According to the European Committee on Social Charter, to be considered fair wages must in any event be above the poverty line in a given country that is 50% of the national average wage. Furthermore, if the wage lies between 50 and 60 % of the national average wage, a State is asked to demonstrate that the wage is sufficient for a decent standard of living, for example, by providing detailed information on the cost of living.³⁷ With regard to the European Union, article 5 of the Community Charter of the Fundamental Social Rights of Workers, adopted in 1989, provides that “All employment shall be fairly remunerated”. To this effect, in accordance with arrangements applying in each country workers shall be assured of an equitable wage, i.e. a wage sufficient to enable them to have a decent standard of living”. The Charter of Fundamental Rights of the European Union, which was intended to restate the provisions of the 1989 Charter, does not however address the issue of the right of workers to a decent or fair wage, and only provides in article 31 that “Every worker has the right to working conditions which respect his or her health, safety and dignity”.

In the Americas, the American Declaration in article 14, provides that every person who works “has the right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family.”³⁸ Furthermore, in accordance with article 7(a) of the

³⁵The same provision is found in Article 4 of the original text of the European Social Charter, adopted in 1961. The Convention for the Protection of Human Rights and Fundamental Freedoms does not guarantee Economic and Social rights as such, including the right to a Minimum Wage. See European Court of Human Rights decision in the case of *Salveti v. Italy*, issued on 9 July 2002, (Application No. 42197/98).

³⁶*Ibid*, article 4 paragraph 1.

³⁷Council of Europe: Digest of the case law of the European Committee of Social Rights, Available at: http://www.coe.int/t/dghl/monitoring/socialcharter/digest/DigestSept2008_en.pdf. (accessed on October 15, 2016).

³⁸The American Declaration of the Rights and Duties of Man, adopted by the Ninth International Conference of American States in 1948. Conference also adopted the Inter-American Charter of Social Guarantees, which enshrines the minimum rights that workers must enjoy in the American States, Article 8 providing that “every worker has the right to earn a minimum wage, fixed periodically with the participation of the state and of workers and employers, which shall be sufficient to cover his

Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights which entered into force in 1999, the State parties recognize that the right to work presupposes that everyone shall enjoy that right under just, equitable, and satisfactory conditions, which the State parties undertake to guarantee in their internal legislation, particularly with respect to remuneration “which guarantees as a minimum to all workers dignified and decent living conditions for them and their families and fair and equal wages for equal work, without distinction”.

In the African Human Rights System, the ACHPR which entered into force in 1986, only contains a general provision under article 15 that “Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work”. However, the ACHPR established under the Charter, adopted in 2010 “Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and People’s Rights.”³⁹ With respect to article 15 of the Charter, the Principles and Guidelines indicate that “Access to equitable and decent work which respects the fundamental rights of the human person and the rights of workers in terms of remuneration can also be critical for both survival and human development.”⁴⁰ More specifically, this instrument elaborates that the right to work includes the obligation of the State to ensure the right of everyone to equitable and satisfactory conditions of work, including fair remuneration.⁴¹

normal home need, material, moral and cultural, taking into account the characteristics of each type of work, the special conditions of each region and each job, the cost of living, the worker’s relative aptitude, and the wage systems prevalent in the enterprises. A minimum occupational wage shall also be set up for those activities in which this matter is not regulated by a collective contract or agreement”. However, the impact of this Charter has been limited in view of the low level of support that it enjoyed.

³⁹In addition to this instrument, the African Commission also adopted in 1989 guidelines for national periodic reports under the African Charter. The 1989 guidelines indicate that among the elements to be reported should be the principal methods used for fixing wages (minimum wage fixing machinery, collective bargaining, statutory regulations, etc.) in the various sectors, and numbers of workers involved, and information on the categories and numbers of workers for whom wages are not set by such methods.

⁴⁰African Commission on Human and Peoples’ Rights, (2010). Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights, para.57.

⁴¹Ibid,para.59.

Generally in the preceding legal analyse, reference has made to a range of international and regional instruments that recognize and encourage the importance and protection of a minimum wage i.e. minimum wage legislations have the power to eliminate unduly wage and underpayment of minimum wage, and prevent exploitation of wages by employer.

4.1.3. NATIONAL LABOUR LAWS ON WAGE PROTECTION

4.1.3.1. ETHIOPIA LABOUR LAWS ON WAGE PROTECTION

ILO conventions are international treaties and occupy a peculiar position that are legally binding for states that have ratified them and improve labour standards in the domestic economy. First of all why do states ratify ILO conventions? Why do some states choose to ratify wage and minimum wage protection conventions and others do not?

In its century history, the ILO has adopted 188 conventions.⁴² Out of these, Ethiopia has been ratified only 21 ILO Conventions. From 188 ILO Conventions, four Conventions deal with wage. Those ILO Conventions on wage and minimum wage protection are Convention No.95 of 1949 on protection of wages and Conventions No.26 of 1928, No.99 of 1951 and No.131 of 1970 on the minimum wage protection, and some of the ILO Recommendations are Recommendation No.85 of 1949 on the Protection of Wages and Recommendation No.R135 of 1970 on minimum wage protection. From these four ILO Conventions on wage and minimum wage protection adopted by ILO, Ethiopia has neither ratified nor enacted laws concerning minimum wage protection for private sectors in their domestic laws. This reveals that Ethiopian government failing its duties to respect, protect, promote and fulfill labour rights of employees of private sector on minimum wage.

However, many countries have succeeded in setting minimum wages to employees in their national legislations as well as ratified ILO Conventions, other international and regional laws having minimum wage issues, though there are also some countries not set the minimum wages in their law. A minimum wage is ‘the minimum amount of remuneration that an employer is required to pay wage earners for the work performed during a given period, which cannot be reduced by collective agreement or

⁴²Baccini, L. et al. (2011). *Why do states commit to international labour standards? The importance of “rivalry” and “friendship”*, Political Science and Political Economy Working Paper, the London school Economics and Political Science, p.2.

an individual contract⁴³ The rationale behind having laws fixing minimum wages protection is that, unlike other contractual agreements, contract of employment relationship has a bench marks below which the terms of the contract may not lay down.⁴⁴ This is because, since employers and employees have no equal bargaining strength, letting them alone to fix their terms of contract failed to bring about equitable outcome.⁴⁵ Also, labour is not simple commodity, unlike other commodities that can be bought and sold on the market; rather, it is a human activity, which cannot be reduced to something that can merely be bought and sold.⁴⁶ Thus, unregulated freedom to enter into contract of employment can cause injustice and instability in industrial peace. Because of this, the government should intervene by law making to bring justice, stability and peace in business undertakings.

In Ethiopia, unlike for public servants, the labour law which governs private sectors does not set minimum wages protection⁴⁷ i.e. left minimum wages protection issue to the employers and employees. In accordance with the FDRE Labour Proclamation No.377/2007, wages mean the regular payment to which the worker is entitled to in return for the performance of the work that he/she performs under a contract of employment.⁴⁸ Wages are independent of overtime premium, allowances, bonus, commissions, service charges received from the customers and other incentives paid for additional work.⁴⁹ Wages are only paid for the work done by the worker except in case of interruption on employer's behalf which makes it impossible to work i.e. interruption in supply of tools and raw materials.⁵⁰ The Proclamation requires the employers to pay wages in cash on working day at the work place unless otherwise agreed.⁵¹ In case date of payment, where already decided, falls on a weekly rest day or

⁴³General Comment No. 23, supra note 13, paragraph, 19.

⁴⁴Mahari Redae (2012). *Introduction to Employment and Labour Law*, available at: <http://www.abbyssinialaw.com/study-on-line/item/459-introduction-to-employment-and-labor-law#> (accessed on 26 June, 2016).

⁴⁵Ibid.

⁴⁶ILO,(1999). *Report of the Director General: Decent Work to the 87th Session*. Geneva: ILO.

⁴⁷The History of Minimum Wage Laws available at: <http://www.tbowleslaw.com/resources-employers/employment-law-history/history-minimum-wage-laws/> (accessed on October 20, 2016).

⁴⁸Article 53(1) of the FDRE Labour Proclamation No. 377/2003 (amended by Proc. No. 466/2005 & Proc. No. 494/2006).

⁴⁹Ibid, article 53(2).

⁵⁰Id, article 54(1)&(2).

⁵¹Id, article 56(1).

public holiday, the wages are paid on the preceding working day.⁵² Wages are paid directly to the worker or to the person authorized by the worker.⁵³ Wages may be paid in kind but it may not be more than 30% of the wages paid in cash.⁵⁴ An employer is under the obligation to pay the worker wages and other emoluments in accordance with this law or the collective agreement or work rule or contract of employment.⁵⁵ An employer has an obligation to keep a record of payment in a register specifying the gross pay and method of calculation of wages; other variable remunerations; the amount and type of deduction; and the net pay and other relevant particulars, unless there is a special arrangement on which the signature of the worker is affixed.⁵⁶ This register must be easily accessible to all the workers and the entries are explained to the worker on request.⁵⁷

Generally, this proclamation applies to the entire private sectors labour force and provides some protections. However, it does not set minimum wages protection. In Ethiopia, usually wages are fixed by the employer or by collective agreements or by the employee's contract of employment. However, whether the country is developed or developing, the law needs to consider minimum wage because as the private sector expands taking advantage of the market economy, labourers could be subjected to exploitation. This is because, minimum wage is a point of reference that allows employees to negotiate with their employers that without a minimum wage, they may be forced to accept whatever suggested by the employer. Thus, minimum wages should be set for employees of the private sector as well and in practice it should apply to all employees including majority of workers like private security guards.

⁵²Id, article 56(2).

⁵³Id, article 57.

⁵⁴Id, article 55.

⁵⁵Id, article 58.

⁵⁶Id, article 60(1).

⁵⁷Id, article 60(2).

4.2. THE PURPOSE OF MINIMUM WAGE LEGISLATION AND ITS EFFECTS ON EMPLOYEE

In the preceding discussion under this chapter, there is a minimum wage issue in the ILO Conventions, and ICESCR treaty. And there is absence of the minimum wage law in Proclamation No.377/2003, and in other Ethiopian laws having relevance to labour issues. Then, what is the importance of having law setting minimum wage? If not, what are the negative impacts of non-existence of law setting minimum wage in Ethiopian private sectors labour? Specially, what are the impacts of the non-existence of law setting minimum wage for private security guards working in Ethiopian private security industries?

The very purpose of minimum wage legislation is to raise the standard of living of the poorest citizens in a society.⁵⁸ In human rights language, it is a means of enabling every working person to have a means to lead a decent standard of living. To accomplish this objective the minimum wage legislation directly increases the purchasing power of the lowest-paid workers.⁵⁹ The minimum wage applies systematically to protect as much as possible the fullest range of workers⁶⁰, which also include private security guards. Thus, legislative definitions of minimum wages usually refer to some minimum standard of living concept⁶¹, which means the minimum wage should be recognized in legislation, fixed with reference to the requirements of a decent living, and applied consistently. ‘The elements to be taken into account in fixing the minimum wage are flexible although they must be technically sound, including the general level of wages in the country, the cost of living, social security contributions and benefits, and relative living standards. The minimum wage might represent a percentage of the average wage so long as this percentage is sufficient to ensure a decent living for workers and their families.’⁶²

⁵⁸Shoenberger, AE. (1970). Minimum Wages: Tool for African Development, *the Journal of Legal Pluralism and Unofficial Law*, Volume 2, Issue 3. p. 1.

⁵⁹Ibid.

⁶⁰General Comment No.23, supra note 13, paragraph, 23.

⁶¹Smith, A. D. (1967). Minimum wages and the Distribution of Income with Special Reference to Developing Countries, *International Labour Review* vol.96, p.129-130.

⁶² General Comment No. 23, supra note 13, paragraph 21.

Moreover, minimum wage legislation can also be seen as a device to transfer income from the wealthy, who tends to be the employers, to the poor, the employees.⁶³ Minimum wage legislation can also be used to change the whole structure of wages and salaries.⁶⁴ It is well known that increases in the minimum wage reverberate throughout the pay scale, pushing all wages higher.⁶⁵ It may be possible to influence productivity by encouraging employers to train workers better, so that the employee is worth a higher salary.⁶⁶ It is also possible to influence the pattern of consumption by putting more money into the hands of a poorer segment of the population.⁶⁷ In all probability that segment would have propensities to consume different from the 'national average'. Minimum wage legislation may also lessen unfair competition between business enterprises by preventing the exploitation of some particularly favorable labour supply situation.⁶⁸ Moreover, on the macro-economic scale it may be desirable to attempt to influence prices, investment, or economic growth through minimum wage legislation.⁶⁹

Generally, the primary goal of raising the minimum wage is to raise the payment of low-wage workers. A broad consensus in the economic research literature agrees that minimum wage laws raise payment for workers on the bottom rungs of the labour market.⁷⁰ Many scholars agree that minimum wage laws have large positive effects on workers' pay and their families' living standards.

As Economists mentioned importance of setting minimum wages legal protection⁷¹; Firstly, paying workers more can change their work performance that means it can change their productivity, their attitude regarding their job, how hard they work. Secondly, low wage labour markets have high levels of job churning, turnover levels are high as workers leave jobs looking for better wages or because they are unable to

⁶³Ibid, p.129.

⁶⁴Ibid.

⁶⁵S.P. Viljoen, (1967). Higher productivity and Higher Wages of Native Labour in South Africa, *S.A.J. of Econ.*, Vol.29,1961,p.35,37;See Also J.P.Arles, Minimum Wages in the Congo (Kinshasa), *International labour review*, Vol.96, ,p.388,398.

⁶⁶ Shoenberger, AE., supra note 58, p. 2.

⁶⁷Ibid.

⁶⁸Kaun, DE. (1965). The Fair Labour Standards Act, *S.A.J.of Econ.*, Vol.33, p.131, 133.

⁶⁹ Smith, A. D., supra note 61, p.129.

⁷⁰ Dale, B. et al . (2014). *New Minimum Wage Research*, Kalamazoo, MI: W.E. Upjohn Institute for Employment Research. Forthcoming.

⁷¹Ken Jacobs, M. et al. (2014). *Local Minimum Wage Laws: Impacts on Workers, Families and Businesses*. IRLE Working Paper No.10414. Available at: <http://irle.berkeley.edu/workingpapers/104-14.pdf> (accessed on October 20, 2016).

stay in their jobs due to poverty-related problems such as difficulties with transportation, child care and education, health, food, housing. As a result, rather than eliminating jobs, raising the minimum wages can reduce turnover and increase job stability. Thirdly, firms can absorb higher labour costs through other means as well i.e. they can pass on some of the increased costs to consumers through higher prices or earn lower profits. In short, firms use a combination of strategies to adjust to higher minimum wages without cutting jobs or hours.⁷²

Ethiopia has ratified the ICESCR on 11 September, 1993.⁷³ Thus, this instrument is protecting the minimum wage right and ‘an integral part of the law of Ethiopia.’⁷⁴ Fundamental rights and freedoms in chapter three of FDRE Constitution which include labour rights shall be interpreted in a manner conforming with these instruments⁷⁵ that entails the FDRE Government has duty to respect, protect, promote and fulfill rights in the treaties that means instruments require the member states to put in to effect by domesticating the rights into national laws.⁷⁶ In addition to these instruments, the Committee on ESCR recommended that ‘States parties should prioritize the adoption of a periodically reviewed minimum wage, indexed at least to the cost of living, and maintain a mechanism to do this. Workers, employers and their representative organizations should participate directly in the operation of such mechanism.’⁷⁷

Member states to ICESCR have three levels of obligations. First, member states have an obligation to respect the right by refraining from interfering directly or indirectly with its enjoyment and this is particularly important where the State is the employer, including State-owned or controlled enterprises.⁷⁸ Secondly, member states have an obligation to take measures to ensure that those third parties such as private sector

⁷²John, S. (2013). *Why Does the Minimum Wage Have No Discernible Effect on Employment?* Center for Economic and Policy Research. Available at: <http://www.cepr.net/documents/publications/minimum-wage-2013-02.pdf> (accessed on October 20, 2016).

⁷³*Office of the United Nations High Commissioner for Human Rights*, available at: <http://www.ohchr.org/english/countries/ratification> (accessed on October 28, 2016).

⁷⁴Article 9(4) of FDRE Constitution proclamation No.1/1995.

⁷⁵*Ibid*, article 13(2).

⁷⁶Article 2(1) of International Convention on Economic Social Cultural Rights adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force on 3 January, 1976, United Nations Treaty Series, vol. 999. And article 1 of African Charter on Human and Peoples' Rights adopted 27 June 1981, OAU Doc.CAB/LEG/76/3 rev.5, 21 I.L.M. 58(1982), entered into force 21 October 1986.

⁷⁷General Comment No. 23, *supra* note 16, paragraph 20.

⁷⁸*Ibid*, paragraph 58.

employers do not interfere with the enjoyment of the right and comply with their obligations.⁷⁹ Such measures are; ‘taking steps to prevent, investigate, punish and redress abuse through effective laws and policies and adjudication. For example, States should ensure that laws, policies and regulations governing the right to legislation on minimum wage and minimum standards for working conditions are adequate and effectively enforced.’⁸⁰ Thirdly, the member states have an obligation to fulfill, which is adopting the necessary measures to ensure the full realization of the right that includes introducing measures to facilitate, promote and provide the right.⁸¹

Overall, state parties should adopt positive measures to assist workers by giving sufficient recognition of the right through policies, laws and regulations, for example, on minimum wages that are non-discriminatory and non-derogable fixed taking into consideration relevant economic factors and indexed to the cost of living so as to ensure a decent living for workers and their families.⁸² Also the committee on ICESCR recommended that to use extra-territorial responsibility when States with advanced labour law systems as home-country enterprises can help to improve standards for working conditions in host-countries i.e. States parties should introduce appropriate measures to ensure that non-State actors domiciled in the State party are accountable for violations of minimum wage extra-territorially and that victims have access to a remedy and also should provide guidance to employers and enterprises on how to respect the right extra-territorially.⁸³

However, member states to ICESCR may violates the Convention either through acts of commission that is the direct actions of state parties or acts of omission which means the failure by a State party to take reasonable steps to fully realize the right for everyone, for example by failing to enforce relevant laws and implement adequate policies, or to regulate the activities of individuals and groups to prevent them from violating the right, or to take into account its Covenant obligations when entering into

⁷⁹Ibid ,paragraph 59.

⁸⁰Ibid, see also Guiding Principles on Business and Human Rights, principle 3.

⁸¹Ibid, paragraph 60.

⁸²Ibid, paragraph 61.

⁸³Ibid, paragraph 70; see also Maastricht Principles on extra-territorial obligations of States in the area of economic, social and cultural rights (2011) and Guiding Principles on Business and Human Rights, principle 2.

bilateral or multilateral agreements with other States, international organizations or multinational corporations.⁸⁴

Ethiopia has yet to promulgate the rights of minimum wage protection in their labour laws for private security guards working in private security industries. Thus, non-adherence of Ethiopia to the international treaties that she ratified is the violation of these instruments and its recommendations i.e. failure to take such steps amounts to a violation of the Covenants. This all cause the violation of workers' rights who work in private sectors i.e. denial of setting minimum wages is denial of decent living for workers and their families. The committee on ICESCR recommended that member states should take appropriate measures, including effective labour inspections to ensure the application of minimum wage provisions into practice and provide adequate information on minimum wages. Even when employers fail to respect the minimum wage requirements, the member states should take different type of sanctions.⁸⁵

Also the Committee recommended that non-state actors such as Business enterprises including private security industries, irrespective of their size, sector, ownership and structure⁸⁶, should comply with laws that are consistent with the Covenant and have a responsibility to respect the right to just and favourable conditions of work⁸⁷, avoiding any infringements and addressing any abuse of the right like minimum wage as a result of their actions. In situations where a business enterprise has caused or contributed to adverse impacts, the enterprise should remedy the damage or cooperate in its remediation through legitimate processes that meet recognized standards of due process.⁸⁸

⁸⁴Ibid, paragraph 78 and 79.

⁸⁵Ibid, paragraph 24.

⁸⁶Ibid, paragraph 75; see also Guiding Principles on Business and Human Rights, principle 14.

⁸⁷Ibid, see also Guiding Principles on Business and Human Rights, principle 11, 12 and 23.

⁸⁸Id, see also Guiding Principles on Business and Human Rights, principle 22.

4.2.1. WAGE OF SECURITY GUARDS IN ETHIOPIAN PRIVATE SECURITY INDUSTRIES AND ITS EFFECT IN ADDIS ABABA

There is a lack of transparency in payment of wages in private security industry which facilitates exploitation by employers of their employees in terms of amount of wages.⁸⁹ Unduly low wage cannot grant decent life for workers and their families.⁹⁰

The table below summarizes the amount of salary the employers (private security industries) contracted with organizations that needs the security services for each security guard per month and the actual amount of salary paid by employers to employees (security guards) in 45 private security industries.

Table 2: Name of private security industries, amount of salary employers contracted with organizations those needs security service per monthly for each security guard, actual amount of salary paid to security guards per monthly.

| No. | Name of private security industries | Amount of salary that Private security industries contracted with organizations needs security service per month for each security guards | Actual amount of salary paid to each private security guards per month |
|-----|---|---|--|
| 1 | A.T.M(ኤቲኤም) Private Security Service Agency | 1600 | 750 |
| 2 | Aba Dina Private Security Service Agency | 1100 | 750 |
| 3 | ABC Private Security Service | 1400 | 700 |

⁸⁹Abdi Mokonen (2016).*Personal interviews*. Analysis exploitation of private security guards' employed by private security industries working in Addis Ababa, 25 November, 2016.

⁹⁰Tsegaw Adene (2016).*Personal interviews*. Analysis exploitation of private security guards' wages by private security industries working in Addis Ababa, 23 December, 2016.

| | | | |
|----|--|------|------|
| | Agency | | |
| 4 | Addis Private Security Service Agency | 1800 | 795 |
| 5 | Agar Private Security Service Agency | 2400 | 1200 |
| 6 | Alfa Private Security Service Agency | 2004 | 1002 |
| 7 | Anis Private Security Service Agency | 1700 | 850 |
| 8 | Apex Private Security Service Agency | 1300 | 701 |
| 9 | Asefa Legese Private Security Service Agency | 2000 | 1026 |
| 10 | Atilas Private Security Service Agency | 1600 | 700 |
| 11 | Best Private Security Service Agency | 2240 | 1500 |
| 12 | Beyokaraba Private Security Service Agency | 1445 | 721 |
| 13 | Beza Private Security Service Agency | 2000 | 800 |
| 14 | Bikat Private Security Service Agency | 1800 | 900 |
| 15 | Check Cite Private Security Service Agency | 1250 | 650 |

| | | | |
|----|---|------|---------|
| 16 | Commercial Nominees plc | 3270 | 1500 |
| 17 | Dejen Private Security Service Agency | 1600 | 750 |
| 18 | EFSC Private Security Service Agency | 2500 | 1250 |
| 23 | G.S(ጂ.ኤስ) Private Security Service Agency | 1655 | 778 |
| 19 | Gefat Private Security Service Agency | 1800 | 900 |
| 20 | Geru Private Security Service Agency | 1200 | 651 |
| 21 | Global Private Security Service Agency | 1400 | 697 |
| 22 | Goal Private Security Service Agency | 2000 | 1000 |
| 24 | Guarantee Private Security Service Agency | 3020 | 1500 |
| 25 | Guasa Private Security Service Agency | 1774 | 850 |
| 26 | J.B.S.M (ጂ.ቤ.ኤስ.ኤም) Private Security Service Agency | 1350 | 650 |
| 27 | LH Private Security Service Agency | 2500 | 1250 |
| 28 | Lion Private Security Service Agency | 2400 | 1054.50 |

| | | | |
|----|--|------|------|
| 29 | Maraki Private Security Service Agency | 1150 | 651 |
| 30 | Mechal Private Security Service Agency | 1600 | 850 |
| 37 | Mirror Private Security Service Agency | 1900 | 900 |
| 31 | MMA Private Security Service Agency | 2200 | 1000 |
| 32 | Nikat Private Security Service Agency | 1700 | 900 |
| 33 | Orchid International Private Security Service Agency | 3000 | 1500 |
| 34 | Safety Private Security Service Agency | 2100 | 1200 |
| 35 | Save Private Security Service Agency | 1600 | 750 |
| 36 | SEBACO Private Security Service Agency | 1600 | 755 |
| 38 | Selam Private Security Service Agency | 2000 | 1215 |
| 39 | Star Private Security Service Agency | 1700 | 900 |
| 40 | Strong Get Private Security Service Agency | 1100 | 650 |
| 41 | Tedememu Private Security Service | 1400 | 700 |

| | Agency | | |
|----|--|------|------|
| 42 | Tila Private Security Service Agency | 2100 | 1200 |
| 43 | Tin Tang Private Security Service Agency | 2000 | 1100 |
| 44 | Trust Private Security Service Agency | 1800 | 1100 |
| 45 | Welta Private Security Service Agency | 1868 | 920 |

Source: Data collected through questioners from private security guards working in Addis Ababa.

From table 2 above, one can analyze and conclude the following truth. The amount of salary private security industries contracted with organizations that needs security service per month for each security guard in Addis Ababa ranges from 1100 to 3270 birr (US \$48.2-US \$143.35).⁹¹ Whereas actual amount of salary paid for security guards per month by private security industries in Addis Ababa ranges from 650 to 1500 birr (US \$28.49-US \$65.76).⁹² Thus, the difference between amount of salary private security industries contracted with organizations who needs security service and actual amount of salary paid for security guards per month by private security industries is too much. Thus, this shows the wage payment for private security guards working in Addis Ababa has a problem.

Concerning exploitations of wages of security guards, interviews conducted with private security guards shows similar figure with that of table 2 above. For example, Commercial Nominees plc contracted with the Ethiopian Commodity Exchange for each employee with 3,270 birr a monthly salary.⁹³ However, this agency pays for each

⁹¹Table 2 that data collected by questionnaires from private security guards working across Addis Ababa from 15 October -25 March, 2016 GC. Emphasis added that 1 US dollar =22.81 Ethiopian Birr on March 18, 2017.

⁹²Ibid

⁹³Tsegaw Adene, supra note 90. See also table 1 of this research.

of its employees only 1,500 birr per month.⁹⁴ Similarly, Agar private security agency contracted with Black Lion Referral Hospital for each of its employee with 3,660 birr a monthly salary.⁹⁵ However, this agency pays for each of its employees only 1,650 birr per month.⁹⁶ Tedememu private security agency contracted with Ghion Hotel for each of its employee with 1,400 birr a monthly salary.⁹⁷ However, this agency pays for each of its employees only 700 birr per month.⁹⁸ Also, as Getnet Tesfamariam stated in Addis Zemen newspaper, Lion private security agency contracted with Addis Ababa University for each of its employee with 2400 birr a monthly salary.⁹⁹ However, this agency pays for each of its employees only 1054.50 birr per month.¹⁰⁰ Addis Private Security Service Agency contracted with Bethel Hospital for each of its employee with 1800 birr a monthly salary.¹⁰¹ However this agency pays for each of its employees only 795birr per month.¹⁰² The other security guard interviewed was stated that he receive 800 birr per a month.¹⁰³ However, the agency employed him is contracted with client firm with 2000 birr for per a month.¹⁰⁴ His family lives far from his work place, as he cannot pay for transportation cost to live with his family as befits a family man; he only visits once or twice a week.¹⁰⁵ He gives half of his salary for his family each month and rent ruin house by 700 birr and live in with his three colleagues around their workplace and cook their food at their off duty.¹⁰⁶ This shows private security industries in Addis Ababa withholding half a monthly salary intended for each private security guard. Security guards claimed that private security agencies are reaping excessive profit from their labour.¹⁰⁷ As Abebe Maru stated in his research, employees of private security agencies are paid low salary and absence of

⁹⁴Ibid.

⁹⁵Abdi Mokonen, supra note 89. See also table 1 of this research.

⁹⁶Ibid.

⁹⁷Contract of security service between Ghion Hotel and Tedememu private security agency on 28 መጋቢት 2008, No. of file ሠ 5-2/861/08.

⁹⁸Hailu Habte, (2017). *Personal interviews*. Analysis exploitation of private security guards' employed by private security industries working in Addis Ababa, 11 March, 2017.

⁹⁹Getnet Tesfamariam (2016). Employment relationship between employee and private agency is modern labour exploitation or what? *Addis Zemen newspaper*, 14 Nov.2016, p.11.

¹⁰⁰Ibid.

¹⁰¹Bayisa Duri, (2017). *Personal interviews*. Analysis exploitation of private security guards' employed by private security industries working in Addis Ababa, on 10 March, 2017.

¹⁰² Ibid

¹⁰³Belay Degu, (2017). *Personal interviews*. Analysis exploitation of private security guards' employed by private security industries working in Addis Ababa, on 15 March, 2017.

¹⁰⁴Ibid

¹⁰⁵Id

¹⁰⁶Id

¹⁰⁷ Tsegaw Adene, supra note 90.

other benefits are the problem they face in their profession i.e. even though the organizations they served are allocate good salary per individual, the private security agencies collect high amount of money from their a monthly salary and employees actual income became very less.¹⁰⁸ Employees of Private security industries are paid very low as compared to the nature of their work which is day and night times.¹⁰⁹ However, the wages should have been increased considering work challenges which workers are faced with, the inflation rate fluctuation, client affordability as well as countries level of economic development and other workers wage amount.

For example working time limit introduced to safeguard the rights of workers to make the labour more productive. Ethiopia introduced the principle of limiting working hours, and enacted legislations that regulate long working hours for private employment sectors as specified under FDRE proclamation No.377/2003 from art.61 to 65. Thus, this proclamation state that weekly working hours are not to exceed 48 hours in a week and eight hours in a day. However, laws have not been implemented in practice and the enforcement mechanism differs from what the law says. The working hour of private security guards is shifting system. Some security guards state that they work for 12 hours and then 24 hours off duty.¹¹⁰ Others claim that they work for 24 hours and then 24 hours off duty.¹¹¹ Generally, private security industries paid their private security guards unduly low wage plus while employees work long hours i.e. working above 8 hours per a day and 48 hours per a week. These all shows the existence of challenges and labour exploitation of private security guards in private security industries found in Addis Ababa. This means the salary paid for guards and number of hours they work is not proportional.

The minimum wage of public servants specifically guards and laborers which their nature of work is similar with security guards that came into effect from 01-01-2003, 01-11-2006 and 01-05-2009 are 420, 582 and 860 birr respectively.¹¹² Working hours

¹⁰⁸Abebe Maru Feleke, (2015). *Challenges and Prospects of Outsourcing: The Case of Commercial Bank of Ethiopia*, Addis Ababa University College of Business and Economics Department of Public Administration and Development Management, unpublished thesis.p.53.

¹⁰⁹Adane Diriba, (2016).*Personal interviews*. Analysis exploitation of private security guards' wages by private security industries working in Addis Ababa, 15 November, 2016.

¹¹⁰Tsegaw Adene, supra note 90.

¹¹¹Abdi Mokonen, supra note 89.

¹¹²Federal Democratic Republic of Ethiopia Ministry of public Service and Human Resource Development wage scale change letter ቁጥር ፕ/ሰ/ሚ.30/ጠ10/89/737 የካቲት 10 ቀን 2009 ዓ.ም.

of civil servant shall not exceed 39 hours a week.¹¹³ Thus, the comparison of wages and working hours of private security guards with guards and laborers of public servant has great difference.

Most of private security guards interviewed stated that the main reason for their wages low is not because of client firms paying less amount of money to private security agencies; it is rather due to agencies taking advantage of employee's weaker bargaining power and the security agencies are raking high profit for themselves. Thus, almost all interviewees consider such labour exploitation practices as unfair and agencies are trading with their labour.

On the other hand, as Getnet Tesfamariam stated agencies tend to argue that 80% of payments they get from their contracted clients go for employees' wage and only 20% for administration cost and profit.¹¹⁴ Also others said that they pay from 60-65% of money they get from their clients to their employees' salary and 35-40% for administration cost and profit.¹¹⁵ For example the manager of human resource development office of Agar private security industry said that the profit they gained is so small and not as what their employees and anyone else suppose it.¹¹⁶ His organization makes profit less than 10%. He said 80% of payments they get from their contracted clients go for employees' salary plus there are administration expenses, office rental and fuel costs and uniform expenses.¹¹⁷ However, he believes that wage of their employees is inadequate to live in Addis Ababa.¹¹⁸

The managing Director of Lion private security service agency Abel Werku said that their agency has 5021 security guards.¹¹⁹ The lowest salary for security guards in this agency is 850 birr per a month.¹²⁰ The money deducted from salary of employee is for insurance, administration costs, uniform purposes.¹²¹ The rest of money go for salary of employees and the profit the agency gain is not us much interesting that is less than

¹¹³Art.32 FDRE Federal Civil Servants Proclamation No. 515/2007.

¹¹⁴Getnet Tesfamariam, supra note 99.

¹¹⁵Ibid

¹¹⁶Colonel Kebede Bejero, (2017). *Personal interviews*. Analysis exploitation of private security guards' employed by private security industries working in Addis Ababa, on 10 March, 2017.

¹¹⁷Ibid

¹¹⁸Id

¹¹⁹Abel Werku, (2016). *Personal interviews*. Analysis exploitation of private security guards' employed by private security industries working in Addis Ababa, on 12 January, 2016

¹²⁰Ibid

¹²¹Id

15%.¹²² The general manager of Addis private security service agency stated that their agency established since 1996 and has 14 years work experiences on providing security services for different governmental and non-governmental organization.¹²³ Wage of their security guards range from 700 to 950, and employees are working 24 hours and 48 hours off duty.¹²⁴ The manager believes that wages of their employees are low and also based on their client firms' affordability.¹²⁵ After reductions of administration expenses, cost of supervisions, office rental, fuel, training and uniform expenses, and then their agency gain profit.¹²⁶ Also, manager of third party service in Commercial Nominees plc stated that their agency started to outsourcing security guards in 2004 for governmental and non-governmental organization specially in large for Commercial Bank of Ethiopia since its establishment in 1958.¹²⁷ Presently, this agency has 12,682 security guards and their employees' actual a monthly salary in between 1500 to 1800 birr.¹²⁸ This salary of security guards is after pension, uniforms, transport allowances and administration expenses are deducted, and then the agency gain 5% to 7% profit.¹²⁹

Moreover, to substantiate whether there is exploitation of wage of security guards by private security agencies, there is need to triangulate what representatives of employers and employees viewed above with that of the CETU and AACALSAB.

Thus, CETU president said that agencies are taking high profit from a monthly salary of employees.¹³⁰ But what he believes is that the right way is once agencies bring to gather employers and employees, they should only take commission once.¹³¹ 'Continuous deduction from a monthly salary of employees amounts to exploitations of employees' labour. With a view to preventing such a problem, there is draft law

¹²²Id

¹²³Reta Mulu, (2017). *Personal interviews*. Analysis exploitation of private security guards' employed by private security industries working in Addis Ababa, 10 March, 2017

¹²⁴Ibid

¹²⁵Id

¹²⁶Id

¹²⁷Gebrehiwot Getahun, (2016). *Personal interviews*. Analysis exploitation of private security guards' employed by private security industries working in Addis Ababa, on 15 December, 2016.

¹²⁸ Ibid

¹²⁹ Id

¹³⁰Kasahun Folo (2016). *Personal interviews*. Analysis exploitation of private security guards' wages by private security industries working in Addis Ababa, 20 October, 2016.

¹³¹Ibid.

which needs the support of MOLSA to be a law and stop the monthly wage deduction of employees by their employers.¹³²

AACALSAB on its side said that since there is no law which determines the minimum wages for private employment sector in Ethiopia, the amount of wage of employees are determined by contract of employment relationship they have with employers.¹³³ They further claim that such relationship is in line with free market economy which government need not intervene, and as business enterprises, private security industries established for profit making.¹³⁴ Because of this different agencies follow different salary payment system.¹³⁵ This is, there is no fixed salary payment system. Even though there is free market economy policy, the government has duty to intervene in a market when he believes that there are violations of labour rights to prevent such high percent deductions of private security guards a monthly salary. To do this, the government has a duty to respect, protect and promote the rights of its society as per the Constitution and international agreements it has ratified.

What did Ethiopian labour laws say about the deduction of employees' wages whose employment relationship is triangular nature? ILO Convention No.181/1997 that Ethiopia ratified since 1999 provides that private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.¹³⁶ Also, FDRE Labour Proclamation No.377/2003 states that employer is not allowed to deduct wages of workers.¹³⁷ The amount of deduction must not exceed one-third of the monthly wages of the worker.¹³⁸ However, private security guards says that their employers deduct from their wages for reasons that go beyond the amounts needed for purchase of uniform, training, rain coat, torches, shoes and night dresses.¹³⁹ This is clearly contrary to what the law says i.e. an employer shall provide workers with protective equipment, clothing and other materials and instruct them of its use.¹⁴⁰ As

¹³²Id.

¹³³Ahmed Ergo (2016). *Personal interviews*. Analysis exploitation of private security guards' wages by private security industries working in Addis Ababa, 23 December, 2016.

¹³⁴ Ibid.

¹³⁵Id

¹³⁶Article 7(1) of ILO Convention No.181/1997, on private employment agencies that Ethiopia ratified since 1999. See also Articles 2(1) of FDRE Employment Exchange Services Proclamation No.632/2009.

¹³⁷Article 59(1) of FDRE Labour proclamation No.377/2003.

¹³⁸Ibid, article 59(2.)

¹³⁹Tsegaw Adene, supra note 90.

¹⁴⁰Article 92(3) of FDRE Labour proclamation No.377/2003.

security guards stated Purchasing of materials needed for work are not in every months of a year, rather once in two years but their wages are deducted monthly for the reason of the above mentioned materials.

Generally, problems of private security guards' low wage in Ethiopia emanates from multiple factors.

Foremost, absence of law setting minimum wage for private sectors as a whole¹⁴¹ ; and specifically lack of law setting minimum wage for private security guards in the country.

Secondly, absence of comprehensive law regulating private security service providers which make them responsible and accountable for their acts. This enables private security service providers to gain profit at the expense of security guards' labour.

Thirdly, cause for the exploitation of the wage of guards was that, security guards are not members of trade unions.¹⁴² This is because of lack of awareness on the importance of trade unions, and their employers are not willing to allow and encourage guards to become member of trade unions for fear of the fact that they may aware their rights and demand high wage payment as well as claims to the court or labour board for their rights against their employers.¹⁴³

Fourthly, High level of unemployment in Ethiopia may reduce the capacity of employees to negotiate with their employers on the amount of wage they want during formation of contract of employment.¹⁴⁴ Since excess labour force on market; the employers hire those whose wage is too low. This makes employees unable to negotiate adequate wage during formation of contract of employment.

Fifthly, the nature of employment relationship between private security industries, security guards and client firms is a triangular type of employment relationship.¹⁴⁵ Triangular employment relationship has positive aspects as of creating job opportunities for non- employed individuals. However, such type of employment

¹⁴¹The History of Minimum Wage Laws available at: http://www.tbowleslaw.com/resources_employers/employment-law-history/history-minimum-wage-laws/ (accessed on October 20, 2016).

¹⁴²Data collected by questionnaires and interviews from private security guards working across Addis Ababa from 15 October -25 March, 2016 GC.

¹⁴³Ibid.

¹⁴⁴Abdi Mokonen, supra note 89.

¹⁴⁵FDRE Proclamation No.632/2009 and ILO Convention No.181/1997 that Ethiopia ratified.

relationship is not so much less to be termed as slavery.¹⁴⁶ For example, Proclamation No.632/2009 allows outsourcing of workers to abroad, and within home country which means a triangular type of employment relationship. This proclamation has problems. For example, article 24 of this proclamation states that the MOLSA may issue directives governing the minimum wage of overseas workers depending on the situation of each country. And also article 11 and 12 of ILO Convention on Private Employment Agency says:

A member states shall in accordance with national law and practice, take the necessary measures to ensure adequate protection for the workers employed by private employment agencies in relation to minimum wages, and determine and allocate respective responsibilities of PEA and user enterprises in relation to minimum wages respectively.

Though Ethiopia ratified ILO Convention No.181/1997 and enacted proclamation No.632/2009 on PEA having the issue of minimum wage protection for overseas workers, still there is no directive enacted by MOLSA as empowered under article 24 of this proclamation. From art.24 of Proclamation No.632/2009 one can understand that there is a discriminatory phrase .i.e. MOLSA issue directives governing the minimum wage of overseas workers which excludes home country workers that including security guards.

Thus, sufficient remuneration for the employees is a key condition for a more efficient, committed and reliable private security service. However, security guards condemn their employers exploit them by contracting with client firms for high payment but pay security guards with less wage, and security guards having different work experience earn the same wage.¹⁴⁷ Also in many agencies in Addis Ababa based on contract of employment private security industries signed with private security guards; security guards having same experience earn different salary depending on where guards outsourced.¹⁴⁸ These resulted in dissatisfaction and tension within the private security guards, and these are problem of employers that they did not have motivation and commitment to increase their employees' wage rather reaping high profit.¹⁴⁹ This shows that employer are abuses labour of guards based on the contract

¹⁴⁶Tsegaw Adene, supra note 90.

¹⁴⁷Abdi Mokonen, supra note 89.

¹⁴⁸Nigist Fayisa (2016). *Personal interviews*. Analysis exploitation of private security guards' employed by private security industries working in Addis Ababa, 16 December, 2016.

¹⁴⁹Ibid.

of employment with their employees that means employees have no strong power to negotiate with their employers due to the factors noted above. According to the interviews with private security guards from different private security industries, they are dissatisfied with their jobs, and this also increases turnover in the private security industries.¹⁵⁰ According to my interviewees, their wages are unable to make their and their families life decent because their wages are low as well as exploited by their employers.¹⁵¹ Some security guards feel that their wages were better than nothing i.e. low waged is better than not having any job.¹⁵² This is because Wage levels have a direct bearing on individuals' and their families' quality of life.¹⁵³ They declared that rental amounts paid in Addis Ababa is so high and transport costs combined with other expenses such as school fee and transportation costs for their children to school make their livelihoods shaky.¹⁵⁴ Some of guards rent house far from their work place because house rent around his work place was more expensive that he cannot afford it.¹⁵⁵ Security guards have life strategies that they exercise as a response to their material deprivation emanating from their relatively low wages and the rising of cost of living.¹⁵⁶ Some of them fear to marry and have child in Addis Ababa because of their income is so low and this low income cannot feed child and spouse.¹⁵⁷ Low remuneration seems to be one of the main reasons why many see a security job as a stepping stone. Having a job seems not to provide immunity from poverty that some feel that the contrast between the expectations of work, that means enable one to meet basic needs and the actual reality is a vividly lived and disappointing experience.¹⁵⁸ There are also who feel that being unemployed is perhaps better because they expect to live in poverty, but the expectation of work was that it was suppose to be a vehicle away from poverty but the reality seems to suggest otherwise.¹⁵⁹ Concerning their work and family life, security guards often feel that

¹⁵⁰Werkine Takele (2016). *Personal interviews*. Analysis exploitation of private security guards' employed by private security industries working in Addis Ababa, 9 October, 2016.

¹⁵¹Adane Diriba, supra note 109.

¹⁵²Tsegaw Adene, supra note 90.

¹⁵³Luxton, M. and Bezanson, K. (2006). *Social Reproduction: Feminist Political Economy Challenges Neo Liberalism*. Montreal: McGill Queen's University Press.

¹⁵⁴Adane Diriba, supra note 109.

¹⁵⁵Abdi Mokonen, supra note 89.

¹⁵⁶Ibid.

¹⁵⁷Ibid.

¹⁵⁸Ayele Hailu, (2016). *Personal interviews*. Analysis exploitation of private security guards' employed by private security industries working in Addis Ababa, 5 November, 2016.

¹⁵⁹Abdi Mokonen, supra note 89.

they are often experienced stress, frustration and anxiety about the relatively little time they have to spend with their families because of work commitments.¹⁶⁰ Many security guards said that they only get to spend some time with their families during leave and off-days.¹⁶¹ The effect of a work and life imbalance shows their dissatisfaction to their work.¹⁶² One of security guard said that to show his dissatisfaction with his job, “I am happy I have a job but if I had an option, I wouldn’t work for this amount of wage.”¹⁶³

In globalization, the wage is the real mechanism for purchasing power, and wage and the ability to access the human rights of adequate standard of living including food, shelter and clothing has direct link.¹⁶⁴ Thus, Security guards are fulfilling their basic needs through an exchange of their labour for wage, which they then use to purchase their necessities.

Therefore, the state has an obligation to protect the human rights to ensure conducive and decent working conditions, thereby ensuring provision of adequate standard of living whereby an individual can provide for him/her self or their families. Thus government can avoid extremely low wages which cannot grant the security guards the ability of purchasing power by means of legal measure concerning wage protection. Thus, the absence of minimum wage protection law and their real practice to pay high wage has impact on accessing human rights to adequate standard of living which including food, shelter and clothing. On the other hand, paying the security guards below the amount needed for basic existence is to deny his/her human dignity.

¹⁶⁰Adane Diriba, supra note 109.

¹⁶¹Ibid.

¹⁶²Tsegaw Adene, supra note 90.

¹⁶³Adane Diriba, supra note 109.

¹⁶⁴Article 11(1) of International Convention on Economic Social Cultural Rights adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force on 3January, 1976, United Nations Treaty Series, vol. 999.

CONCLUSION

The chapter analyzed the international and FDRE national laws on wage and minimum wage protections, and practical wage problems of private security guards working in Ethiopian private security industries in Addis Ababa. As a result, the findings of this chapter are:-

Unlike for public servants, there is no law setting minimum wages protection for private employment relationships in the Ethiopian labour laws.

Ethiopia has ratified the ICESCR. However, yet implemented part of instrument concerned with minimum wage protection in their labour laws. This instrument is an integral part of the law of Ethiopia by virtue of article 9(4) of the constitution. And Fundamental rights and freedoms in chapter three of FDRE Constitution which include labour rights shall be interpreted in a manner conforming to this instrument that entails the FDRE Government has duty to respect, protect and promote the minimum wage protections imposed in the treaty.

Ethiopia has not ratified the ILO Conventions such as Convention No.95/1949 on Protection of Wages, and Conventions No.26/1928, No.99/1951 and No.131/1970 on the minimum wage protection. These all international law standards are intended to provide guidance and a framework for the key principles that underlie wage and minimum wage protections, and their incorporation into national legislation.

Minimum wage legislations have the power to eliminate unduly low wage and underpayment of minimum wage, and prevent exploitation of wages by employer. The absence of minimum wage protection for private employee sectors in Ethiopian labour laws, non-ratification of ILO Conventions, and non-adherence of Ethiopia to the ICESCR that she ratified related to minimum wage protection are cause for exploitations of wages of private security guards employed by private security industries in Addis Ababa.

Wage of private security guards are unduly low and private security industries in Addis Ababa are exploiting almost half of their monthly salary. Such violations of labour rights of private security guards who works in private security industries in Addis Ababa is because of government is unwilling to enact laws that setting minimum wage protections. This reluctance of government result into denial accessing human rights to adequate standard of living.

A minimum wage is the minimum amount of remuneration that an employer is required to pay wage earners for the work performed during a given period, which cannot be reduced by collective agreement or an individual contract. The rationale behind having laws fixing minimum wages protection is that, unlike other contractual agreements, contract of employment relationship has a bench marks below which the terms of the contract may not lay down. Also, labour is not simple a commodity, which like any other commodities on the market that can be bought and sold; rather, it is a human activity, which cannot be reduced to something that can merely be bought and sold. Because, as employers and employees have no equal bargaining strength. Minimum wage is a point of reference that allows employees to negotiate with their employers that without a minimum wage, they may be forced to accept whatever suggested by the employer.

Thus, such legal gaps in contract of employment can cause injustice and instability in industrial peace.

CHAPTER-FIVE
CONCLUSION AND RECOMMENDATIONS

5.1. CONCLUSION

The main aim of this research is to answer three basic questions. These questions are: 1) how are the works and responsibilities of private security industries and rights of private security guards regulated in Ethiopia? 2) What is the extent of legal protection of the wages of private security guards in Ethiopia in general? How their wages regulated in Addis Ababa? and 3) are there adequate legal frame works protecting the minimum wage of private security guards in Ethiopia?

In answering these triple questions, this research is meant to have significance for the private security guards and private security industries on the one hand and for the concerned government organs on the other. It creates awareness for private security guards. This in turn helps them to hold the government and employers accountable for their failures of taking steps to enforce their rights. Specially, it assist the Government body such as MOLSA and AACALSAB to understand gaps and inadequacy of Ethiopia laws which regulate private security industries, and violations of the labour rights of private security guards by private security industry. Also, helps monitoring bodies such as ILO, African Commission on Human and Peoples' Rights, UN Committee on Economic, Social and Cultural Rights, donor states, trade unions and CETU to monitor the protection of the labour rights of private security guards in Addis Ababa.

The research has employed qualitative research method to collect and analysis data, and used primary data collection techniques such as questionnaires and interviews.

Consequently, the research has come with the following findings. These are:-

1. At international level, ICOC is self-regulation law that is aimed to set international standards and provides legal frameworks at national level. Since ICOC is signed by private security industries rather than states, internationally there is a legal gap to control and secure legitimacy of private security service providers. And also no Ethiopian private security company has signed the International Code of Conduct for private security providers.
2. In Ethiopia there is no national legislation that is comprehensively, separately and adequately regulates and control private security service providers as that

of India and South Africa. The absence of adequate law which regulates private security industries in Ethiopia makes the private security industries not responsible and accountable for their acts, especially in terms of maintaining minimum working conditions such as minimum wage protection, maximum working hours, and the like. This results in violations of labour rights of private security guards which are fundamental human rights. Private security industries are market-based and profit oriented to be effective and efficient in their delivery of security services to clients.

3. In Ethiopia, unlike for public servants, there is no law setting minimum wage protection for private employment sectors. Ethiopia neither ratified ILO Conventions such as Convention No.95/1949 on wage protection, Conventions No.26/1928, No.99/1951 and No.131/1970 on minimum wage protections nor implemented part of the ICESCR which deal with minimum wage protections that she ratified. The absence of minimum wage protection for private employee sectors in Ethiopian labour laws, non-ratification of ILO Conventions, and non-adherence of Ethiopia to the international law that the state has ratified relating to minimum wage protection such as ICESCR leave room for exploitation of wages of private security guards employed by private security industries in Addis Ababa. Such failure to take steps amounts to a violation of the Covenant. This all cause the violation of workers' rights who work in private sectors i.e. denial of setting minimum wages is denial of decent living for workers and their families.
4. The practice shows that private security guards working in Addis Ababa are facing wage exploitation by their employers. The data gathered by this study indicate that the wage of private security guards in Ethiopia is unduly low and that ranges from 650 to 1500 birr (US \$28.49-US \$65.76). And private security companies working in Addis Ababa are paying to the security guards almost half of the amount that they collect from their clients for each security guard that the companies deploy; they keep the rest for the companies' benefit. With a view to preventing such a problem, there is draft law which needs the support of MOLSA to be a law and stop the monthly wage deduction of employees by their employers. These violations of labour rights of private security guards who work in Ethiopian private security industries in Addis

Ababa are attributed to Government's lack of willingness or inability to enact laws setting minimum wages protection for private employment sectors. This in turn amounts to denial of decent and adequate standard of living including food, shelter and clothing for security guards and their families, rights that are protected under the constitution as well as ratified regional and international treaties.

5.2. RECOMMENDATIONS

To protect the rights of private security guards; it require a legal frameworks that support realization of their rights. Allowing market forces to predict the minimum wage without monitoring wages system resulted workers will be used as just another commodity and wages can fall below which could maintain their living. Establishing a legal framework within which any employer, State or private person must respect the dignity of private security guards and his/her right to an adequate standard of living is relevant to the realization of the rights.

Thus, in order to avoid legal gaps and exploitation of wages of private security guards by private security industries in Ethiopia, Addis Ababa, the following recommendations are forwarded based on the aforementioned findings in particular and on the basis of the thesis of the study in general:

1. The Ethiopian Government should implement wage and minimum wage protection as stated in the ICESCR and General comment No.23 for employees of private employment relationships and private security industries.
2. The Ethiopian Government should ratify and implement the ILO Conventions on wage protection No.95/1949 and the minimum wage protection No.26/1928, No.99/1951 and No.131/1970 to protect the rights of private security guards working in the country's private security industries, and give effect to these Conventions on wage and minimum wage protection in national labour laws which govern private employment relationships.
3. To ensure accountability of private security industries, maximize their role in crime prevention, and to protect the labour rights of security guards Ethiopian Government should enact law which adequately regulates private security industries.
4. The AACALSAB have a mandate to inspect the violations of labour rights of private security guards working under its jurisdiction. Thus, the Bureau in

collaboration with the CETU, the trade unions and other stakeholders should stop unduly low wage payment and the half exploitation of private security guards' a monthly salary by private security industries working in Addis Ababa.

5. MOLSA, CETU and AACALSAB should help raise awareness of the security guards.

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ANNEXES

Annex1

Questionarie guide line distributed to private security guards working in Addis Ababa.

| No | Personal information | Possible response |
|----|---|---|
| 1 | Sex | 1. Male 2. Female |
| 2 | Age | -----years |
| 3 | Marital status | 1. Married 2. Single 3. Divorced |
| 4 | Educations level | 1. Illiterate 2. Read and write 3. Primary 4. Secondary 5. Diploma/Level 6. Degree 7. Others |
| 5 | Where do you work now? | 1. Bank 2. Insurance 3. Manufacturing 4. Trade and commerce 5. Warehouse 6. Government institution 7. NGOs 8. Embassy 9. Others |
| 6 | What is your previous work experience? | 1. On police work 2. On military work. 3. Others |
| 7 | Amount of salary that Private security industries contracted with outsourced company per month for each employees | _____ Ethiopian birr |
| 8 | Actual amount of salary paid to you per | _____ Ethiopian birr |

| | | | |
|----|--|---|-----------------|
| | month | | |
| 9 | Is there wage increment for you having long experiences? | 1. Yes 2. No | |
| 10 | How you weigh your monthly wage payment? | 1. High 2. Medium 3. Low 4. Very low | |
| 11 | Do you have access to social security? | 1. Yes 2. No | |
| 12 | Does your employer provides you non-wage benefits of: | Retirement pension? | 1. Yes 2. No |
| | | Invalidity pension? | 1. Yes 2. No |
| | | incapacity pension or Survivors' pension? | 1. Yes 2. No |
| | | Gratuity? | 1. Yes 2. No |
| | | Refundable pension contribution? | 1. Yes 2. No |
| 13 | Do you have access to annual leave? | 1. Yes 2. No | |
| 14 | If you work on public holy day, is there any payment? | 1. Yes 2. No | |
| 15 | Do you have access to week rest? | 1. Yes 2. No | |
| 16 | If your answer on Question No.15 is Yes, for how many day? | 1. 1 day 2. 2 day 3. 3 day | |
| 17 | Are you entitled to pay sick leave? | 1. Yes 2. No | |
| 18 | Are you entitled to paid Maternity leave?(only for female) | 1. Yes 2. No | |
| 19 | If your answer on Question No.18 is Yes, for how many month? | 1. 1 month 2. 2 month 3. 3.month | |
| 20 | Does your employer provides you with: | Transport? | 1. Yes 2. No |
| | | Meals? | 1. Yes No |
| | | Uniforms? | 1. Yes No |
| | | Accommodation benefit? | 1. Yes No |

| | | |
|----|--|--|
| 21 | How many hours do you work in each day? | 1. 8 hours 2. Below 8 hours 3. Above 8 hours |
| 22 | If your answer on Question No.21 is above 8 hours, are you paid for the over time works? | 1. Yes 2. No |
| 23 | How many hours do you work in each week? | 1. 48 hours 2. Above 48 hours 3. Below 48 hours |
| 24 | Are you satisfied by your current job? | 1. Yes 2. No |
| 25 | To what extent are you satisfied with your work? | 1. Very satisfied 2. Satisfied 3. Dissatisfied 4. Very dissatisfied |
| 26 | Have you signed employment agreement with your employer? | 1. Yes 2. No |
| 27 | What type employment contract do you have with your employer? | 1. Indefinite period 2. Definite period |
| 28 | Is there a trade union at your work place? | 1. Yes 2. No |
| 29 | Do you belong to a trade union? | 1. Yes 2. No |

Annex 2

Interviews guide line for private security guards working in Addis Ababa

1. What is your salary that Private security industries contracted with outsourced company per a month for each employee?
2. What is the actual salary paid you to per month (your Monthly net wage)?
3. How you weigh your monthly wage payment?
4. Is there wage increment for you having long experiences?
5. What types of problems you faced in your work? Is it the problem you faced is the problem of legal gaps or practical problems that to put the existing law in to practice? Please would you explain these problems in details?

6. Is there problem of low wage payment? If yes, what is the impact low wage on your purchasing power to access adequate standard of living means having adequate food, shelter, and clothing for him and families?
7. Who exploit your wage? How these bodies exploit your wage?
8. Are you satisfied by your current job? If no, what is your reason that makes you not satisfied to your work?

Annex 3

Interviews guide line for Addis Ababa city administration Labour and Social Affairs Bureau and Confederation of Ethiopian Trade Union

1. What types of problems you identified concerning the labour rights of private security guards? Is it the problem you identified is the problem of legal gaps or implementation of existing law in to practice? Or both of them?
2. What solution you suggested for the problem you identified?
3. What did the workers/private security guards/ says about their wages?
4. If there is problem of low wage payment for guards, as per your knowledge, does this have impact on purchasing power of guards to access adequate standard of living means having adequate food, shelter, clothing for him and families?
5. As per your knowledge, who exploit wage of security guards? How this body exploit wage of security guards?

Annex 4

Interviews guide line for Private Security Industries established in Addis Ababa

1. What is your agency Name?
2. When was your industry established?
3. How many security guards do your agency employed? What is the number of female/male employees?
4. Have you signed employment agreement with your employes? What type of employment relationships do you have with your employees? Indefinite period or definite period?

5. How do you see the wage of your employees? High or medium or low? Is there wage increment for your employees based on working experience or educational improvement? What is your employees' average Monthly wage? As per your knowledge, does this wage enough and enable your employees to have good purchasing power to access adequate standard of living means having adequate food, shelter, and clothing for him/her and families?
6. How many hours do your employees work in a day? Does your company provide overtime pay?
7. Do your employees have access to social security? Do they have access to annual leave? Are they entitled to pay sick leave? Are they entitled to paid Maternity or paternity leave?
8. Do your employees have awareness both on their rights and duty?
9. Does your company offer benefits in order to attract and retain serious minded employees? What kind of benefit? Is it transport, meals, accommodation benefit, annual bonus?

LIST OF TABLES

1. Table1: Name of agency, Year of establishment and Number security guards
2. Table2: Name of private security industries, amount of salary employers contracted with organizations those needs security service per monthly for each security guard, actual amount of salary paid to security guards per monthly.