The Impact of Ethiopian Labor Laws on Business Efficiency and Competitiveness

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Abbreviations and Acronyms

AACCSA	Addis Ababa Chamber of Commerce Sectoral Associations
CETU	Confederation of Ethiopian Trade Unions
EFE	Employers' Federation of Ethiopia
FDRE	Federal Democratic Republic of Ethiopia
FILC	First Instance Labor Court
FSC	Federal Supreme Court
HCLD	High Court Labor Division
ILO	International Labor Organization
LAB	Labor Advisory Board
LDHC	Labor Division of the High Court
LRB	Labor Relations Board
MLCR	Minimum Labor Conditions Regulation
MNCD	Ministry of National Community Development
MoLSA	Ministry of Labor and Social Affairs
POEPF	Private Organization Employees Pension Fund
POEPP	Private Organization Employees' Pension Proclamation
PMAC	Provisional Military Administrative Council
PSD HUB	Private Sector Development Hub
REPDP	Right of Employment of Persons with Disability Proclamation
RSC	Regional Supreme Court
SCCD	Supreme Court Cassation Division
TAB	Tripartite Advisory Board
TDC	Trade Dispute Committee
TGE	Transitional Government of Ethiopia

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CHAPTER I

INTRODUCTION

1.1 Background

Ethiopia is endowed with favorable climate, agrarian and mineral wealth. It has abundant human resources, livestock, river basins, exotic wildlife, and unique heritages. Due to its underdeveloped agricultural and handicrafts practices as well as the slow pace of industrialization, however, the country has not been able to satisfy the basic needs of its people and its human resources remain unproductive.

The economic liberalization measures undertaken by the Ethiopian government in recent years have encouraged investment that resulted in high growth of the economy. Several of the enterprises established have contributed to the growth of the various sectors of the economy. Yet the economic growth has not been accompanied by concomitant growth in formal employment. The manufacturing sector, for example, has registered little incremental growth in employment that resulted from economic growth.

This disparity in growth and slow development, in particular the sluggish growth of employment, led to discussions and debates over the true causes of stagnation in formal employment. There is a strong argument that Ethiopian workers have been overprotected by strict labor laws that impede industrial growth and employment creation. The laws are designed to protect workers from discriminatory and unfair practices of employers. They intend to protect workers against job insecurity, poor working conditions and low wages.

Labor legislations stipulate minimum benefits that accrue to workers and restrict the rights of hiring and firing, thereby raising labor costs and affecting productivity and competitiveness. Similarly, labor market rigidities increase tenure and wages of employed workers. Both regulations and market rigidities have the influence to hold back investors, particularly foreign investors who, among other things, make decisions based on these factors.

Theoretically, labor laws are considered exogenous factors that negatively affect employment and productivity. In practice, however, labor laws are treated as partially endogenous factors influenced by national and sectoral contexts as well as labor and capital market institutions. The political and economic systems followed in a country also define the content and impact of labor laws. Such factors have to be considered when assessment of the impact

of labor laws on business efficiency and competitiveness in a given national context is made. Thus, there is a need for an assessment of the impact of labor laws on business operations in Ethiopia based on these and other factors.

The assessment would help policy makers in designing policies that encourage business efficiency and competitiveness.

1.2 Objectives and Expected Output

The objective of the study is to assess the impact of Ethiopian labor laws on business efficiency and competitiveness, and to make recommendations that would enhance productivity and efficiency through policy and legislative measures.

The major expected output will be an in-depth study, which will both present and analyze implications of the current legal and institutional framework, and suggest specific and implementable recommendations for the government and the private sector on improving the current institutional and legal framework for the labor market.

1.3 Methodology

At the start of this exercise, the approach for the conduct of the study included, but was not necessarily limited to, the following:

- The consultant's team met to ensure a collective understanding of the ToR and to define individual responsibilities in the conduct of the study;
- The team met with PSD Hub to ensure common understanding of the proposed approach and methodology as well as the approval of the client; and
- Securing of all relevant documents related to the above mentioned study, ensuring that each member of the team has internalized the content of the document and filtered out the relevant information.

The consultant's team then engaged in the important activities indicated below:

- Review of literature;
- Conduct of survey;
- Ensure that client's comments and comments by the validation workshop are accommodated as appropriate.

The methodology utilized for conducting the above activities is presented below:

- Collect data from selected enterprises in major sectors of the economy through:
    i. Questionnaires; and
    ii. Interviewing stakeholders and gather their opinions on the provisions of the current labor proclamations that negatively affect business efficiency and competitiveness;
- Gather views of key stakeholders on legal and institutional framework as well as on how to make it efficient;
- Retain useful inputs from earlier studies made on the subject;
- Review all relevant legislations;
- Consult with the Private Sector Development Hub.

CHAPTER II

LABOR LAW AND LABOR MARKETS: LITERATURE REVIEW

2.1 What is labor law?

Labor law includes all the controls that regulate, direct, and protect management and labor. It is a highly personalized type of law. In addition to meeting the terms of the law, labor law compliance involves the personal (and personnel) element. It requires constant study of and adjustment to all the personal pressures that bear on the employer-employee relationship. Labor peace or violence must be weighed against production schedules, stakeholders' demands and expansion programs. Wage bargaining; in particular, must take into consideration possible operating losses, layoffs, increasing resort to labor-saving machinery and the fluctuation of the purchasing power of currency. This is true even on the legislative side. Labor law is necessarily influenced by the public interest and the public's stake in productive industrial peace. Thus, labor law is a highly personalized law reflecting highly competitive interests.[1] Labor law is also referred to as an employment law relating to the employment of workers or a law that governs employment relationship.

The main topics of a labor law are the contract of employment, the role of any collective bargaining and the statutory control of minimum conditions of work; and these topics do, of course, subdivide still further.[2] The contract of employment is different from other kinds of contracts in that the key issues are the unequal distribution of bargaining power between the contracting parties, the employer and the employee. The results of such bargaining are unlikely to be in the public interest. Contract of employment may be written or oral, although there is now an encouragement to produce written contract.

In the contract of employment the obligations of both the employer and the employee are clearly stated. Generally, the employer's obligations are to pay the agreed wages and to respect any other terms of the contract. However, the employer is not obliged to provide work. The employer has statutory obligations relating to safe working conditions. The employee's obligations are to give faithful and honest service, to use reasonable skill in his/her work

[1] Labor Law Course, Twenty first Edition,1972, Commerce Clearing House, Inc., Publishers of Tropical Law reports,p.511

[2] J.M.Oliver, Law and Economics, An Introduction, London, George Allen and Unwin (Publishers)Ltd,1979,p.92.

and to obey lawful orders, and not commit misconduct. An employee is, nevertheless, personally liable for damages done to property due to lack of reasonable care in his/her work.

The application of collective bargaining reduced the notion of an individual contract. Legislations have encouraged the use of collective bargaining through the intermediary of government advisory, conciliation and arbitration services. Similarly, the idea of personal contract discouraged trade union movements.

The labor law defines minimum conditions of work that must be observed by parties to an employment contract. Conditions of work such as hours of work, probation period, leave, remuneration for work performed, health and safety of workers, and other conditions are set by the law. Both parties may engage in collective bargaining in respect of minimum conditions of work as prescribed by law.

The competitiveness and efficiency of firms is dependent on productive labor. For labor to be productive, employers have to invest in the training and apprenticeship of workers. The cost incurred in improving the productive capacity of workers is an investment that ensures competitiveness and efficiency of a firm. Workers need to be introduced to the technology with which they operate. Also, they have to be aware of the results of their contribution to the enterprise. They are responsible partners in the production processes of goods and services.

2.2 Labor Laws and Competitiveness

It is argued that labor markets are imperfect and, therefore, workers need to be protected from employers who extract rent from employment relationship. Where workers are forced to work more or face termination, inefficiency and unfair practices arise. The government should, hence, intervene in the labor market.

Government regulation of labor markets to protect workers from their employers takes various forms. The first is prohibition of discrimination in the labor market. This protects workers against forced labor and against discrimination based on race or gender; and it also gives protection against exploitation of child labor. The second is empowering labor unions to represent workers in negotiating with employers. It protects labor unions that enforce workers' rights with the aim of curbing the power of employers over workers. The third is government regulation of employment relationship. These interventions by government are taken as rigidities in the labor market operations. Excessive protection of workers is reckoned to affect performance

negatively as institutions limit businesses in making market-based decisions. It is thus argued that there is a need for labor market flexibility in which institutional interventions are limited.

There are theories on the need for the flexibility of labor markets. The first expounds the need for labor force to adjust to changes in the product market that requires firms to respond quickly to these changes. The changes may be in size, composition and location of the work force. The second theory is related to reducing labor costs and increasing productivity for competitiveness. The third theory emphasizes free market operations where there is no intervention by both government and trade unions. Non-intervention helps in generating more opportunities for both workers and employers. Labor market flexibility implies legislative reforms that provide greater freedom for employers and workers to negotiate the terms of flexibility.

The notion behind flexibility of labor markets is expounded by several economists. Some economists argue that the free play of market forces results in employment of resources at the market clearing prices. This leads to both efficiency, as almost all resources are employed, and equity, as all are rewarded according to their marginal contribution. Regulation of the market by the state leads to deviations from full employment of resources. Hence, attempts should be made to remove as many of these imperfections as possible so as to achieve full employment of resources and optimal social welfare. In the case of labor market, trade unions and protective labor legislations are said to be market distorting agents which curtail the free operations of the market forces to ensure full employment of labor.

Labor market flexibility is also essential for economic liberalization and market competition. Competition among firms requires that production organizations be guided by changing market conditions in order to promote economic growth and generate employment. Labor market flexibility promotes competitiveness and efficiency in line with globalization and technological progress, supported by skill development of the labor force and flexibility of labor laws.

Studies conducted by the World Bank support the argument for flexible labor markets. The bank's studies argue that labor market policies designed to improve the welfare of workers such as minimum wages, job security regulations and social security have proved to do harm to workers they are intended to benefit. As these policies are intended to raise the benefits of workers and reduce exploitation, they might raise the cost of labor in the formal sector and reduce demand for labor.

The World Bank has developed 'employing workers index' for measuring the impact of labor regulation on enterprise operations. This index is updated every year on the basis of surveys of employment regulations and reviews of laws. It is largely based on the study of formal laws and survey results on perception of regulatory rigidity. It seeks to capture actual costs as they are impacting on enterprises affected by labor regulations. The index points at laws that are most protective or most rigid.

2.3 Impacts of Labor Laws on Investment and Employment

Studies reveal that labor laws have impacts on the level and quantity of investment and employment. There are close linkages between labor regulations and investment climate and employment generation. A reduction in labor market regulation enhances the investment climate, resulting in increased investment and employment opportunities. Small businesses benefit most from deregulation of labor markets as they are sensitive to stringent regulatory environment.

Studies also show that labor regulations increase costs of labor and discourage firms from hiring more labor. Firms tend to adopt new technologies which displace workers and reduce employment opportunities.

Studies on the relationship between regulation and foreign direct investment indicate that with flexible labor market in a host country foreign direct investment tends to increase. Such investment creates more employment opportunities, particularly in the service sector.

The lesson to be learnt from studies on impacts of labor market regulation on investment and employment is that stringent labor laws tend to depress investment and, therefore, reduce employment opportunities.

CHAPTER III

BRIEF REVIEW OF ETHIOPIAN LABOR LAWS

3.1 Historical Background

After liberation from Italian occupation in 1941, Ethiopia engaged in the task of developing trade and commerce, and the establishment of manufacturing industries. This led to vast employment of workers and the formation of occupational associations. Taking note of the emerging new phenomena, Article 47 of 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.[3]

The law on the formation of associations was then provided in the Civil Code which was promulgated in 1960.[4] The Civil Code also provided provisions with regard to contract of employment in general, which ,among other things, covered conclusion of contract of employment and collective agreements, work of employee, wages, safety precautions, accidents arising from work, occupational diseases, leave, termination of contract of employment and compensation to be paid in the event of dismissal without good cause.[5]

The Civil Code also included provisions on contracts of apprenticeship and contracts with a trial period.[6] The Civil Code provisions on contract of employment are still in use to adjudicate disputes based on contracts of employment regarding managerial employees.[7]

In 1962 the Labor Relation Decree was promulgated by the imperial government in accordance with the provisions of Article 92 of the Revised Constitution which gave the Emperor power to promulgate a decree during a parliamentary recess.[8] The decree, as could be understood from the preamble, was promulgated to enhance higher standard of living for the people of Ethiopia through harmonious and voluntary cooperation of labor and enterprise, create conducive labor conditions, provide provisions for the settlement of labor disputes through collective bargaining between employers and employees or their lawfully established representatives, and create an institutional framework for the settlement of labor disputes. The decree

[3] Revised Constitution Proclamation No. 149/1955, Art.47
[4] Civil Code of Ethiopia, Arts.404-482
[5] Ibid, Arts. 2512-2593
[6] Ibid, Arts.2594-2600
[7] Nib Transport S.C. v. Ato Tegenu Meshesha(Supreme Court Cassation Division), 2005, Seber F/ No. 18307
[8] Labor Relations Decree No. 49/1962

granted power to the Ministry of National Community Development (MNCD) to fix labor conditions which should not be less favorable than was provided in the Civil Code of 1960. The decree also established a new procedure for the registration and legislation of employers' associations and labor unions, and set up conflict-resolving machinery, i.e. The Labor Relations Board (LRB) and made strike or lockout in essential public service undertakings unfair labor practice.

In 1963, parliament introduced certain amendments into the decree of 1962 and passed it as the Labor Relations Proclamations.[9]

The MNCD, in 1964, issued Minimum Labor Conditions Regulation (MLCR)[10] 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.

The 1963 Labor Relations Proclamation and the 1964 MLCR excluded from their coverage a manager, director, superintendent or representative of an employer or a person performing similar duties on behalf of an employer. A domestic servant, an agricultural or pastoral employee on a farm having less than ten permanent employees and public servants were also excluded from the coverage of the laws.

Labor disputes regarding working hours, overtime, annual leave, public holidays and severance payment for dismissals without good cause were handled in accordance with the provisions of the Minimum Labor Conditions Regulation. Labor disputes involving payment of compensation for management employees whose contract of employment were terminated without good cause and other matters not covered by the Regulation were adjudicated in accordance with the Civil Code provisions on employment contract. Labor disputes involving industrial accidents and occupational diseases were also handled under provisions of contract of employment of the Civil Code.

The LRB had power to consult and arbitrate labor disputes involving the terms or tenure of labor conditions and power to consider complaint of unfair labor practice and prohibit any such practice.[11] The Board had also power to order reinstatement of workers dismissed due to union activities and stoppage of strike or lockout as unfair labor practice.

Any party not satisfied with the Board's decision or award could appeal to the Supreme Court on question of law only. If the Court found error of law in the decision, it returned the case to the Board for final action with binding

[9] Labor Relations Proclamation No. 210/1963
[10] Minimum Labor Conditions Regulation,1964, Legal Notice No. 302/1964
[11] Proclamation No. 210/1963, Art. 12

directives. Individual employee cases were referred to Courts in the event of failure of conciliation attempt by conciliators of the MNCD.

When seen in retrospect, the labor law of Imperial Ethiopia was very conducive for investment. It allowed termination of contract of employment even without good cause, subject to compensation. In fact, towards the end of the monarchy commercial farming was expanding and industrialization was starting to grow.

In 1975, the Provisional Military Administrative Council (PMAC), also known as the Dergue, promulgated Proclamation No. 64/1975 which explicitly repealed Labor Proclamation No. 210/1963 and practically made the MLCR ineffective.[12]

The preamble of the proclamation stated its purpose to improve the standard of living of the worker by freeing him/her from exploitation, expanding employment opportunities and eradicating unemployment, organizing workers in trade unions in line with socialist principles, attaining higher production through improved efficiency and systematic work methods as well as the participations of workers in the management of undertakings.

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.[13]

The proclamation 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 labor conditions, trade unions, collective agreement, and trade dispute settlement. Collective trade dispute (defined under Article 2(5) was heard by the Labor Division of the High Court (LDHC) which rendered final decision. Individual trade dispute (defined under Article 2(12) was heard by the Trade Dispute Committee (TDC) established in every undertaking, and appeal was taken to the Awradja Court that rendered final decision.

In 1993, the Transitional Government of Ethiopia (TGE) promulgated Labor Proclamation No. 42/1993 (as amended) that repealed Labor Proclamation No. 64/1975. On August 21/1995 the Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995 was promulgated. Then, Labor Proclamation No. 377/2003 (as amended) was promulgated and is in operation now while Labor Proclamation No. 42/1993 (as amended) was repealed.

[12] Labor Proclamation No. 64/1975, Arts.111 and 114(1)
[13] Ibid, Arts. 3-5

3.2 Basic Forms of the Current Labor Law

The basic forms of the labor law under which management and labor operate in Ethiopia today include the following:

- Constitutional rights;
- Labor Proclamation;
- ILO Conventions (those ratified);
- Supreme Court, Cassation Division Decisions;
- Directives issued by the Ministry of Labor and Social Affairs;
- Collective Agreement;
- Work Rules.

3.2.1 Constitutional Rights

The constitution of the Federal Democratic Republic of Ethiopia (FDRE), among other things, grants rights to labor, form associations, bargain collectively with employers, express grievances including the right to strike, reasonable limitation of working hours, rest, periodic leave with pay, remuneration for public holidays as well as healthy and safe work environment.[14]

The labor proclamation and other forms of labor laws should embody, observe and be consistent with the labor rights enshrined in the constitution. If they infringe constitutional rights, they would be declared unconstitutional and would have no legal effect.

3.2.2 The Labor Proclamation

The labor law which is in operation at present is Labor Proclamation No.377/2003 (as amended). The proclamation covers 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, Labor Courts and the LRB, strike and lockout, period of limitation, labor administration, employment service and labor inspection service, and penalty provisions.

[14] Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, Art.42

The above coverage of the labor proclamation shall be applicable to employment relations based on contract of employment that exists between a worker and an employer. The proclamation shall not be applicable to contracts made for the purpose of upbringing, treatment, 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.[15]

This labor proclamation is the main focus of this study as regards its effect on business efficiency and competiveness since it is the operational law that is controlling and governing employment relationship.

3.2.3 ILO Conventions

"The International Labor Organization (ILO) was established in 1919 as part of the League of Nations. Its purpose was and continues to be the improvement of working conditions through international cooperation of employers, workers, and governments.

"Since its inception, one major part of the ILO's program has been the establishment of international labor standards through the promulgation of conventions and recommendations. When an ILO convention or recommendation is adopted, all member countries are required under Article 19 of the ILO constitution to submit it to competent legislative bodies for enactment of legislation or other action within 12-18 month after the Conference adopts the instrument." [16]

Unqualified ratifications of conventions would have the force and effect of law and constitute a multilateral treaty obligation of a country. Ratification of conventions not only could affect the substantive requirements of domestic labor law, but would also establish an international obligation on a country to fulfill the requirements.[17]

Ratification of ILO conventions requires extreme caution. Developing countries should examine whether labor standards embodied in the conventions required to be ratified go in line with their economic policies and stage of development or not. It has taken hundreds of years for western countries to reform their labor laws step by step in line with the pace of their economic and social development before they arrived at the standard, form and content of labor laws they have now.

[15] Labor Proclamation No. 377/2003, Art. 3(2)
[16] Edward E. Potter, Freedom of Association, The Right to Organize and Collective Bargaining, Labor Policy Association, INC. Washington, D.C.,p.1
[17] Ibid, p.2

As indicated in Article 9(4) of the Constitution of the FDRE, 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 labor law of Ethiopia and thus are expected to be enacted as part of the labor law.

3.2.4 Supreme Court, Cassation Division Decisions

In cases where they contain fundamental error of law, the Federal Supreme Court (FSC) 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 (RSC) rendered as a regular division or in its appellate jurisdiction.[18]

When one of the parties to a case petitions the Supreme Court Cassation Division (SCCD) 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 SCCD with not less than five judges sitting.[19]

Interpretation of a law rendered by SCCD with no less than five judges shall be binding on federal as well as regional courts found at all levels. The FSC shall publish and distribute decisions that contain binding interpretation of laws to all levels of courts and other relevant bodies.[20]

Accordingly, the SCCD has given many decisions regarding the interpretation of labor law articles. Since the interpretations given on labor laws have binding effect, enterprises should obtain such decisions and use them as part of the labor law when they consider taking disciplinary or other measures.

3.2.5 Directives issued by the Ministry of Labor and Social Affairs

Article 170(1) of the Labor Proclamation No. 377/2003 (as amended) gives power to the Ministry of Labor 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, procedures for the registration of job seekers and vacancies as well as procedures for the reduction of work force, etc.

So far, the Ministry has issued directives on procedures of reduction of labor force, establishment of committees at enterprises which follow

[18] Federal Courts Proclamation No. 25/1996, Art. 10
[19] Ibid,Art.21(2)(C)
[20] Federal Courts Proclamation Re-Amendment Proclamation No. 454/2005, Art.2(1)

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 Labor Advisory Board (LAB) which is established by the Ministry to study work conditions, the safety and health of workers and the labor law in general and give advisory opinion to the Ministry. Under Article 185(1) of the Labor Proclamation No.377/2003 (as amended) it is indicated that violation of directives issued in accordance with the proclamation is considered as an offence. Thus, it is important to get the directives that are issued by the Ministry to know the guidelines.

3.2.6 Collective Agreement

According to Article 124(1) of the Labor Proclamation No. 377/2003 (as amended), 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. The agreement is made on conditions of work. 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 labor law.

3.2.7 Work Rule

Article 2(5) of the Labor Proclamation No. 377/2003 (as amended) 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.

The employer has obligation under Article 12(8) of the Proclamation to observe the provisions of the proclamation, collective agreement, work rules, directives and orders issued in accordance with the law.

3.3 Other Related Laws

3.3.1 The Pension Law

Private Organization Employees' Pension Proclamation (POEPP) 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.

Though the law affects labor, it cannot be considered as part of labor law. But it is worth mentioning it here since under 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 (POEPF) established in accordance with the proclamation.

3.3.2 Law Regarding Persons with Disability

The Right to Employment of Persons with Disability Proclamation (REPDP) No. 568/2008 has been promulgated in order to comply with the country's policy of equal employment opportunity as could be understood from the preamble of the proclamation.

The law requires that unless the nature of the work dictates otherwise, a person with disability having the necessary qualification and scored more than other candidates shall have the rights without any discrimination: (a) to occupy a vacant post in any office or undertaking through recruitment, promotion, placement or transfer procedures; or (b) to participate in a training program to be conducted either locally or abroad.[21]

[21] Right to Employment of Persons with Disability Proclamation No. 568/2008, Art. 4(1)

CHAPTER IV

FINDINGS OF THE STUDY

4.1 Coverage

The study on the impacts of Ethiopian labor laws on business efficiency and competitiveness covered sixteen enterprises and two key stakeholders. Table 1 shows the type of enterprises by sector and employment.

Table 1: Number of Enterprises by Sector and Employment

No.	Sector	Number of Enterprises	%	Number of Employees	%
1	Agriculture	3	18.8	1664	13.1
2	Construction	7	43.6	8159	64.1
3	Manufacturing	3	18.8	642	5.1
4	Services	3	18.8	2243	17.7
	Total	16	100	12,708	100

Among the enterprises covered by the study, about 44 percent are engaged in the construction sector, while the rest are operating in the agriculture, manufacturing and services sectors. Out of the 12,700 employees working in these enterprises, about 64 percent and 18 percent are located in the construction and services sectors, respectively.

Limitation of coverage: This study does not cover one key stakeholder and one enterprise. Despite repeated attempts by the consultancy team to discuss the objective of this study, the Employers' Federation of Ethiopia (EFE) was not willing to provide the required information on the ground that it is the Federation and not the Addis Ababa Chamber of Commerce and Sectoral Associations (AACCSA) that is legally mandated to conduct such study. Also, the consultancy team could not get response to the questionnaire submitted to MIDROC Gold Mine PLC until the time the deadline for data collection was over.

4.2 Labor Problems Faced by Enterprises

Enterprises face diverse labor problems that negatively affect business efficiency and competitiveness. These problems include lack of labor discipline, work slowdown and insubordination. Employers usually take measures to correct such problems, the consequences of which are unpredictable reactions

from workers and trade unions. In section 4.3, labor problems which are relevant to the study and reported by enterprises are presented.

4.2.1 Labor Problems Affecting Enterprises

As shown in Table 2, about 63 percent of the responding enterprises reported that lack of labor discipline affected their businesses. Workers slowdown work; they also refuse to accept technological change as a result of which labor productivity declines. Employers pointed out that work stoppage reduced production. Moreover, as employers take measures to correct labor indiscipline labor disputes arise. The settlement of such disputes, particularly through labor courts, cost enterprises time, court fees, and legal service expenses, as mentioned in section 4.4.

Table 2: Types of Labor Problems and Percent of Enterprises Affected

No.	Types of Labor Problems*	Enterprises Affected in %
1	Lack of labor discipline	62.5
2	Slowdown	25.0
3	Declining productivity of labor	31.2
4	Labor not accepting technological change	6.25
5	Others (specify)	-

* An enterprise could be affected by one or more problems indicated in this and other tables, making the total percentage greater than 100. (Source of the data is the survey conducted.)

Table 3 reveals that 75 percent of the respondents have identified the impacts of labor problems on their undertakings. The impacts are reduction of profitability, diminishing of efficiency and negative labor-management relations. Consequently, these problems reduce competitiveness of enterprises.

Table 3: Impact of Labor Problems and Percent of Enterprises Affected

No.	Impact	Enterprises Affected in %
1	Reduction of profitability	75.0
2	Diminishing of efficiency	50.0
3	Affect management-labor relations	50.0
4	Reduce competitiveness	43.7
5	Others (specify)	-

4.2.2 Cost of Hiring and Firing of Labor and Closure of Enterprise

Hiring: As shown in Table 4, 31.2 percent reported that hiring of labor is inexpensive while one fourth of the respondents reported the hiring of labor is expensive or slightly expensive. They remarked that they incurred costs on vacancy advertisement, training and orientation of newly recruited workers.

Table 4: Cost of Hiring Labor

No.	Nature of Cost	Enterprises Affected in %
1	Very expensive	18.6
2	Expensive	25.0
3	Slightly expensive	25.0
4	Inexpensive	31.2

Employers said that during hiring they could not make reference to previous history of workers from certificates given by former employers.

Firing: As indicated in Table 5, 37.5 percent of the respondents reported that the cost of firing labor is expensive, while 37.5 said it is very expensive. About 13 percent of them reported that it is inexpensive. During discussion, employers remarked that severance payment is very high. Removal of workers is not easy. The legal good causes for terminating workers are not sufficient. They also said that Labor Inspectors instruct employers to retain casual workers as permanent ones on the ground that they have worked for long in the enterprise.

Table 5: Cost of Firing Labor

No.	Nature of Cost	Enterprises Affected in %
1	Very expensive	31.2
2	Expensive	37.5
3	Slightly expensive	12.5
4	Inexpensive	12.5

Employers identified problems they face when terminating workers. As shown in Table 6 nearly 81 percent of the respondents reported that they faced court cases when terminating a worker, while 37.5 percent reported that they faced exaggerated compensation. About 31 percent said they are forced to reinstate workers by decisions of labor courts. They believe that this creates precedent that affects business efficiency and profitability.

Table 6: Problems in Terminating Workers and Percent of Enterprises Affected

No.	Problems of Termination of Worker	Enterprises Affected in %
1	Facing court cases	81.2
2	Exaggerated compensation	37.5
3	Reinstatement of workers	31.2
4	Creating precedent	25.0
5	Others (specify)	-

During discussions, employers complain that they are instructed by labor courts to reinstate workers that have been laid off when business slowed down, particularly in the construction sector during the rainy season. They believe that laying off workers is not firing of workers. These workers return to their work when the rainy season is over. However, courts misinterpret laying off workers as firing of workers.

Reduction of workers as stipulated in Article 29 of the labor law is based on the principle of "first in, last out." However, employers in the construction sector believe that the reduction criteria should be efficiency rather than date of employment.

Employers also said that when workers are fired for damaging the means of production, the cost of repairing such damaged machines is heavy. Also the investment on orienting and training a newly placed worker to run repaired machinery is costly.

During discussions, employers, particularly in the manufacturing sector, have remarked on the cost of redundancy of workers caused by factors external to the enterprise or force majeure. Enterprises reduce or close operations when they run out of raw materials that are imported from abroad. One of the factors that affect supply of imported raw materials is shortage of foreign currency. Other factors that are external to the enterprises are power outage, shortage of water required for boiler, and shortage of furnace oil. Cross border and contraband trade also cause trade war, in which legally operating and tax-paying firms lose. Consequently, they are forced to reduce operations, leaving some workers redundant. Retaining such workers is costly to firms that are externally affected. Employers also refer to the cost of firing such redundant workers. They think they are bound to lose at both ends: retaining redundant workers or firing such workers.

Employers point out during discussions that they are forced to retain workers when revenues decline seasonally. They are also affected by the seasonality of sales. This is caused by the seasonality of purchasing power of customers such as farmers. With reduced revenue, the enterprises' wage bills remain constant, if not rising.

Employers also believe that some aspects of the labor proclamation, such as termination of contract, compensation, penalty for late payment and probation period, should be revised as proposed in Chapter VI. They think that a probation period of 45 days is not enough for orienting and evaluating newly recruited workers, including replacement workers, especially professional ones. They are of the opinion that the probation period be extended to 90 days.

Closure: A certain enterprise owner expressed his worry about the labor cost implications of partial or full closure of enterprise due to force majeure. The enterprise enumerated problems such as shortage of imported raw materials, power outage, and other similar problems that led to closure. This is, in fact, a problem since closure of enterprise entails cost of labor such as notice and severance pay.

4.2.3 Introduction of New Technology and Restructuring

As shown in Table 7, a quarter of the enterprises covered by the study reported that workers resisted the introduction of new technologies and the restructuring of operations. About 19 percent of them said that labor disputes arise because of workers' resistance to change. Respondents said that work slows down and labor-management relations are negatively affected.

Table 7: Reaction of Labor When Enterprises Introduce New Technology

No.	Reaction of Labor	Enterprises Affected in %
1	Workers resist	25.0
2	Labor disputes arise	18.6
3	Work slows down	12.5
4	Labor-management relations affected negatively	12.5
5	Others (specify)	-

4.2.4 Effect of Workers' Reinstatement

About 56 percent of the respondents reported that when workers are reinstated by decisions of labor courts, their attitude toward work changes negatively. This induces decline in labor productivity.

Table 8: Effects of Reinstatement of Workers by Labor Court Decision

No.	Effects of Reinstatement of Workers	Enterprises Affected in %
1	Workers' attitude toward work changes negatively	56.2
2	Labor productivity declines	31.2
3	Supervision of work becomes difficult	43.7
4	Management efficiency declines	12.5
5	Others (specify)	-

Close to 44 percent of respondents reported that supervision of workers becomes difficult. Enterprises reported that management efficiency declines. Employers think that since workers are reinstated with back pay, they tend to develop litigant attitude that affects productivity.

4.2.5 Collective Agreement

About 44 percent of the respondents reported that collective agreement is useful for maintaining good labor-management relations at enterprise level. Some 13 percent of them think that it is not useful and it is a source of labor problems (See details in Table 9 below).

Table 9: Uses of Collective Agreement in Maintaining Good Labor-Management Relations

No.	Uses of Collective Agreement	Enterprise Response in %
1	Very useful	18.6
2	Useful	43.7
3	Not useful	6.25
4	Source of labor problems	6.25

Though most of the enterprises do not have collective agreements for the reason that they are not organized in trade unions, they believe that collective agreement, as stipulated in the Labor Proclamation, is useful for maintaining good labor-management relations.

4.2.6 Effectiveness of Labor Law in Restructuring and Change of Work Methods

Nearly 63 percent of enterprises said that the Labor Law is effective and efficient in restructuring or changing work methods within undertakings. This is also confirmed by MoLSA, CETU and FILC.

4.3 General Observation of Employers on the Labor Proclamation

Enterprises covered by the study have made general observations concerning articles of the Labor Proclamation that affect business efficiency and effectiveness. These articles are related to contract of employment for definite period or piece work, probation period, temporary suspension of right and obligation, termination of contract of employment without notice, period on notice, payment of wages and other payments on termination, reinstatement or compensation, unlawful termination, overtime, annual leave postponement, sick leave, strike and lockout, and statute of limitation. The article numbers and the respective provisions with which employers are concerned are presented in Table 10. The table shows the percentage of enterprises affected by the specific articles of the Labor Proclamation. Proposals made by employers for the amendment of articles of the Labor Proclamation that affect businesses are also presented in detail in Chapter VI.

Table 10: Articles of Proclamation 377/2003 Affecting Business and Percent Affected

No.	Article Number	Provision	%
1	Article 10	Contract of Employment for Definite Period or Piece Work	18.6
2	Article 11	Probation Period	6.3
3	Articles 17	Temporary Suspension of Right and Obligation	12.5
4	Article 27	Termination of Contract of Employment without Notice	43.7
5	Articles 28	Termination with Notice	31.2
6	Article 29	Reduction of Workers	25.0
7	Article 35 (2) *	Period of Notice	
8	Articles 36&38	Payment of Wages and other Payments on Termination	43.7
9	Article 43 (1-5)	Reinstatement or Compensation of Unlawful Termination	37.5
10	Articles 66,67 &68	Overtime Work Limit	12.5
11	Article 79	Annual Leave Postponement	12.5
12	Articles 85&86	Sick Leave	6.3
13	Article 157	Strike and Lockout	12.5
14	Article 162	Statute of Limitation	37.5

** This article is raised as an issue during discussions.*

The Tripartite Advisory Board (TAB), which consists of MoLSA, CETU and EFE meet formally every two months to discuss labor matters and advise the Ministry. MoLSA and the Confederation of Ethiopian Trade Unions (CETU) confirmed that the TAB has proposed to the government amendments on the provisions of the labor law. But, they were not in a position to provide details of the provisions to be amended. Business enterprises, however, have suggested amendment of Articles shown in Table 10 since they affect their businesses negatively.

4.4 Problems Observed in the Labor Courts and Reforms Suggested

As shown in Table 11, about 44 percent of the respondents reported that decisions of labor courts are not favorable to employers. About 38 percent of them reported that the labor courts take longer time to pass decisions; they also said that the decisions are costly and enforcement of the labor law time consuming. The CETU is also of the opinion that the labor courts take longer time in passing decisions. FILC confirmed that the labor court decisions take time due to several reasons. There are very few courts and judges handing labor cases. A judge in a labor court, for example, hears about forty labor cases a day and takes from two months to two years to decide cases.

Table 11: Problems Observed in the Labor Courts Affecting Business Negatively

No.	Problems Observed in the Labor Courts	Enterprises Affected in %
1	Labor courts take longer time to pass decisions	37.5
2	Decisions are not favorable to employers	43.7
3	Decisions of the labor courts are costly	25.0
4	Enforcement of labor law is time consuming	25.0
5	Other problems (please specify)	-

Labor court cases are costly to employers because of court fee, lawyer's fee, and cost of witnesses. Managers are summoned to appear before courts as witnesses on several occasions and this is costly in terms of time.

Table 12: Opinion of Employers on Reforming Labor Courts

No.	Types of Reforms	Employers' Opinion in %
1	Courts need total reform	18.6
2	Courts need partial reform	31.2
3	Courts need slight reform	25.0
4	No need to reform them	12.5

Nearly a third of the enterprises, MoLSA and FILC proposed partial reform of the labor courts, while about 19 percent of the enterprises suggested total reform. However, CETU is of the opinion that the labor courts need only slight reform.

4.5 Effectiveness of Labor Offices (MoLSA)

About 38 percent of the enterprises reported that MoLSA/Labor Offices are slightly effective while an equal number reported that they are ineffective in assisting business undertakings in solving labor-management problems. But CETU said that the labor offices are effective in solving labor-management problems, while experts of MoLSA said that the labor offices are slightly effective. FILC is of the opinion that MoLSA did not issue directives which contain a list of occupational diseases in accordance with Article 98 (3) of the Labor Proclamation. As a result, labor courts have problems in deciding whether an alleged occupational disease is of occupational origin or not.

Table 13: Opinion of Employers on Effectiveness of Labor Offices

No.	Effectiveness of Labor Offices	Employers' Opinion in %
1	Very effective	6.25
2	Effective	18.6
3	Slightly effective	37.5
4	Ineffective	37.5

Employers think that labor inspectors force them to observe high work safety standards. Also they believe that the emphasis of inspectors on safety of work processes and the enforcement of standards are costly for enterprises.

Employers complain that labor inspectors require enterprises to maintain costly health and safety standards to protect workers from occupational hazards. They also require enterprises to give training to their workers when they introduce new technologies. Experts of the MoLSA, on the other hand, argue that expense incurred on the safety and health of workers is an investment. Workers become productive as they may not be absent from work due to occupational hazards. Safe working environment reduces accidents that may be costly to enterprises. The experts also observed that despite the provision of safety equipment by employers, some workers are not willing to use them.

4.6 Effectiveness of Employers' Federation of Ethiopia

Nearly 31 percent of the respondents reported that the Federation is slightly effective, while an equal percentage said it is ineffective in providing technical assistance to the undertakings of its members.

Table 14: Opinion of Employers on Effectiveness of Employers' Federation of Ethiopia

No.	Effectiveness of Employers' Federation	Employer's Opinion in %
1	Very effective	-
2	Effective	18.6
3	Slightly effective	31.2
4	Ineffective	31.2

The consultants have tried to seek the opinion of the officials of the EFE on its effectiveness in assisting member employers/enterprises. However, the officials raised the question of mandate for conducting such a study rather than cooperating with the study team.

4.7 Problems of Misinterpretation of the Labor Law

Half of the enterprises interviewed have reported that they faced problems due to the misinterpretation of the labor law. Some of the respondents have pointed out the difficulty of communicating one's cases to the courts as a cause for misinterpretation of the labor law. Others cited lack of experience on the part of labor court judges and failure on the part of enterprises to present their cases based on cassation court decisions to the courts as causes for misinterpretation of the labor law. Employers have suggested proposals for solving the problems of misinterpretation of the law such as capacity building and adherence to the decisions of SCCD as legally binding precedents.

The CETU also confirmed that there are several problems that arise from misinterpretation of the labor law, as a result of which workers' rights are affected negatively. Mainly Articles 9, 10, 14, 130, 138 and 142 are not properly interpreted by labor courts in line with the spirit of the labor law. For example, workers are forced to sign a contract of employment for a definite period while assigned on a work of an indefinite period. CETU said that the provisions of the labor law on unfair labor practices are not observed by employers. They dismiss workers for being trade union members under the excuse of committing serious faults. The burden of proof on the incidence of unfair labor practices is on the worker, and workers find it difficult to provide evidences to the labor courts. Workers working in construction projects are reduced right in the middle of a project, and this act of employers is approved by SCCD. Thus, due to misinterpretation of the law, labor courts do not reinstate workers unfairly dismissed. Also, a worker is defined to be a manager by his or her employer to exclude him or her from membership in trade union and to avoid legal obligations upon termination of employment contract.

As indicated above, both employers and CETU have grievances on the application and interpretation of the Labor Proclamation by labor courts.

Asked if enterprises ever petitioned labor court decisions to the SCCD, about a third of them reported positively. The Articles on which they petitioned to the SCCD were related to Articles 9, 10, 17, 24, 27, 30 and 36. But 63 percent of the enterprises have never petitioned their cases to the SCCD.

A third of the enterprises reported that their undertakings were effectively introduced to the decisions of the SCCD as legally binding precedents. Both MoLSA and CETU have said that they have introduced the decisions of the SCCD to stakeholders and members of trade unions. The FILC have also stated that labor courts have access to the decisions of SCCD.

CHAPTER V

LABOR DISPUTE ADJUDICATION PRACTICES AND WEAKNESSES OF ENTERPRISES

5.1 Labor Dispute Adjudication Practices

The Labor Proclamation No. 377/2003 (as amended) under Articles 137 and 139 establishes Labor First Instance and appellate courts to adjudicate individual labor disputes stipulated under Article 138. Article 144 establishes the Labor Relations Board to adjudicate collective labor disputes stipulated under Article 142 of the Labor Proclamation.

All enterprises interviewed said they have problems with the labor courts. They allege that the Fist Instance Labor Courts (FILC) and the High Court Labor Division (HCLD) most of the time decide in favor of workers. They think that labor court judges do not have enough knowledge and experience in labor laws and as a result they tend to misinterpret provisions of the labor proclamation.

It is proved that these allegations are true as could be understood from a sample of decisions of the SCCD (See Table 15 below).

Table 15: Sample Decisions of the Supreme Court Cassation Division (SCCD)

Case No.	Cause for Dismissal	Decision of First Instance Labor Court (FILC)	Decision of High Court Labor Division (HCLD)	Decision of Supreme Court Cassation Division (SCCD)
1	Theft	Reinstatement of worker	Affirmed reinstatement	Reversed decisions of labor courts
2	Misappropriation of property by worker	Decided in favor of worker with all benefits	Affirmed payment of benefits to the worker	Reversed decisions of labor courts
3	Termination due to restructuring	Decided termination unlawful	Affirmed payment of compensation	Reversed decisions
4	Termination when volume of specified work decreased	Termination unlawful	Affirmed payment of compensation	Reversed decision
5	Termination due to partial completion of project	Termination unlawful	Affirmed payment of legal entitlement	Reversed decision

Sources: *(1) Supreme Court, Cassation Division, File No. 34585, May 2007; (2) File No. 39118, December, 2008; (3) File No. 38811, February 2008; (4) File No. 39042, June, 2008; (5) File No. 42075, July 2008.*

Theft is a good cause for dismissal under Article 27 of the Labor Proclamation. But FILC and HCLD reinstated the worker despite the fact that theft was proven. However, the SCCD reversed the decision of reinstatement as indicated in Table 15. The lesson to learn from this case is that the judges of labor courts seem to favor workers, despite the presence of proven facts of serious fault.

Misappropriation of enterprise property entrusted to a worker is illegal. Under Article 13(3) a worker has the obligation to handle instruments and tools with care. As stated in Article 14(2.b) there is no reason to say the illegal missing of property has no direct connection with a worker. But the labor courts decided in favor of the worker. The requirement for proof of undue use of property for the purpose of unlawful enrichment is not used as a criterion for decision. Thus, the SCCD reversed the decision.

Termination of workers due to restructuring of work for enhancing productivity and competitiveness of undertaking is a proper action. Article 28 of the Labor Proclamation allows for new working systems and changes in work methods. The SCCD reversed decisions of lower courts to reinstate workers since such decisions go against the objective and spirit of the Labor Proclamation.

It is deemed legal to reduce a work force when the volume of work decreases, particularly in the construction sector. Article 30(1) of the proclamation stipulates that due to a decrease in the volume of construction work, the work force could be reduced. The employer need not follow the reduction procedures indicated in the proclamation. But the labor courts decided the termination of such workers to be unlawful. However, the SCCD reversed the lower court decisions in accordance with the Labor Proclamation. The lesson learnt in this case is that failure to properly analyze the objective of the law, facts and their nuances leads to fundamental error in the interpretation of the labor law.

A similar case related to the above has been observed in a situation where projects are in the process of completion. Termination of workers due to partial completion of projects is allowed as provided in Article 30 of the labor law. But, FILC and HCLD decided that such termination was unlawful and ordered legal payments claimed by workers. However, these decisions were reversed by the SCCD in accordance with Articles 24(1) and 30 of the Labor Proclamation.

The cases presented above confirm that the lower labor courts do not seem to have a deep understanding of the nature and work processes in certain sectors of the economy such as the construction sector. Decisions based on lack of understanding of the reality on the ground lead to undue financial burden on

undertakings. Discouraged employers who fail to appeal their cases to the SCCD are bound to suffer from the consequences of unfair decisions of lower courts of labor.

5.2 Weaknesses of Enterprises

Failure to provide proper evidence: Weaknesses have been identified on the part of enterprises that are obliged to appear before labor courts. First, they do not produce proper documentary evidence or witnesses to support their allegations of fault against a worker upon whom, for example, disciplinary measure is taken. In a labor case where workers are terminated for unfair practices such as overpricing or improper distribution of products, employers fail to furnish evidence to prove the allegations.[22]

In another case, an employer terminated workers on the ground that they were managerial staff and, therefore, not covered by the labor law. But the employer did not produce any evidence to show their managerial functions to support his/her case.[23]

In a third case regarding dismissal of workers for repeated late reporting to work and disobedience, the employer failed to produce evidence supporting the allegations.[24]

In all the three cases the SCCD approved the decisions of the lower courts in favor of employees, reinstating them to work. The lesson to learn from these cases is that failure to keep proper records of workers entails unforeseen expenses resulting from court decisions.

Failure to take proper disciplinary measures: Some undertakings have collective agreements while others do have work rules that have provisions for disciplinary measures. However, there are cases where employers fail to follow proper disciplinary measures. They fail to note when to terminate workers without notice. They tend to take disciplinary measures, including termination, without exhausting all the steps starting with warning or fines for offences. Certain minor offences by workers may cause emotional reaction on the part of a few employers that lead to the dismissal of workers. Such types of measures would have adverse effects on undertakings, including penalties, reinstatement of workers with all its legal repercussions, financial or material.

Failure to access decisions of the Cassation Division: Employers also fail to have access to the decisions of the SCCD. As mentioned earlier, interpretation of a law rendered by the SCCD shall be binding. The Supreme Court publishes and distributes decisions that contain binding interpretation of the laws. It

[22] Supreme Court,Cassation Division, File No. 9478, March 2002
[23] Supreme Court,Cassation Division, File No. 8500, May 2000
[24] Supreme Court,Cassation Division, File No. 11797, December 2003

is, therefore, important to have access to these decisions on labor disputes. About two-thirds of the enterprises covered by this study do not have access to such publications.

Access to the decisions of the SCCD would help enterprises reduce unnecessary labor disputes, particularly in the real estate and construction sectors. These decisions would help to understand the objectives, the spirit and the legal interpretations of certain Articles of the labor law.

CHAPTER VI

PROPOSALS FOR THE AMENDMENT OF THE LABOR PROCLAMATION AND IMPROVEMENT OF THE LABOR COURTS

6.1 The Labor Proclamation

The enterprises interviewed about the impacts of the labor law on business efficiency and competiveness mentioned some Articles of the Labor Proclamation that cause problems to their business operation and affect productivity. The Articles mentioned by the enterprises are enumerated in Chapter IV of this study. Accordingly, changes are proposed on the following Articles of the Labor Proclamation No. 377/2003 (as amended).

Article 11 of the Labor Proclamation

Under Article 11(3), it is stated that the probation period shall not exceed 45 consecutive days. The enterprises interviewed stated that 45 days is not enough to evaluate workers' performance, especially those workers that are skilled and professional. According to the enterprises, when new workers are employed, considerable time is spent on orientation, introduction of workers to the system and the interconnections of work of the undertaking, and much longer time to get report of work approach and plan and to evaluate the performance and work relationship. The enterprises, therefore, suggested that the probation period be at least 90 consecutive days.

Moreover, Article 11 (5) states that "if the worker proves to be unfit for the job during his probation..." The phrase, "proves to be unfit," is interpreted to mean that an undertaking is required to prove that a worker is unfit for the job in order to dismiss him/her during probation. This is contrary to the principle, objective and spirit of probation period. Thus, it is proposed that the phrase, "proves to be unfit," be revoked from Article 11 (5).

Article 14 (2) of the Labor Proclamation

Article 14 (2) indicates unlawful activities that are good causes for dismissal. According to Article 14 (2) (a) it is unlawful for a worker to intentionally commit in the place of work any act which endangers life and property. In light of this Article a dismissal of a guard, for example, for abandoning a place of work while on duty is considered unlawful dismissal since according

to Article 14 (2) (a) not only property, but life should also be in danger for the dismissal to be lawful. Due to this problem of interpretation, it is proposed that the word "and" under Article 14 (2) (a) be replaced by the word "or" to serve the purpose of the Article.

Articles 17, 18 and 27(4) of the Labor Proclamation

Some enterprises interviewed stated that Articles 17 and 18 do not give enterprises the right to suspend workers who commit serious faults like theft so as to be able to investigate matters during the suspension period. The grounds for suspension enumerated under Article 18 of the Labor Proclamation do not cover suspension in the event of serious faults. Under Article 27(4) of the Labor Proclamation suspension of a worker up to 30 working days in the event of serious fault is allowed. However, the Article indicates only enterprises that have collective agreements which detail grounds for suspension could suspend workers up to 30 working days.

The SCCD decision concerning Article 27(4), in a labor dispute regarding suspension of a worker from work and salary, stated that under Article 27(4) suspension could be made by an undertaking that has collective agreement, if grounds for suspension are provided in the collective agreement. The court stated that since the undertaking in the present case does not have a collective agreement, the suspension is taken to be termination of contract of employment.[25]

As could be understood from the decision of the SCCD, Article 27(4) denies the right to suspend workers for serious faults to enterprises that do not have collective agreements. It is believed that such distinction among undertakings is not fair and it is proposed that the "requirement of the need to have a collective agreement for suspension of a worker for serious fault" be deleted from Article 27(4) of the Labor Proclamation.

Article 27 of the Labor Proclamation

Many of the enterprises interviewed stated that this Article restricts their right to dismiss workers who pose problems to their work and suggest that the list of good causes be expanded to include other serious faults. They suggested other serious faults to be included in Article 27(1) of the Labor Proclamation as indicated below.

Article 27(1) gives the right to include other grounds of good cause through collective agreements. But enterprises that do not have collective agreements follow only the good causes laid down in the proclamation. It is believed that enterprises which do not have collective agreements have also the right

[25] Water Action vs. Yilma Assefa, February 2007, Seber, File No. 29415

to wide coverage of serious faults that enable them to have greater work discipline in their work places.

Therefore, it is proposed that the following serious faults for the termination of contract of employment be included in Article 27(1):

- Presentation of false certificates or other forged documents to establish a fact;
- Gambling or betting for money within the premises of the undertaking;
- Refusal to be transferred to another post or to another place of work;
- Smoking or lighting fire in specifically restricted areas;
- Carrying firearms in work areas without authorization of the undertaking, with the exception of guards on duty;
- Taking out or driving the vehicle of an undertaking or to cause the vehicle to be driven by a third person without written authorization of the undertaking;
- To cause or incite an illegal work stoppage or slowdown in an undertaking;
- Failure to show in carrying out his/her work, the technical knowledge, conscientiousness, efficiency, reliability or speed which could reasonably be expected of him/her.

Under Article 27(1) (j) absence from work due to a sentence of imprisonment passed against the worker for more than thirty days is good cause for termination of contract of employment. Yet this Article is vague as to the situation of a worker who is acquitted of a crime or found not guilty after being imprisoned for more than thirty days. Thus, it is proposed that the Article be made clear.

Article 29 (3) of the Labor Proclamation

Article 29 (3) of the Labor Proclamation states, "Whenever a reduction of work force takes place according to Sub-Article (1) of Article 28…" Article 28 (1) is wrongly quoted and should be corrected to read as Article 28 (2) in Article 29 (3). If this is not corrected as proposed here, it will be inconsistent with the spirit of reduction of work force as stipulated under Article 28 (2). It will also be in contradiction with what is stated under Article 29 (1) of the Labor Proclamation. Moreover, it could lead to misinterpretation of these provisions.

Article 30 of the Labor Proclamation

Article 30 states that the procedure laid down in this proclamation shall not apply to the reduction of workers undertaken due to normal decrease in the volume of construction work as a result of its successful completion.

Although the above Article states that the procedures laid down in the proclamation do not apply to the reduction of workers in construction work, labor courts do not take the phrase on Article 30 "the procedure laid down in this proclamation" to include the notice requirement and as a result order payment of two months notice period in cases of termination of contract of employment under Article 30 of the proclamation.

In a case where the FILC decided notice to be served to construction workers, the SCCD reversed the decision stating that the workers in the undertaking's building construction work could be reduced without notice due to the completion of the work. Thus, the FILC made a fundamental error of law requiring notice to be given.[26]

Therefore, it is proposed that Article 30 be redrafted clearly to show that the notice under Article 28(2) is not required to be given for terminations made under Article 30.

Article 35 (2) of the Labor Proclamation

Article 35(2) of the Labor Proclamation requires that the period of notice for a contract of employment for a definite period or piece work shall be agreed upon by the parties in the said contract.

It is known that a contract of employment concluded for definite period or piece work under Article 10 of the Labor Proclamation terminates when the definite period lapses or the piece of work is completed. This means the definite period or the piece work is notice by itself. The parties know when the time lapses or the work is completed.

Article 24 of the proclamation is termination of contract by law. Under Article 24 (1) it is indicated that a contract of employment shall terminate on the expiry of the period or on the completion of the work where the contract of employment is for definite period or piece work.

This provision indicates that the termination of contract of employment upon expiry of the definite period or on completion of piece work is good cause, and therefore, it means that notice is not required for termination of definite period. It is thus proposed that Article 35 (2) be repealed since it entails undue payment of two months notice on enterprises.

[26] Asmelash and Sons Construction Plc vs. Yohannes Eshibel, January 2009, Seber File No. 49057

Articles 36 and 38 of the Labor Proclamation

Article 36 states that where a contract of employment is terminated, wage and other payments connected with wages due to the worker shall be paid within seven working days from the date of termination. Article 38 states that where an employer fails to pay the sum due to the worker within seven working days, the competent labor court may order the worker to be paid his wage for the period of delay up to three months wage.

Enterprises interviewed stated that the seven days stated under Article 36 of the Labor Proclamation are not enough to collect information and records regarding the worker from different work sites or departments. It takes longer time to process the accounts of workers. Sometimes it may be necessary to wait for authorized persons to approve payments or sign checks in case they are out to field works or they may be in places of work in other locations. Enterprises propose that at least a one month period be given to process payment.

Moreover, although Article 38 states payment of up to three months wage, it is ascertained from the interviews made with employers and from labor court decisions that the courts always ordered payment of three-month wages and never have they decided payment less than three months for the delay of payment. The courts never considered circumstances or justified reasons to use flexibility with regard to payment of less than three-month wage as penalty.

Furthermore, the labor courts never considered for the extension of the seven days period required under Article 36(1) where the worker delayed because of his/her own fault to return property or any sum of money which the worker received from or is due to the employer. Despite the clear condition put under Article 36(1) that the worker should fulfill the hand over, labor courts impose a three-month penalty payment on the employer.

In a case where an undertaking refused to make payments of severance and annual leave and to give certificate of work to a worker on the ground that the worker did not return the property and documents of the undertaking and did not settle accounts, the SCCD in its decision stated that the undertaking can claim the property and documents and the unsettled accounts by instituting suit in the competent court and cannot use this as an excuse not to pay the legal entitlement due to the worker.[27]

This decision of the SCCD shows that the conditions laid down under Article 36, which the worker should fulfill before payment is made to him within seven days, are not taken as mandatory.

[27] Fafa Food S.C. vs. Ato Tesfa Giorgis Sebokesa, April 2002, Seber File No. 8175

It is, therefore, proposed that the seven days indicated under Article 36 be prolonged and that the conditions or the requirements which should be fulfilled by a worker before claim to payment is made be clearly stipulated in the Article.

It is also proposed that criteria should be set or circumstances identified under Article 38 indicating when the three months wage should be paid in full and when it should not be paid.

Article 43 of the Labor Proclamation

Under Article 43 (4) (a) it is indicated that in the event of unlawful termination of contract of employment, the worker shall be paid compensation of six-month wage in addition to severance pay and notice period. And under Article 43(5) it is stated that upon order of reinstatement of the worker, the FILC shall order payment of back pay not exceeding six-month wage. In the event of confirmation of the decision by an appellate court, payment of back pay not exceeding one year shall be ordered by the court.

Enterprises interviewed think that the payments to be made to the worker under Article 43(4) (a) is excessive and think that the compensation should not be more than three-month salary and they do not support the idea of back pay.

The payment for unlawful termination is 180 times the average daily wages of the worker; to this is added severance pay according to Article 40, which is thirty times the average daily wages for the first year of service to be increased by one third of a worker's monthly salary for every additional year of service up to a maximum of twelve months wage. Notice pay is also given for the notice period.

Some enterprises have noted that because of this high payment, some workers gain experience of getting such payments by going to labor courts and as a result do not settle and work within an enterprise for long. Since the payment for unlawful termination of contract of employment is made despite the fact that the worker is covered by pension law or by provident fund schemes, a reduction in the compensation to be paid under Article 43(4) (a) has been recommended.

As regards the issue of back pay of six months in the event of a decision of reinstatement by the FILC or the one year back pay when the decision is confirmed by the appellate court (Article 43(5), it is believed that the back pay is excessive in light of the fact that the contract of employment was interrupted and there was no work done by the worker.

Besides, such payment will encourage a worker to file suit just on the verge of lapse of the long period of statute of limitation so as to get paid the back pay without work. In consideration of these facts, it is proposed that the amount of back pay in the event of reinstatement be reduced.

It is also proposed that the phrase "not exceeding" in Article 43 (5) be replaced by the term "up to" since there may be extraordinarily rare instances where cases could take less than six months altogether to attain final decisions.

Articles 67 (2) and 79 (5) of the Labor Proclamation

About 13 percent of the enterprises suggested that the limit for overtime work put under Article 67 (2) and the limit put for possible postponement of annual leave under Article 79 (5) of the Labor Proclamation be lifted to allow flexibility by both management and labor.

Article 162 of the Labor Proclamation

Article 162 deals with statute of limitation. Most of the enterprises interviewed consider the time limit of three months to claim reinstatement to work under Article 162 (2) and six months to claim payment of legal entitlement due to termination of contract of employment under Article 162(4) is very long. Enterprises think that the time should be reduced.

When a worker is dismissed from work and the worker thinks the dismissal is unlawful, he or she would normally file suit immediately. The question is why he or she is given such a long a time to file suit under Article 162 ? For example under Article 138 (3) the party who is not satisfied with the decision of the FILC is expected to appeal to the appellate court within thirty days from the date on which the decision was delivered. Under Article 154 (1) an appeal from the decision of a Labor Relations Board is expected to be made to the Federal High Court within thirty days after the decision has been read to or served up on the parties.

When only one month time is given for appeal for a labor case why is a worker given the right to wait up to three months to file suit for reinstatement and six months to file suit for payment of legal entitlements? Is the undertaking expected to wait so long without hiring a replacement for the work? Does not the long period statute of limitation affect the plan and budget and restructuring of work of the undertaking? The long period of statute of limitation given for filing of suit when seen in light of the back pay amount to be paid to the worker in the event of reinstatement will motivate the worker to delay filing suit. It is, therefore, proposed that both the three months and the six months statute of limitation be reduced to one month of statute of limitation as delays may have adverse effect on business, investment and economy of the country.

The Labor Proclamation vis-à-vis the Private Organization Employees' Pension Proclamation (POEPP)

The new POEP Proclamation No. 715/2011 Article 10(1) states that an employer shall pay a contribution of 11 percent of the salary of an employee to the Private Organizations' Pension Fund.

Article 2(2) (g) and (h) of Labor Proclamation No. 494/2006 which amends Article 39(1) of Labor Proclamation No. 377/2003 states that if a worker resigns after services of five years in an enterprise and before attainment of retirement age as stipulated in the pension law, he or she shall have the right to get severance pay from the employer as stipulated under Article 40 of the Labor Proclamation.

Some of the enterprises stated that since they contribute to the pension fund on behalf of their workers they should not be required to pay severance pay to a worker whose contract of employment is terminated before attainment of retirement age.

The point raised here by the enterprises needs to be given consideration as it would mean double payment for the same service a worker renders during his or her employment in an enterprise. This double payment for services rendered during employment would increase expenses of enterprises with adverse effect on their competitiveness.

The other point raised by enterprises is regarding disablement payments for employment injuries. They said that Article 109(2) of the Labor Proclamation No. 377/2003 (as amended) states that an employer shall pay a lump sum of disablement compensation to workers who are not covered by pension law in the amount stated under Article 109 (3). The enterprises thought that they should not pay the disablement payment required under Article 109(2) and (3) of the Labor Proclamation as the workers are covered by the new pension law.

Since the workers of all enterprises are now covered by pension scheme in accordance with the Private Organization Employees' Pension Proclamation, it is proposed that Article 109 of the Labor Proclamation dealing with disability payments be revoked.

6.2 The Labor Courts

All the private enterprises interviewed have stated that the labor courts are not fair and almost all the time decide in favor of workers. To check the validity of this allegation, effort was made in the course of this study to examine petitions made to SCCD by enterprises. It was found from the decisions given in favor of workers by labor courts that were petitioned to the SCCD that most of them had been reversed. Enterprises believe that the main reasons for

decisions given in favor of workers by the labor courts are: lack of adequate knowledge of labor law; inadequate experience in the field of industrial relations; lack of appreciation of the effects of decisions given by labor courts on the efficiency and competiveness of enterprises; failure to analytically link facts to the dynamic realities of businesses. It is also believed that lack of clarity on specific Articles of the Labor Proclamation led to misinterpretation of the law.

However, according to the FILC, the number of labor courts and judges are small compared to the amount of cases they handle. This, of course, affects the quality of decisions given and the period of time a case takes to decide.

Taking into consideration the prevailing problems, it is proposed that labor court judges must be made to work in rotation in other courts so that they could gain experience and knowledge in the multidisciplinary implications of labor relations. This will also result in the specialization of judges in labor matters. It is also proposed that after graduating from law schools, selected labor court judges should be given extra training in the application of the labor law and industrial relations before they sit as labor court judges.

Labor disputes are costly and time consuming for enterprises. Labor disputes negatively affect productivity, efficiency and competitiveness of enterprises in terms of time wasted through litigation. Enterprises incur costs, waste energy and time in litigation, including losing working time of management or technical group that have to appear before labor courts as witnesses. The long time courts take to pass decisions also affects the work of enterprises.

The limited number of labor courts puts a heavy burden on judges and other court functionaries. This may lead to slow processing of labor cases that require, by their nature, quick decisions. This has impact on both employers and workers. The livelihood of workers is also affected as productivity declines due to labor disputes and delayed decisions. Hence the labor proclamation puts a mandatory provision that decision should be given within 60 days from the date on which the claim or the appeal is lodged. To make this mandatory provision effective, it is proposed that the number of courts be increased.

CHAPTER VII

CONCLUSIONS AND RECOMMENDATIONS

7.1 Conclusions

Survey results indicate that the application of the labor law has direct impact on business efficiency and competitiveness in Ethiopia. Some of the contents and general application of the Labor Proclamation No. 377/2003 are considered factors that affect labor productivity and profitability of enterprises.

The survey points out that some Articles of the Labor Proclamation such as those regarding probation period, good causes for dismissal and suspension of workers provide very limited or narrow grounds for action by enterprises. Those Articles on compensation, penalty for late payment, back pay for reinstated workers, on the other hand, create heavy financial burden on enterprises affecting their efficiency and competitiveness.

The good causes for dismissal in the Labor Proclamation need to cover other serious faults as those suggested under Chapter VI since the existence of work discipline is one of the decisive factors for the efficiency, productivity and expansion of an enterprise and for the wellbeing of workers and for employment generation. In view of this situation, the Labor Proclamation needs to focus on mechanisms that strengthen work discipline.

The survey also indicated that inaccurate application of the labor law on the part of judges is a serious problem for both enterprises and workers. Enterprises in particular are adversely affected in their efficiency and competitiveness. The inaccurate application of the labor law emanates from failure to understand the objective and spirit of some of the Articles of the labor law as related to industrial relations and the work of enterprises. Some of the enterprises interviewed disclosed that some of the labor courts do not appreciate the nature and operational processes of work such as construction and real estate, particularly when examining cases of reduction of workers due to the decrease in the volume of work. Thus, misinterpretation of some Articles of the Labor Proclamation resulted in negative impacts.

Delays and prolonged labor court proceedings have adverse effects on enterprises. Moreover, as most of the enterprises reported, the labor courts decide in favor of workers. Workers are also affected by the long court proceedings. Both enterprises and workers' representatives stated that labor courts should be reformed.

There are failures on the part of some enterprises to keep proper records regarding their workers which make them lose their court cases. As a result, they suffer from unnecessary financial costs. Some enterprises also fail to follow the disciplinary measures and steps required by the law, collective agreement or work rules of their undertakings. Such failure causes them to incur costs. Being ignorant of the existence of the decisions of the SCCD on labor matters or not accessing such decisions have exposed them to unnecessary costs. Thus, there is a need on the part of enterprises to follow proper and legal courses of action.

Key stakeholders, MoLSA, CETU and EFE are not visible to some enterprises that operate in different sectors of the economy. There seems to be a communication gap between these key stakeholders and business enterprises. Enterprises seem to have limited interest in key stakeholders who could have provided them with technical support and advice on harmonized management-labor relations. On the other hand, key stakeholders do not make the necessary effort to provide enterprises with the required technical support and advice.

7.2 Recommendations

7.2.1 Revision of the Labor Proclamation

A. General Recommendations

1. Ethiopia needs to grow and develop fast in order to reduce and ultimately eliminate poverty. This requires the designing or revising of policies and programs that contribute to the development of a culture of work and respect for the dignity of labor which enhance labor productivity and industrial peace.
2. The current Labor Proclamation should be revised with the goal of promoting work discipline, business efficiency and competitiveness. Articles of the Labor Proclamation that need to be revoked or amended are suggested with detailed reasons in Chapter VI.

B. Specific Recommendations

3. Article 11 (3): The probation period should be at least 90 consecutive days instead of 45 days in order to provide adequate period for evaluation of performance of skilled or professional workers.
4. Article 11 (5) : The phrase “if the worker proves to be unfit” be revoked since the existence of this phrase defeats the purpose of the principle, objective and spirit of probation as enterprises are required “to prove” unfitness of the worker.

5. Article 14 (2) (a): The word "and" in the Article should be replaced by the word "or", since the phrase "life and property" in the Article requires that both life and property be endangered simultaneously, contrary to the purpose of the Article.

6. Article 27 (1) (j) : This article needs to be clear with regard to a worker acquitted of a crime or found not guilty after being imprisoned for more than 30 days because the Article states only about a worker sentenced for more than 30 days imprisonment.

7. Article 27 (1) : This Article needs to include the following good causes for dismissal: presentation of false certificate or other forged documents to establish a fact; gambling or betting for money within the premises of an undertaking; refusal to transfer to another post or to another place of work; smoking or lighting fire in specifically prohibited areas; carrying fire arms in work areas without authorization of an undertaking; taking out or driving of vehicle of an undertaking or to cause vehicle to be driven by a third person without written authorization; to cause or incite an illegal work stoppage or slowdown in an undertaking; failure to show in carrying out his or her work and the technical knowledge, conscientiousness, efficiency, reliability or speed which could be reasonably expected of a worker. The absence of these good causes in the Article affects negatively the efficiency and competitiveness of enterprises.

8. Article 27 (4) : The requirement of the need to have a collective agreement for the purpose of suspension of a worker should be amended to include those enterprises that do not have collective agreements since they are at a comparative disadvantage.

9. Article 29 (3) needs to be corrected so as to put Article 28 (2) instead of 28 (1) mentioned in the Article since Article 29 (3) deals with reduction of workers and Article 28 (2) also deals with the same issue unlike Article 28 (1).

10. Article 30 (1) deals with reduction of workers from construction work, which in principle does not require giving advance notice to workers. But Article 28 (2) that deals with reduction of workers requires giving advance notice to workers in contradiction to the objective and spirit of Article 30 (1). Thus, Article 30 (1) should explicitly indicate the non-requirement of advance notice in the construction enterprises in the event of reduction of workers.

11. Article 35 (2) requires notice for termination of contract of employment of definite period or piece work. This Article should be revoked since

expiry of the definite period or the completion of the piece work is obvious to both parties.

12. Article 36: The seven working days period of payment need to be amended so as to extend it to at least 30 working days. Also, the requirement to be fulfilled by a worker before a claim to any payment needs to be mandatory in the Article. The reason for such amendment is that the seven-day period is not enough for conducting the different types of accounting and administrative processes. The requirement on the part of the worker to return the property or any sum of money which is due to the employer before payment is made to him or her be explicitly stated as mandatory to protect properties of enterprises.
13. Article 38 requires a worker to be paid up to three-month wage as penalty for delay of payment for more than seven working days as stated in Article 36. Article 38 needs amendment so as to set criteria indicating when the three-month wage should be paid in full and when it should not be paid in full. This amendment is needed to clarify the Article since the existing practice in labor courts is ordering payment of three-month wage, and not less, contrary to the provision of the Article.
14. Article 43 (4) (a): The compensation of the six-month salary in the event of unlawful termination is costly to enterprises and needs to be reduced.
15. Article 43 (5): The up to one-year back pay in the event of reinstatement of a worker is costly to enterprises and should be reduced since it is paid for work not performed.
16. Article 162 (2) and (4) : The statute of limitation to file suit of three-month and six-month period, respectively, should both be reduced to one-month as it affects planned operations of enterprises.
17. Article 39 (1) of the Labor Proclamation on severance payment as amended in Article 2 (2) (g) and (h) of Labor Proclamation No. 494/2006 and Article 109 of the Labor Proclamation on disability payment need to be amended in view of Article 10 (1) of the Private Organization Employees' Pension Proclamation No. 7/2011 to avoid double payment.

7.2.2 Restructuring and Capacity Building of Labor Courts

The lack of experience and knowledge on the part of a few labor court judges about industrial relations and about the application of the Labor Proclamation as related to the work of various enterprises, coupled with the long delay of

court proceedings, have aroused grievances on the labor courts by business enterprises. In light of these facts, it is recommended that the following measures be taken:

- Increase the number of labor courts and judges;
- Assign and retain judges only for labor courts;
- Provide training for judges newly assigned to labor courts on the application of the labor law in industrial relations and in a business climate;
- Conduct workshop for labor court judges on the implications of decisions made by the SCCD;
- Conduct field visits to enterprises or work sites by labor court judges to observe and understand the nature of work of complicated labor disputes; and
- Develop the capacity of court functionaries to achieve efficiency in court procedures.

7.2.3 Awareness Creation for Employers and Workers of Enterprises

There is a need to establish harmonized relationship and cooperation between business enterprises and key stakeholders, such as MoLSA, CETU and EFE. To achieve this, it is recommended that the following measures be taken by stakeholders in unison or separately:

- ✓ The key stakeholders, particularly the MoLSA, EFE and CETU should jointly or separately organize awareness creation workshops for enterprises and workers on the spirit, goal and implementation of the Labor Proclamation;
- ✓ Training of trainers on awareness creation on the Labor Proclamation should be given for representatives of enterprises and workers ;
- ✓ Use the mass media to inform enterprises and workers on the benefit of harmonized management-labor relations; and
- ✓ Concerned key stakeholders should device mechanisms, such as brochures and booklets, by which both business enterprises and workers could be informed of the labor decisions of SCCD. This helps both employers and workers from being engaged in unnecessary labor disputes.

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ANNEXES

ANNEX 1: QUESTIONNAIRE FOR PRIVATE SECTOR ENTERPRISES

Name of Enterprise: _____
Address: _____
Telephone: _____
Number of Employees: _____
Instruction: Please answer the questions in the blank space provided by putting "X" mark. If more than one answer is required put more Xs in responding to the question.

I. Probable Problems of Labor within Enterprises

1. What types of labor problems mostly affect business undertakings?
   a. Lack of labor discipline ____
   b. Slow down ____
   c. Declining productivity of labor ____
   d. Labor not accepting technological change
   e. Others (please specify): _____
2. How do these problems affect business undertakings?
   a. Reduce profitability ____
   b. Diminish efficiency ____
   c. Affect management-labor relations ____
   d. Reduce competitiveness ____
   e. Others (please specify)_____
3. Is the cost of hiring labor expensive?
   a. Very expensive ____
   b. Expensive ____
   c. Slightly expensive ____
   d. Inexpensive ____

4. Is the cost of firing labor expensive?
   a. Very expensive ____
   b. Expensive ____
   c. Slightly expensive ____
   d. Inexpensive ____

5. What is the reaction of labor if undertakings introduce new technology or restructure?
   a. Workers resist ____
   b. Labor disputes arise ____
   c. Work slows down ____
   d. Labor-management relations affected negatively ____
   e. Others, please specify: _____

6. What is the effect on business efficiency if a worker is reinstated by the decision of the labor court?
   a. Workers' attitude toward work changes negatively ____
   b. Labor productivity declines ____
   c. Supervision of work becomes difficult ____
   d. Management efficiency declines ____
   e. Others, please specify: _____

7. Is collective agreement useful for maintaining good labor-management relations?
   a. Very useful ____
   b. Useful ____
   c. Not useful ____
   d. Source of labor problems

II. Structural Problems of the Labor Law that Affect Businesses

8. Which Articles of the labor law affect business efficiency and competitiveness?

   Please write Article numbers that affect businesses very seriously, seriously, and slightly in the table provided below. If space is not enough, insert additional lines below the table.

Very seriously	Seriously	Slightly
Article number ___	Article number ___	Article number ___
Article number ___	Article number ___	Article number ___
Article number ___	Article number ___	Article number ___
Article number ___	Article number ___	Article number ___
Article number ___	Article number ___	Article number ___

9. How effective is the labor law in maintaining labor discipline and productivity?
   a. Very effective ____
   b. Effective ____
   c. Slightly effective ____
   d. Ineffective ____

10. Is the labor law efficient in restructuring or changing of work methods within undertakings?
   a. Very efficient ____
   b. Efficient ____
   c. Slightly efficient ____
   d. Inefficient ____

III. Observed Problems of Implementation of the Labor Law

11. What problems are observed in the labor courts that negatively affect business?
   a. Labor courts take longer time to pass decisions ____
   b. Decisions are not favorable to employers ____
   c. Decisions of the labor court are costly ____
   d. Enforcement of the labor law is time consuming ____
   e. Other problems, please specify _____

12. Do labor courts need to be reformed?
   a. They need total reform ____
   b. They need partial reform ____
   c. They need slight reform ____
   d. No need to reform them ____

13. How effective are labor offices/Federal and regional Bureaus of Labor and Social Affairs/ in assisting business undertakings effectively in solving labor-management problems?
    a. Very effective ____
    b. Effective ____
    c. Slightly effective ____
    d. Ineffective ____

14. Is the Employers Federation of Ethiopia effective in providing technical assistance to undertaking that are its members?
    a. Very effective ____
    b. Effective ____
    c. Slightly effective ____
    d. Ineffective ____

IV. Problems of Interpretation of the Labor Law

15. Have you faced problems due to misinterpretation of the labor law? Yes ____ No ____

16. In your opinion, what are the causes for misinterpreting the law?
    a. Lack of evidence ____
    b. Failure to present cases to the court properly ____
    c. Difficulty in communicating ones cases to the court ____
    d. Other causes: _____

17. What labor issues are usually subject to misinterpretation by labor courts?
    a. Termination of contract ____
    b. Remuneration of labor ____
    c. Other issues, please specify: _____

18. Have you ever appealed labor court decisions to the Cassation Division of the Federal Supreme Court? Yes ____ No ____

    If yes, which Article number was subject to interpretation?
    a. Article number _____
    b. Were you satisfied with the decision of the Division? Yes ____ No____

19. Are enterprises/undertakings effectively introduced to the decisions of the Cassation Division of the Federal Supreme Court as legal precedents?
    a. Very effectively ____
    b. Effectively ____
    c. Slightly effectively ____
    d. Ineffectively ____
    e. No introduction to the decisions of the Division ____

ANNEX 2: QUESTIONNAIRE FOR CETU

Instruction: Please answer the questions in the blank space provided by putting "X" mark. If more than one answer is required put more Xs in responding to the question.

I. Structural Problems of the Labor Law that Affect Businesses

1. Which Articles of the labor law affect business efficiency and competitiveness?

Please write Article numbers that affect businesses very seriously, seriously, and slightly in the table provided below. If space is not enough, insert additional lines below the table.

Very seriously	Seriously	Slightly
Article number ___	Article number ___	Article number ___
Article number ___	Article number ___	Article number ___
Article number ___	Article number ___	Article number ___
Article number ___	Article number ___	Article number ___
Article number ___	Article number ___	Article number ___

2. How effective is the labor law in maintaining labor productivity?
   a. Very effective ____
   b. Effective ____
   c. Slightly effective ____
   d. Ineffective ____
3. Is the labor law efficient in restructuring or changing of work methods within undertakings?
   a. Very efficient ____
   b. Efficient ____
   c. Slightly efficient ____
   d. Inefficient ____

II. Observed Problems of Implementation of the Labor Law

4. What problems are observed in the labor courts that negatively affect labor-management relations?

   a. Labor courts take longer time to pass decisions ____
   b. Decisions are not favorable to employers ____
   c. Decisions of the labor court are costly ____
   d. Enforcement of the labor law is time consuming ____
   e. Other problems, please specify _____

5. Do labor courts need to be reformed?

   a. They need total reform ____
   b. They need partial reform ____
   c. They need slight reform ____
   d. No need to reform them ____

6. How effective are labor offices/Federal and regional Bureaus of Labor and Social Affairs/ in assisting in solving labor-management problems?

   a. Very effective ____
   b. Effective ____
   c. Slightly effective ____
   d. Ineffective ____

7. How efficient are agencies, including the police, that are responsible for the enforcement of the labor law?

   a. Very efficient ____
   b. Efficient ____
   c. Slightly efficient ____
   d. Inefficient ____

III. Role of the Confederation of Ethiopian Trade Unions

8. Is the Confederation of Ethiopian Trade Unions effective in providing technical assistance to its members?

   a. Very effective ____
   b. Effective ____
   c. Slightly effective ____
   d. Ineffective ____

9. In the table below, please indicate which sectors of the economy are seriously affected by labor disputes? Please, put "X" in the appropriate box:

Sector	**Seriously affected**	**Slightly affected**	**Not affected**
Agriculture			
Manufacturing			
Transport and communications			
Construction			
Services			

10. Have you ever conducted formal meetings with the Employers' Federation of Ethiopia on labor issues? Yes___ No___

11. How often does the Tripartite Advisory Board hold meetings to discuss and resolve labor matters with the Confederation participating in it?

    a. Monthly ____
    b. Quarterly ____
    c. Half-yearly ____
    d. Annually ____
    e. No meeting is conducted in the last 9 months ____

12. Has the Tripartite Advisory Board ever proposed amendments to the government regarding the labor law? Yes ____ No ____

13. Has the Confederation ever introduced the decisions made by the Cassation Division of the Federal Supreme Court to member trade unions? Yes ____ No ____

ANNEX 3: QUESTIONNAIRE FOR MoLSA

Instruction: Please answer the questions in the blank space provided by putting "X" mark. If more than one answer is required put more Xs in responding to the question.

I. Structural Problems of the Labor Law that Affect Businesses

1. Which Articles of the labor law affect business efficiency and competitiveness?

Please write Article numbers that affect businesses very seriously, seriously, and slightly in the table provided below. If space is not enough, insert additional lines below the table.

Very seriously	Seriously	Slightly
Article number ___	Article number ___	Article number ___
Article number ___	Article number ___	Article number ___
Article number ___	Article number ___	Article number ___
Article number ___	Article number ___	Article number ___
Article number ___	Article number ___	Article number ___

2. How effective is the labor law in maintaining labor discipline and productivity?

   a. Very effective ____
   b. Effective ____
   c. Slightly effective ____
   d. Ineffective ____

3. Is the labor law efficient in restructuring or changing of work methods within undertakings?

   a. Very efficient ____
   b. Efficient ____
   c. Slightly efficient ____
   d. Inefficient ____

II. Observed Problems of Implementation of the Labor Law

4. What problems are observed in the labor courts that negatively affect business?

   a. Labor courts take longer time to pass decisions ____

b. Decisions are not favorable to employers ____
c. Decisions of the labor court are costly ____
d. Enforcement of the labor law is time consuming ____
e. Other problems, please specify _____ _____

5. Do labor courts need to be reformed?

a. They need total reform ____
b. They need partial reform ____
c. They need slight reform ____
d. No need to reform them ____

6. How effective are labor offices/Federal and regional Bureaus of Labor and Social Affairs/ in assisting business undertakings effectively in solving labor-management problems?

a. Very effective ____
b. Effective ____
c. Slightly effective ____
d. Ineffective ____

7. How efficient are agencies, including the police, that are responsible for the enforcement of the labor law?

a. Very efficient ____
b. Efficient ____
c. Slightly efficient ____
d. Inefficient ____

III. Role of the Ministry of Labor and Social Affairs/Labor Offices

8. Is the Ministry of Labor and Social Affairs/Labor Offices effective in providing technical assistance to both management and labor?

a. Very effective ____
b. Effective ____
c. Slightly effective ____
d. Ineffective ____

9. In the table below, please indicate which sectors of the economy are seriously affected by labor disputes? Please, put "X" in the appropriate box:

Sector	Seriously affected	Slightly affected	Not affected
Agriculture			
Manufacturing			
Transport and communications			
Construction			
Services			

10. Have you ever conducted formal meetings with the Employers' Federation of Ethiopia and the Confederation of Trade Unions on labor issues? Yes___ No___

11. How often does the Ministry call the Tripartite Advisory Board meetings to discuss and resolve labor matters?

    a. Monthly ____
    b. Quarterly ____
    c. Half-yearly ____
    d. Annually ____
    e. No meeting is conducted in the last 9 months ____

12. Has the Tripartite Advisory Board ever proposed amendments to the Government regarding the labor law? Yes ____ No ____

13. Has the Ministry ever introduced the decisions made by the Cassation Division of the Federal Supreme Court to major stakeholders such as the Employers Federation of Ethiopia and Confederation of Trade Unions? Yes ____ No ____

ANNEX 4: List of Enterprises Covered by the Study on Impacts of Labor Laws on Business Efficiency and Competitiveness

No.	Name of Enterprise	Contact Person
1	COUNTRY CLUB DEVELOPMENT PLC	Tewodros Kebede
2	GIFT REAL ESTATE PLC	Melesse Tariku
3	SATCON CONSTRUCTION PLC	Admasu Legesse
4	SUNSHINE CONSTRUCTION PLC	Anwar Hussien
5	ENYI GENERAL BUSINESS	Ato Aberra
6	AYAT SHARE CO.	Teshome Muzzeien
7	EAST AFRICAN AGRI-BUSINESS	Behailu Tadesse
8	D.H GEDA TRADE & INDUSTRY PLC	Geremew Mengistu
9	KADISCO CHEMICAL INDUSTRY PLC	Demere G/Yohannes
10	KANGAROO SHOE FACTORY	Degifew Gibe
11	GET-AS INTERNATIONAL PLC	Ato Mengesha Gemechu
12	SARON ROSE AGRO FARM PLC	Negussie G/Mariam
13	J.J. KOTHARI & CO ETH. LTD	Admas Zewde
14	ETHIO-ASIAN SOAP & DETERGENT PLC	Shetly S. Bagwady
15	ENYI CONSTRUCTION	Getaneh
16	ENYI ETHIO ROSE	>>
17	MINISTRY OF LABOR AND SOCIAL AFFAIRS	Fekadu Gebru
18	CONFEDERATION OF ETHIOPIAN LABOR UNIONS	Seid Yimer
19	FIRST INSTANCE LABOR COURT, 2ND BENCH, KERA	Gidelew Genbito
20	EMPLOYERS' FEDERATION OF ETHIOPIA	Tadele Yimer
21	MIDROC GOLD MINES PLS	Debebe/Aster

ANNEX 5: International Labor Organization Conventions Ratified by Ethiopia

1. Unemployment Convention, 1919 (No.2)
2. Right of Association (Agriculture) Convention, 1921 (No. 11)
3. Weekly Rest (Industry) Convention, 1921(No. 14)
4. Forced Labor Convention, 1930 (No.29)
5. First Articles Revision Convention, 1946 (No. 80)
6. Freedom of Association and Protection of the Right to Organize Convention,1948 (No. 87)
7. Employment Service Convention, 1948 (No. 88)
8. Right to Organize and Collective Bargaining Convention, 1949 (No. 98)
9. Equal Remuneration Convention, 1951 (No. 100)
10. Abolition of Forced Labor Convention, 1957 (No.105)
11. Weekly Rest (Commerce and Offices) Convention, 1957 (No.106)
12. Discrimination (Employment and Occupational) Convention, 1958 (No. 111)
13. Final Articles Revision Convention, 1961 (No.116)
14. Minimum Age Convention, 1973 (No.138)
15. Occupational Safety and Health Convention, 1981 (No.155)
16. Workers with Family Responsibility Convention, 1981 (No.156)
17. Termination of Employment Convention,1982 (No.158)
18. Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No.159)
19. Private Employment Agencies Convention, 1997, 1997 (No.181)
20. Worst Forms of Child Labor Convention,1999 (No.182)
21. Denunciation of Fee-Charging Employment Agencies Convention (Revised), 1949 (No.96)

ANNEX 6: SUMMARY OF SURVEY RESULTS

No.	Questions	Serial No. of Enterprises Covered by the Survey*														
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
1	What types of labor problems mostly affect business undertakings?																
a	Lack of labor discipline	X		X	X	X		X	X	X	X		X				X
b	Slow down						X	X			X		X				
c	Declining productivity of labor		X					X					X		X	X	
d	Labor not accepting technological change										x						
e	Others (please specify):																
2	How do these problems affect business undertakings?																
a	Reduce profitability	X	X	X	X	X	X	X			x		X	X	X	X	
b	Diminish efficiency	X	X	X		X		X			X		X				X
c	Affect management-labor relations			X	X	X		X	X		X		X				X
d	Reduce competitiveness	X		X	X	X			X		X		X				
e	Others (please specify):																
3	Is the cost of hiring labor expensive?																
a	Very expensive		X								X			X			
b	Expensive			X	X	X		X									
c	Slightly expensive								X	X					X	X	
d	Inexpensive	X					X					X	X				X
4	Is the cost of firing labor expensive?																
a	Very expensive		X	X		X	X						X				
b	Expensive	X			X			X	X	X							X
c	Slightly expensive														X	X	

d	Inexpensive											X		X			
4.1	What problems do you face when you terminate a worker																
a	Facing court case	X	X	X	X	X	X	X	X	X			X	X	X		X
b	Exaggerated compensation			X	X	X	X				X		X				
c	Reinstatement of workers				X		X	X	X				X				
d	Creating precedence				X		X	X					X				
e	Others (please specify):																
5	What is the reaction of labor if undertakings introduce new technology or restructure?																
a	Workers resist					X			X						X	X	
b	Labor disputes arise				X						X					X	
c	Work slows down				X	X											
d	Labor-management relations affected negatively				X						X						
e	Others (please specify):																
6	What is the effect on business efficiency if a worker is reinstated by the decision of the labor court?																
a	Workers' attitude toward work changes negatively	X		X	X	X	X		X		X		X		X		
b	Labor productivity declines			X	X	X									X	X	
c	Supervision of work becomes difficult		X	X	X		X				X		X				X
d	Management efficiency declines			X			X										
e	Others (please specify):																
7	Is collective agreement useful for maintaining good labor-management relations?																
a	Very useful					X		X						X			
b	Useful	X			X						X	X			X	X	X
c	Not useful												X				
d	Source of labor problems		X														

8	Which articles of the labor law affect business efficiency and competitiveness? Please write article numbers that affect businesses seriously.	29 36 27		38 36 162	10 17 27 28 66 86 162	66 67 68 85	27 28 36 43 162	11 27 36 162	9 10 27 36 138 162		10 28 29 38 43		27 36 43 162		17 18 27 36	28 29 43 79 157	28 29 43 67 79 157
9	How effective is the labor law in maintain labor discipline and productivity?																
a	Very effective									X				X		X	
b	Effective	X		X	X	X	X	X	X		X				X		X
c	Slightly effective		X														
d	Ineffective												X				
10	Is the labor law efficient in restructuring or changing of work methods within undertakings?																
a	Very efficient					X				X				X		X	
b	Efficient			X			X	X	X								X
c	Slightly efficient		X		X												
d	Inefficient										X						
11	What problems are observed in the labor courts that negatively affect business?																
a	Labor courts take longer time to pass decisions			X	X	X	X		X		X						
b	Decisions are not favorable to employers			X	X		X				X		X			X	X
c	Decisions of the labor courts are costly	X				X	X						X				
d	Enforcement of labor law is time consuming		X		X	X		X									
e	Other problems (please specify):																
12	Do labor courts need to be reformed																

a	They need total reform				X				X				X				
b	They need partial reform		X	X			X	X			X						
c	They need slight reform	X										X				X	X
d	No need to reform them					X				X							
13	How effective are labor offices/Federal and regional Bureaus of Labor and Social Affairs/ in assisting business undertakings effectively in solving labor-management problems?																
a	Very effective									X							
b	Effective	X												X		X	
c	Slightly effective		X				X		X		X		X				X
d	Ineffective			X	X	X		X				X			X		
14	Is the Employers' Federation of Ethiopia effective in providing technical assistance to undertakings that are its members?																
a	Very effective																
b	Effective	X									X					X	
c	Slightly effective		X	X	X		X										X
d	Ineffective					X			X	X				X	X		
15	Have you faced problems due to misinterpretation of the labor law?																
a	Yes	X	X	X	X	X			X		X						X
b	No						X	X		X			X	X	X	X	
16	In your opinion, what are the causes of misinterpreting the law?																
a	Lack of experience														X		
b	Failure to present cases to the court properly																X

c	Difficulty in communicating ones cases to the court		X		X	X										X	
d	Other causes	X		X					X								
17	What labor issues are subject to misinterpretation by labor courts?																
a	Termination of contract	X	X	X	X	X	X		X		X	x				X	
b	Remuneration of labor			X		X									X	X	
c	Other issue, please specify:																
18	Have you ever appealed labor court decisions to the Cassation Division of the Federal Supreme Court?																
a	Yes				X	X	X		X		X						
b	No	X	X	X				X		X			x	X	x	X	X
	If yes, which article number was subject to interpretation?				10 17 24 30	27	27		27 36		9 10						
19	Are enterprises/undertakings effectively introduced to the decisions of the Cassation Division of the Federal Supreme Court as legal precedents?																
a	Very effectively			x	X	X			X		X						
b	Effectively															x	X
c	Slightly effectively	X	X				X										
d	Ineffectively																
e	No introduction to the decisions of the Division									X				X			

* See attachment of list of enterprises covered by the study