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**Privatisation in Ethiopia**  
the Challenge it poses to Unionisation  
and Collective Bargaining

**By**  
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**A thesis submitted to the University of Warwick, School of Law  
for the Degree of Doctor of Philosophy**

**April, 2015**

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- Demir and Bayraka v Turkey* (Application No.34503/97 (ECJ) (Judgment of 12 November 2008).
- International Transport Workers' Federation and Finnish Seamen's Union v Viking Line ABP and OU Viking Line Eesti* (Case C-438/05 (ECJ) (Judgment of 11 December 2007).
- Laval Un Partneri Ltd v Svenska Byggnadsarbetareförbundet and others* (Case C-341/05 (ECJ) (Judgment of 18 December 2007).
- Commercial Bank of Ethiopia Trade Union v Commercial Bank of Ethiopia* (Federal Cassation File No.50679 (Federal Supreme Court Cassation Division) (Judgment of 14 July 2010).
- Construction Works and Coffee Production Technology Development Company Trade Union v Construction Works and Coffee Production Technology Development Company* (Federal Cassation File No.49152 (Federal Supreme Court Cassation Division) (Judgment of 14 July 2010).
- Fincha Sugar Corporation v Fincha Sugar Corporation Trade Union* (Federal Cassation File No.54451 (Federal Supreme Court Cassation Division) (Judgment of 7 September 2010).
- Ethio-leather Industry plc v Ethio-leather Trade union* (Federal High Court File No.48054 (Federal High Court) (Judgment of 4 January 2007)

## Table of Laws

- The Revised Constitution of Ethiopia, Proclamation No.149/1955, *Negarit Gazeta*, 15<sup>th</sup> year, No.2
- Civil Code of the Empire of Ethiopia of 1960, Proclamation No. 165/1960, *Negarit Gazeta* 19<sup>th</sup> year No. 2.
- Commercial Code of the Empire of Ethiopia, Proclamation No.166/1960, *extraordinary issue Negarit Gazeta* 19<sup>th</sup> year No. 3.
- A Proclamation to provide for Labour Proclamation No. 210/1963, *Negarit Gazeta*, 23<sup>rd</sup> year, No. 3
- A Proclamation to provide for Labour Proclamation No. 64/1975, *Negarit Gazeta*, 35<sup>th</sup> year, No. 11.
- Trade Unions Organization Proclamation No. 222 / 1982, *Negarit Gazeta*, 41<sup>th</sup> year No.6
- Transitional Period Charter of Ethiopia, *Negarit Gazeta* 22 July 1991, Addis Ababa.
- A Proclamation to Provide for the Establishment of the Public Enterprises' Proclamation No. 25/1992, *Negarit Gazeta* 51<sup>st</sup> year, No. 21
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- Council of Ministers Regulation to establish Textile and Leather Industry Development Center No.125/2006, *Federal Negarit Gazeta* 12<sup>th</sup> year No.27.



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Mehari Redae

## **Declaration of Originality**

I hereby declare that this research work under the title ‘**Privatisation in Ethiopia: the Challenge it poses on Unionisation and Collective Bargaining**’ is my original contribution. I further affirm that it has not been published or submitted for publication anywhere else nor will it be sent for publication in the future. Any reference to work done by any other person or any materials obtained from other sources have been duly acknowledged.

Mehari Redae

## **Acronyms and Abbreviations**

ACP	African Caribbean and Pacific Countries
ADBG	African Development Bank Group
AFRODAD	African Forum and Network on Debt and Development
AGOA	African Growth and Opportunity Act
Art.	Article
CC	Civil Code of the Empire of Ethiopia
CELU	Confederation of Ethiopian Labour Unions
CETU	Confederation of Ethiopian Trade Unions
Com.C	Commercial Code of the Empire of Ethiopia
Const.	Constitution
ECJ	European Court of Justice
EEF	Ethiopian Employers' Federation
EPA	Ethiopian Privatisation Agency
EPRDF	Ethiopian Peoples' Revolutionary Democratic Front
EU	European Union
FDRE	Federal Democratic Republic of Ethiopia
ICESCR	International Covenant for Economic Social and Cultural Rights
ICCPR	International Covenant for Civil and Political Rights
ICFTU	International Confederation of Free Trade Unions
ILO	International Labour Organisation
IMF	International Monetary Fund
MOLSA	Ministry of Labour and Social Affairs
MOI	Ministry of Industry
NAFTA	North America Free Trade Area
NAALC	North American Agreement on Labour Cooperation
OECD	Organisation of Economic Co-operation and Development
PPESA	Privatisation and Public Enterprises Supervising Agency
Para.	Paragraph
Proc.	Proclamation
TEP	Transitional Economic Policy
TVET	Technical and Vocational Education and Training
WB	World Bank
WRAP	Worldwide Responsible Accredited Production
WTO	World Trade Organization
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
USA	United States of America
USD	United States Dollar

## **Abstract**

The thesis explores the challenge Ethiopia as a developing country faces in responding to issues associated with economic liberalisation on the one hand and the protection and promotion of ‘core’ labour rights on the other. In order to closely examine the issue, privatisation and the collective aspects of labour rights have been considered for analysis. More specifically, the status of unionisation and collective bargaining in the privatised enterprises in Ethiopia has been examined through the medium of case studies. The literature on privatisation and labour examined the adverse effect of privatisation from the perspective of the job losses associated with it. The contribution of this thesis is its contention that job loss associated with privatisation, if any, is a short-term and an individualised issue. There are rather other concerns to the labour force associated with privatisation which are long-lasting, issue of collectivity and with broader implications.

Privatisation programme has been put into effect since the early 1980s in a more noticeable manner in terms of pace and scope in developing countries owing to, at times, external prescription from multilateral lending and donor institutions to privatise State-owned enterprises as far and as fast as possible. Responding positively to such a donor prescription brings with it a financial and technical assistance from these institutions in addition to the perception that investment would be attracted and retained with liberalised economic policy. Ethiopia has embarked upon the actual implementation of the privatisation programme since 1995.

Side by side to this, at the international level, freedom of association and collective bargaining has attained special status in the ILO jurisprudence since the adoption of the 1998 ILO Declaration. In fact, in the Ethiopian context, these labour rights have been incorporated into Ethiopian law by ratifying the relevant ILO conventions by the country in 1963. Moreover, they have been enshrined in the country’s Constitution since 1995 providing them a constitutional law status. These State actions formally impose international and national obligation on Ethiopia to respect, protect and promote the rights.

In terms of labour profile, the privatisation programme, as an aspect of economic liberalisation, expects a liberal and flexible labour market. However, such flexibility is criticised of directly or indirectly eroding labour standards including the rights to unionisation and collective bargaining. Thus this state of affairs places Ethiopian policy makers in a dilemma on how to address both sides of the concerns and interests. The dilemma has been reflected in the ambivalent position the country’s law making, implementation and interpretation activities manifested themselves.

## Chapter 1- Introduction

### 1.1. The Context

Ethiopia is located in Eastern Africa, bordering with the Sudan to the west, Eritrea to the north, Djibouti to the east, the Republic of Somalia to the south east and Kenya to the south. Although an old and independent country which was never physically colonised by any foreign powers, it is one of the least developed countries in sub-Saharan Africa. It is neither a significant international trading partner for other states nor is it yet a member of the WTO. Its economy is not well integrated into the global economic order. However, the country has been undergoing transformation in all aspects of its social and economic life. In particular, since the early 1990s,<sup>1</sup> numerous changes have taken place in the political and economic spheres.

Politically, a long-established centralised and unitary state administration has been restructured to a decentralised federal arrangement. Legislative, executive and judicial powers have been constitutionally apportioned between the federal government and the federated member states (locally known as *kilils*). Parliament, the highest political organ of the country, is being constituted and re-constituted both at federal and state levels through periodic elections every five years based on universal suffrage. The executive has been made formally accountable to the parliament. The judiciary was also restructured in so far as the judges of the various benches who were considered to have affiliations with the previous military regime were removed and replaced by newly appointed judges (Menbere-Tsehay, 2010:40).

Economically, the communist-oriented command economy of the military government has been replaced by an economic system with a market orientation. Private capital, unlike under the previous regime, is no longer viewed with hostility. On the contrary, the current policy makers have designated private capital as an engine to economic growth and a partner to development (Admit, 2010:243). It has been claimed that the role of the State in the economic affairs of the country is being predominantly restricted to policy formulation and law making. In practical

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<sup>1</sup> In 1991 the military regime (locally known as the *Dergue*) was forcefully overthrown by the EPRDF forces. After a brief transitional period (1991-1994), Ethiopia adopted a constitution, in 1995, which declared that the country is a 'Federal, Democratic Republic'.

terms, the government has been engaged for some years now in an extensive privatisation programme. Many State-owned enterprises have been restructured to adopt a more market-orientated approach and privatised thereafter. Nevertheless, in selected areas of economic activity including those such as power generation and distribution and telecommunication service government monopoly has been retained.<sup>2</sup> As a result, the role of the private sector has become increasingly visible in the economy.

A policy question that then arises is to what extent, if at all, these economic and political shifts have influenced the framework of labour law in general and collective labour law in particular. In this connection, it is important to note that since it became a member of the ILO in 1923, Ethiopia has ratified a number of the ILO conventions among which the eight ‘core’ conventions are to be found.<sup>3</sup> Specifically, ILO Conventions No.87 and 98 which regulate freedom of association and collective bargaining respectively were ratified by Ethiopia in 1963.

Moreover, the 1998 ILO Declaration on ‘Fundamental Principles and Rights at Work’ requires Member States, by virtue of their membership, to promote, respect and realise, the ‘core’ labour rights which are enshrined in the eight core conventions. In recognition of these commitments, Ethiopia has incorporated the main principles of the ‘core’ conventions into its Constitution and other ordinary laws. The Ethiopian Federal Constitution stipulates ‘all international agreements ratified by the country are integral parts of the laws of the land’ (FDRE Constitution, Art.9 (4)). Thus, Ethiopia has both international and national formal obligations to respect, protect and fulfil the prescriptions of the ‘core’ ILO conventions including those relating to freedom of association and collective bargaining.

A premise of this thesis is that it would be unwise to assume that the political and economic changes referred to above will have no impact on workplace relations and fulfilment of these international and national commitments. There are, for instance, concerns that the current economic liberalisation in Ethiopia in general and the privatisation programme in particular has

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<sup>2</sup> Of course, the government had plans to withdraw from the ownership and management of enterprises in the manufacturing sector such as textile factories. But due to lack of interest of private purchasers to take them over, the government still owns and manages some them.

<sup>3</sup> Ethiopia ratified 22 ILO conventions in which the eight core conventions are included. (Source: <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl>? Ethiopia; 02 February 2009).

been associated with job losses and decline in the role and power of trade unions<sup>4</sup> as a result of which a hostile attitude towards the privatisation programme has developed (Abebe and Admit, 2001:62).

The government by contrast contends that privatisation and private sector development bring about economic growth and also create employment opportunities for the young generation. On the other hand, the government concedes that if not handled with care, privatisation may bring about undesirable social consequences in general and erosion of labour standards in particular. Nevertheless, the government has tried to give assurances that it is committed to addressing the social concerns at any time and at any cost. In fact, it has been claimed that the government would neither condone nor tolerate labour rights' violations of any sort.<sup>5</sup> Whether and to what extent such a commitment has been fulfilled is a claim on which it is hoped that the empirical case studies in this thesis will throw some light.

## **1.2. Scope of the Study**

Broadly, the study places itself within the framework of economic liberalisation and labour rights discourse. It is contended that economic liberalisation brings about economic growth and economic growth generates employment. Hence the emphasis on introducing economic liberalisation seems to imply that once growth is secured, social objectives could be attained through the so-called the 'trickle down' effect in that members of society including employees will directly or indirectly benefit from the overall growth of the economy. However, Stiglitz argued that 'while it is true that sustained reductions in poverty cannot be attained without robust economic growth, the converse is not true: growth need not benefit all' (2002: 78).

It has already been mentioned that Ethiopia is undertaking economic liberalisation programme. Economic liberalisation encompasses, among other measures, foreign trade liberalisation, market deregulation (including labour market deregulation) and privatisation. The package of labour rights also has varied dimensions. Given the potentially very broad ranging subject matter, it

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<sup>4</sup> Trade union leaders in Ethiopia have had this perception. In their regular annual deliberations with the Prime Minister on May Day celebrations, the concern of the union officials predominantly revolves around privatisation and labour rights. Generally, the International Confederation of Free Trade Unions (ICFTU) is also highly critical on privatisation (see <<http://www.newunioinsm.net/library/internationalism/ICFTU-privatisation> and its impact on labour-2002-PDF>. (accessed 21 February 2009).

<sup>5</sup> In one of his May Day celebration meetings with the national trade union leaders, the late Ethiopian Prime Minister gave such an assurance to them (Ethiopian TV: 01 May 1999).

would be difficult within the resource and time limitations of the present study to examine every aspect of economic liberalisation and every aspect of the labour rights impacted by it.

The scope of the study will therefore focus on only certain aspects of the economic liberalisation programme and the labour rights. Regardless of whether externally prescribed or internally motivated or both privatisation in Ethiopia has been introduced and implemented since 1995. As a result, the privatisation programme has been identified for the study from the set of economic liberalisation package. Even from the privatisation programme, although the Ethiopian privatisation programme has expressed itself through various modalities such as total sale, joint venture, management contract and lease, the present study will limit itself to total sale of State-owned business entities to private ownership as full transfer has been the main mode of implementing the privatisation programme (*See, p.125, Table 1 below*).

From the labour rights package, freedom of association and collective bargaining have been selected for the study because they are considered among the ‘core’ labour rights and are in most cases the entry points towards respect for other labour rights (Hepple, 2005:59). They are therefore central to any understanding of the broader impact on labour rights. Even though freedom of association and collective bargaining are rights available both to employees and employers, in practice; it has been employees who demanded and most in need of them due to their weak bargaining positions when and if employees sought to bargain individually. Thus freedom of association has been further limited to unionisation due to the importance employees attach to it. For these all reasons the study limits its examination to the challenges posed by privatisation on unionisation and collective bargaining.

### **1.3. Objective of the Study**

With the adoption of the ‘Transitional Economic Policy’ (TEP) in 1991, immediately after the downfall of the military rule, Ethiopia has embarked on liberalising its economy by deviating from the command economy of the military regime. Privatisation of State-owned enterprises has been taken one of the modalities of the opening up of the economy. It is claimed that the privatisation programme is one way of introducing wider private sector economic involvement and an avenue towards economic success and growth. But it is alleged that it poses challenges for social welfare in general and for the interest of labour in particular.



Although there is controversy as to whether the effect is short-term or long-term, the adverse impact of privatisation on jobs has been documented in many studies (IMF, 1999a; Bortolotti and Siniscalco, 2004:12). Job losses are mainly of concern for those who lose their jobs as a result of privatisation. However, this would be to ignore or at least understate the consequences for those who managed to retain their job positions. The proposition then is that securing employment though necessary is not a sufficient guarantee for the exercise of labour rights because labour rights are not merely about obtaining gainful employment. The quality of employment in the sense of working condition with dignity is equally important. It is in this context that protection and enhancement of collective labour rights takes on a particular significance. That premise is a starting point for this study which will focus on those members of the workforce who have managed to retain their employment. In particular it seeks to examine the nature and degree of challenges that they encounter in their effort towards unionisation and collective bargaining in the privatised enterprises in Ethiopia.

Internationally, since the adoption of the ILO 1998 Declaration of Fundamental Principles and rights at Work, the ‘core’ labour rights have been accorded special status. Consequently Member States of the ILO, by virtue of their mere membership, are required to respect, protect and promote these rights regardless of specific separate ILO conventions to which they may also be signatories. The right to unionisation and collective bargaining, as will be discussed in Chapter 3 and 4 below, are among the core labour rights. These rights are ‘so fundamental that they should be assured for all people regardless of the culture and level of development of the countries in which they live’ (Hepple, 2005:57) The rights associated with unionisation and collective bargaining are broad-based in scope in that they address issues of organised labour rather than the interests of an individual employee.

Domestically, Ethiopia has been a signatory to the relevant ILO Conventions No. 87 and 98 and both rights under the Conventions have also, since 1995, been enshrined in the Federal Constitution of Ethiopia. Thus, at domestic level too, they are not merely treaty obligations but have been upgraded to having constitutional law status. Furthermore, Ethiopian labour law has also provided provisions recognising these rights. Notwithstanding the formal commitments in these international and national legislative instruments, trade union leaders in Ethiopia have been

both critical and sceptical about the level of respect for unionisation and collective bargaining in the privatised enterprises.

One focus for the research is therefore to examine the tension between the importance accorded to these rights both at international and domestic level on the one hand and the pessimism of the trade union leadership as to their practical implementation on the other. The study will therefore deal with the development of the collective aspects labour rights in Ethiopia and the influence the relevant ILO instruments have had on that pattern of development. Consideration will also be given as to the extent to which Ethiopia's political and social history has influenced the exercise of the collective aspects of labour rights. This will provide the basis for assessing the implementation of the rights in a post-privatisation economic system. This emphasis on the Ethiopian experience in relation to its political and social history has a dual significance. Certainly the experience can be considered from the standpoint of understanding how collective labour law has been developed in Ethiopia through three very different political regimes. But there is a further more speculative dimension that alludes to the potential role for law as a 'protective force' for labour in the context of privatisation.

In a sense, if privatisation is to benefit all, it must be inclusive of the interests and concerns of the stakeholders. Privatisation involves the 'rolling back' of the state from the economy and this displacement of the state should be complemented by proactive state action in the social sphere if a holistic approach to development is to be attained. In fact, 'issues of social development and welfare have been a continuous theme in the discourses of development' (Twining, 2009:325). One of the subject matters in the social sphere is the issue of labour and its regulatory framework. Therefore, now that the Ethiopian government has begun to withdraw from some of the manufacturing sectors of the economy, whether and to what extent it has simultaneously undertaken active measures in regulating and enforcing labour rights will be examined.

Furthermore, it will be argued that privatisation is not an issue of merely a transfer of ownership from state to private. Whilst an assessment of privatisation in one sense involves simply a study of certain legal steps of transfer of ownership from state to private, an understanding of the process and its objectives requires more than that. The policies, laws and mind-set of institutions involved in the privatisation process and enforcement of labour rights also need to be considered.

Their roles in furthering as well as impeding the exercise of the collective aspects of labour right will therefore be assessed as part of this study.

It is for these reasons that in addition to a study of the laws at the surface, at the empirical level, case studies will be presented with a view to shed light on the type of practical issues referred to above. The data from the case studies will serve as input in examining how collective labour has been regarded and treated in the privatised enterprises. How this has been reflected both in union membership density and in the process and outcome of collective bargaining between the social partners will also be considered. A premise to be considered is that despite the rhetoric for ‘zero tolerance’ against labour rights violations and the apparently more favourable legal framework for unionisation, in practice, collective labour rights have faced appreciable challenges in the privatised enterprises in Ethiopia. This poses the question as to the effectiveness of legal measures by themselves. In particular, though necessary, are they sufficient to address workplace issues that appear to be a consequence of privatisation? Also can it then be argued that complementary measures, other than the legal ones, need to be considered in order to respect, promote and protect the rights? If so what these measures are and how should they be integrated and coordinated? These are all issues to be discussed in the body of the thesis.

Finally, this study will be assessed in the light of labour law reforms dictated by economic liberalisation in other jurisdictions. For this purpose Compa’s general report will be considered.<sup>6</sup> In his consolidated report, Compa formulated four models for assessing the national reports on the labour law reforms initiated in the respective countries due to globalisation’s pressures. These are (Compa 2006: 10-11) : ‘*No change in law, but sometimes change in practice*’; whereby no change is observed as far as the formal labour law is concerned but implementing and enforcement agencies deviate from the formal laws towards lowering labour standards. ‘*Incremental Change*’ in which changes in labour law towards eroding labour rights is noted but the change is not drastic; rather a gradual one avoiding extreme deregulation. ‘*Substantial Change*’ represents highly visible transformation in labour law towards reduced labour standard while ‘*Cyclical Change*’ is expressed by labour law reform which at times register appreciable

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<sup>6</sup> In September 2006 the XVIII ‘World Congress of International Society for Labour and Social Security Law’ organised a Conference in Paris to discuss on various themes among which ‘Trade Liberalisation and Labour Law’ was one. Under this theme 23 country reports were presented from North America, South America, Central America and the Caribbean; in Western, Eastern, Northern and Southern Europe; and in the Asia-Pacific Region (Compa:2006). However, the Conference did not include any report from Africa, the Middle East and from continental Asian nations. Compa prepared a general report by synthesising the various country reports.

setback in terms of labour rights protection while regaining protection at a later time associated with sympathetic political parties assuming state power. He assessed the labour law reforms of the national reports against these models.

It is contended that both the issues under consideration in this comparison (i.e. Privatisation and Collective Labour Law) and that of the Conference from which Compa extracted a general report (i.e. Trade Liberalisation and Labour Law) are similar because they both fall within the broader framework of economic liberalisation and labour rights and touch upon similar issues. Since Compa's report did not benefit from an African experience, it is hoped that, the present study of Ethiopia, a country from Africa, will provide a modest contribution in filling the literary gap by pinpointing similarities or peculiarities, if any, with the conclusions of the general report. A point to note at this juncture however is Compa's general report covers labour law reforms pertaining to both individual and collective labour relations. Nevertheless, as the present study is focused on collective aspects of labour rights, the discussion will be confined to analysing an aspect of the Compa's general report relating to collective labour issues.

According to Compa's report, the *Substantial Change* model was observed in the labour law reform of several Eastern European countries as a reflection of their transition from command to market economies (2006: 11). It is understood that the Ethiopian economy was also transformed from command to market economy, and hence whether its labour law reform is to be characterised as *Substantial Change* will be examined in this study.

#### **1.4. Significance of the Study**

Whereas the economic effect of privatisation in developing countries has been extensively studied (Ramandham, 1993b; Kikeri and Nellis, 2004: 92) studies on the effects of privatisation on social welfare have been fewer (Kikeri, 1997:1; Buchs, 2003:40; Zhou and Cheng, 2007:161). Still fewer studies exist when it comes to the challenge that privatisation presents for labour rights (Cook and Kirkpartick, 1998; Chang, 2006). Such studies as exist tend to focus on macro-economic consequences for jobs and are inclined to indicate that although there may be job losses associated with privatisation, the effect is only temporary. The studies contend that jobs that may be lost in one location or industry could be replaced elsewhere and opportunities for re-employment may be available as soon as the economy regains competitiveness. However,

addressing issues of job security, though necessary, is not sufficient to address the problems associated with privatisation from the standpoint of labour. In particular studies on the challenge of privatisation towards unionisation and collective bargaining are lacking.

The Ethiopian privatisation programme has been in operation for almost two decades now but is far from complete. Even though the number of divestments appears impressive,<sup>7</sup> the actual focus of the privatisation programme has been on the sectors comprising mainly the retail trade and manufacturing factories which have been transferred to the private sector. The government still owns and manages a central core of economic entities such as the national airline, postal and telecommunication services, water and power generation, in addition to some textile enterprises, banks and insurance companies. Some of these enterprises are unlikely to be subjected to privatisation in the near future because of the desire of the government to retain the ‘key establishments’ of the economy under its ownership.<sup>8</sup> But many enterprises in the manufacturing sector are on the pipeline for privatisation and therefore the scope for a more labour-friendly privatisation deserves consideration.

Whilst the present study focuses on only one aspect of economic reform (privatisation), and one interest group (organised labour) its findings can be argued to demonstrate broader implications. What may be observed as a challenge posed by privatisation to collective labour rights may also shed light as to the manner the private sector views and responds to the demands of organised labour. The study may therefore provide some material evidence as to how public and private actors could formulate a conscious initiative to seek to influence the way in which the private sector handles issues of collective labour.

The significance of the study could also be viewed from the sector of the economy which has been identified as the focus for the field work. As will be seen later, this study focuses on the manufacturing sector particularly the traditionally labour intensive textile and leather industries. The WB has noted that Ethiopia has a comparative advantage in leather, garment and textile production (World Bank, 2004:23). With a population of more than 80 million Ethiopia remains

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<sup>7</sup> As at 2012, 312 enterprises have been divested out of the around 380 State -owned enterprises destined for privatisation.(Source: *Performance Report- Privatisation and Public Enterprises Supervising Agency; April, 2012* )

<sup>8</sup> In recent times the Ethiopian government is claiming to have introduced what it calls the ‘Developmental State’ model through which the role of the state in owning and managing infrastructure projects such as construction of mega dams and power generation and distribution facilities has been expanded. The financial sector (banks and insurance companies) which the state currently owns will also continue to remain under state ownership.

one of the most populous countries in Africa standing second only to Nigeria (MOLSA, 2009: 2). The predominantly lowland part of the country has been inhabited by nomads whose livelihood depends on cattle breeding. In terms of numbers of livestock too, Ethiopia stands first in Africa and tenth in the world (MOI, 2004:82).

Moreover, a study by the Ministry of Agriculture and Rural Development concluded that there are some 2,575,810 hectares of land suitable for cotton production in Ethiopia. This availability is believed to be equivalent to that of Pakistan, the fourth largest producer of cotton in the world (Rahel, 2007:23). Therefore, the large human and cattle population in the country coupled with the availability of vast areas of arable land made Ethiopia a suitable location for labour intensive manufacturing production systems for textile and leather products.

According to the records at the Ministry of Industry, the textile and leather industries are the two largest sub-sectors and account for 50% of the total employment of the manufacturing sector (MOI, 2004:100). The labour intensiveness of the two sectors has the potential to provide a significant contribution in reducing the alarming poverty prevailing in the country. In particular, as these industries have been labour intensive (Sonebe *et al*, 2007:1) and also tend to employ a higher proportion of female labour force (Tadele *et al*, 2007:3) they can be seen as paving the way for gainful employment to women.

An additional economic factor is that the markets for their products, both domestic and international, have also been promising. In terms of societal need, clothing stands in second place after food. The large Ethiopian population has the potential to generate a substantial number of consumers of textile and leather products provided that their purchasing power is enhanced to a sufficient level. Internationally, there are preferential trade arrangements on the basis of which products originating from Ethiopia have been allowed to cross the borders of Member States of the EU and of the USA at zero tariffs and zero quotas.<sup>9</sup> This preferential treatment by countries of destination in favour of Ethiopian products has emanated from the country's eligibility for a differential and preferential treatment under the EBA and the AGOA schemes offered by the EU and the USA respectively (Rahel: 2007).

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<sup>9</sup> For an extended discussion of the market potential, (see; Endalkachew Sime (2006) '*Enterprise Management of State- Owned cotton /textile/garment enterprise in Ethiopia.*')

Under the EBA scheme all products, other than arms and ammunition, originating from eligible least developing ACP countries have been granted access to European markets on duty free and quota free arrangements. Ethiopia, which is one of the least developing countries in sub-Saharan Africa, has been a beneficiary of this scheme (MOI, 2004:127).

The AGOA scheme operates in a similar manner by providing a preferential trade facility in favour of eligible African countries among which Ethiopia is one<sup>10</sup> (ibid). The scheme was introduced in 2002 and was originally planned to remain valid until 2008. However, the USA Government has since extended the benefits of the scheme until September, 2015.<sup>11</sup> Further preferential market opportunities are open to Ethiopian products due to its membership in the COMESA.<sup>12</sup> It is estimated that this Common Market is inhabited by a population of over 400 million<sup>13</sup> potentially a huge market. This body embraces 20 countries and grants preferential tariff rates to products originating in members of the Common Market (MOI, 2004:126).

Aware of these comparative advantages, the Ethiopian Government in its 'Industrial Development Strategy' paper issued in 2002 identified the textile and leather industries as among the 'industries of primary concern' to which prominence has been accorded as part of the Strategy (Altenburg, 2010:19). As is clear from that Strategy Paper, the government will assist an 'industry of primary concern', through various modalities such as bank loans with soft conditionality, training of personnel at government cost, research assistance and other incentives, with a view to making it competitive in national and international markets.

The position is therefore that in the future these industries seem likely to be scaled up resulting in a probable significant increase in the employed labour force. There is therefore a sound practical reason for studying ways in which a legal framework may contribute to enabling the industries to be more productive and competitive in the economic sphere on the one hand whilst also enhancing socially responsible industrial relation at workplaces on the other. Indeed, achieving sustainable success and access in market competition is, it will be argued here, dependent to

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<sup>10</sup> In October 2000, Ethiopia was designated as one of the 35 sub-Saharan African countries eligible to receive African Growth and Opportunity Act (AGOA) benefits. In August 2001, Ethiopia was certified for textile and apparel benefits under AGOA. (available at: [www.icongrouponline.com](http://www.icongrouponline.com) (accessed on 03 May 2009)

<sup>11</sup> Available at: <http://www.agoa.gov/agoalegislation/index.asp> (accessed 13 May 2009)

<sup>12</sup> Available at: <http://www.mfa.gov.et/internationalMore.php?pp=33> (accessed 14 September 2010)

<sup>13</sup> Available at: <http://about.comesa.int/> (accessed on 03 June 2009).

some significant degree on harmonious industrial relation and the level of motivation of the human capital working therein.

### **1.5. Research Questions**

Both ‘privatisation’ and ‘core’ labour rights have obtained recognition under the globalised world order. Privatisation, as an aspect of economic liberalisation, has been one of the desired economic arrangements of the global economic order and one of the prescriptions of the multilateral lending institutions, namely the IMF and the WB. Freedom of association and collective bargaining being sub-sets of ‘core’ labour rights are aspects of workplace human rights. Privatisation is usually claimed to have been associated with economic efficiency goals (there are, however, arguments contending that privatisation does not necessarily bring about economic efficiency) while core labour rights represent fundamental human rights at work and hence the social dimension. Hence, both economic and social goals are socially pertinent objectives and therefore necessarily feature within industrial relations system whether in a co-existing or competitive vein.

Internationally, donor and lending agencies such as the WB and the IMF advise all their members in general and transition economies and developing countries in particular to privatise their State-owned enterprises as a condition of obtaining financial and technical assistance (Stiglitz: 2002; Chang: 2006). Although, both international bodies have recently become more cautious about the pace and the sequence of the privatisation programme (Nellis, 2007:15), they still favour a policy characterised by small and least intrusive governments paving the way for privatisation and private sector development (Glinavos, 2010:70). Ethiopia, one of the least developing countries which relies heavily on donor hand-outs and loans (Stiglitz, 2002:28), is expected to take the ‘advice’ of these multilateral lending institutions seriously. Failure to do so may result in withholding of financial and technical assistance which are considered to be important, if not decisive, to the country’s development endeavour. For instance, ADBG documented that loan disbursement to Ethiopia from multilateral lending institutions was delayed for 23 months than previously scheduled on account of delay in the process of implementation in the area of privatisation (2000: II) Of course the lending institutions do not prescribe the specific content of law. They rather generally press for a business-friendly mind-set



and attitude on the basis of which the legal details to be worked out locally at the level of national governments.

For the WB, ‘in all its decisions only economic considerations shall be relevant’ (Kaufmann, 2007:107). With similar intent and purpose, the IMF’s approach is that (...) ‘core labour rights are only part of IMF programme discussions, if they are essential for the success of the programme’ (op cit: 117) and its programmes are guided mainly by financial stability concerns. It is conceded that these multilateral institutions have begun to show concerns towards certain core labour rights such as child labour and gender equality and, at times, attach conditionalities to their protection, but to date comparable concern is not evident over issues of freedom of association and collective bargaining (Hepple, 2005:65; Kaufmann, 2007:111).

In the domestic sphere also, if a privatisation programme is to attract and retain private sector involvement, it is widely believed that the policy framework needs to be business-friendly. Business friendliness in this context means the provision of a ‘flexible labour market’ whereby employers will be given wider latitude on how to arrange and manage their labour force including whether to recognize trade unions at all, and whether or not to bargain with any such unions. At its most extreme, a privatisation programme expects total deregulation or minimal state intervention in labour markets.

On the other side of the ledger, Ethiopia, as indicated above, has ratified all of the ‘core’ ILO conventions. Consequently, not only because of its membership in the ILO but also due to treaty obligations, it is duty bound to ensure their observance. The country’s Constitution and labour law also have provisions on freedom of association and collective bargaining. The right to freedom of association and recognition of collective bargaining are within the social sphere and their effective implementation requires, among other things, some degree of intervention by the state. Thus, the labour force would expect the government to honour its national and international commitments in promoting, respecting and protecting these rights. Failure to comply with these commitments would thus bring about international and national accountability and a political cost may be incurred at periodic elections in the sense of losing favourable vote from the labour force.

Herein lies a tension with a sort of ‘double accountability’ both at international and national levels. One level of accountability, which has an international character, is expressed through adherence to the advice of donor and lending institutions and at the same time to the ILO commitments. The second level of the accountability is a domestic one expressed through facilitation towards private sector development on the one hand and labour protection on the other. Therefore, one focus of this study is to investigate how these competing and apparently conflicting interests have been operating at the enterprise and workplace level. In a sense, how and to what extent a meaningful balance between the economic goals on the one hand and the social goals on the other of the labour law has been attained and the challenges in striking the appropriate balance will be explored.

Within this broad framework of analysis, the thesis will address the following specific research questions.

- a) How did labour law in general and the collective aspect of labour law in particular develop in Ethiopia? What influence, if any, do the ILO instruments on freedom of association and collective bargaining bring to the developmental pattern?*
- b) What challenges does the privatisation programme in Ethiopia pose to unionisation and union density?*
- c) What are the implications for collective bargaining and collective agreement post-privatisation in Ethiopia?*
- d) What experience does the Ethiopian collective labour law reform offer in terms of responding to the demands of economic liberalisation on the one hand and the country’s commitment towards the ILO on the other?*

## **1.6. Method of Study**

The present study draws on primary and secondary sources and employs both quantitative and qualitative approaches to the data acquired by the research. Relevant international legal instruments in general and labour and privatisation related documents in particular have been identified, studied and analysed. Policies and laws on Ethiopian privatisation and labour law have also been consulted. Court decisions relevant to the issues under consideration have also been examined. Existing literature on the push factors towards privatisation and its social implications has been assessed.

One principal focus of the research has been the use of case studies. Here, a total of six enterprises, two enterprises from each type of ownership (i.e. state, private domestic and private foreign ownership) have been selected for the study.<sup>14</sup> The reason for the limited sample size is explained fully in Chapter 6 but has been dictated mainly by the meagre number of enterprises which met the requirements for selection. Enterprises in the textile and leather industry (three from each sub-sector) will be the object of the study.<sup>15</sup> Four of the six enterprises are privatised while the remaining two are still under State ownership and management. Two of the privatised enterprises have been divested to Ethiopian investors while the other two have been transferred to foreigner ownership. This will enable us to detect variations, if any, in dealing and handling of the collective labour rights along the lines of the type of private ownership.

The four privatised enterprises selected for the study are from among those which have been fully divested to the private sector. Conversely, the two State-owned enterprises in the study are fully owned by the State (i.e. with no private sector involvement). This provides a basis of comparison that enables us to appreciate the role that type of ownership plays, if any, in addressing the issues. Moreover, drawing comparisons between enterprises operating in a similar line of business with comparable size of labour force removes to some extent the variables for analysis. This is reinforced by the fact that the enterprises selected for comparison are generally endowed with similar opportunities and exposed to similar challenges with both types of ownership being required to operate under the same labour law.

Data on union membership density in post-privatisation setting was gathered from the trade union sources of the selected enterprises because this was the only source available. Such data was compared with the pre-privatisation status of union density within the same enterprise. Copies of collective agreements signed pre-and post-privatisation were obtained from the respective enterprises' managements. Comparisons were undertaken as to the contents of collective agreements operative pre-privatisation on the one hand and the collective agreements signed post-privatisation on the other in the same enterprise. The object here was to shed light on

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<sup>14</sup> The names of the enterprises considered to the study have been deliberately withheld in order to ensure confidentiality. Instead fictitious names have been assigned to each of them. This will be stated under Chapter 6 of the study.

<sup>15</sup> The relevance and economic potential of these sectors have already been discussed under item 1.4 of this chapter.

whether the union maintained similar or more or less beneficial terms in the post-privatisation period with the pre-privatisation.

A further level of analysis was to compare enterprises which have been privatised with enterprises still under State ownership and management with respect to their record on union density. A similar comparison was undertaken in relation to the contents of collective agreements between the State-owned and the privatised enterprises. Any observed difference in outcome, in this regard, could mainly be correlated with the type of ownership as the principal difference between the two sets being the ownership difference. It was stated that jobs in Ethiopian State-owned enterprises offer higher wages, better working conditions and more security than the private (De Gobbi, 2005: 13) and this is why the state ownership status was taken as a basis for comparison.

The research for the study was conducted mainly through consultation of written materials in the custody of the trade unions, enterprises' archives and publications of the Office of the Privatisation and Public Enterprises' Supervisory Agency. In addition, interviews with key informants<sup>16</sup> have been employed with a view to complementing that data and also serving as a source to help fill in gaps in the documentary data. Data for this study was collected as at December 2012 and hence any change in information, if any, pertaining to the enterprises under the study is not taken into account.

### **1.7. Risk assessment**

It is evident from the literature that privatisation has been undertaken as a sub-set of a package of broader economic reform rather than as a stand-alone reform (Selvam and Meenakshi, 2005: 82; Nellis, 2007:10). Thus, multiple factors other than privatisation might have a role in posing challenges to labour rights in general and collective labour rights in particular. Thus, at times, it may be difficult precisely to pinpoint whether a particular challenge emanates from privatisation or some other factors of the reform process. 'It is always difficult to isolate, precisely, the effects of policy reforms on the economy' (ADB, 2000:10). As a result, one limitation of the study is it is likely that in most instances it is only a correlation rather than causation that can be established.

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<sup>16</sup> The names of the interviewees have remained anonymous as requested by them although they consented to participate in the study. Informed consent form has been attached as an annex to the present study (Annex-VI).

It must also be emphasised that the set of enterprises identified for the study are numerically small and sectorally limited and hence they may not be representative enough to draw broad conclusions. The period of observation of the case studies is also very short, being limited to situations during the time of privatisation and a few years post-privatisation. As a result, longitudinal data for the enterprises under the study is not available.

The absence of such data is not simply a facet of record-keeping by business enterprises. Systematic data collection, its preservation and dissemination have been serious problems in Ethiopia more generally as a result of which pertinent data on the subject matter is scarce. In fact, the Ethiopian Central Statistical Agency (CSA), a government institution entrusted with the responsibility to collect, compile, analyse and disseminate official national data on economic and social statistics of the country, does not collect and disseminate data on unionisation, union density and the status of collective agreements. The Ministry of Labour and Social Affairs does not also have any records on this information.

One final but relevant cultural observation is that, as a closed society for many years due to successive repressive and non-accountable regimes, Ethiopians tend to be very reserved and reluctant to share information within their knowledge and/or custody on controversial national topics such as privatisation. The ‘hang over’ from the past still lingers even under the current relatively more open system of state governance. In particular, with few exceptions, the representatives of the employers tended to be reluctant to make themselves available for interviews arranged with this author.<sup>17</sup> These limitations of the fieldwork case studies necessarily mean that caution is necessary in seeking to extrapolate from the specific findings to more general conclusions.

## **1.8 Outline of the Thesis**

The thesis is presented in two parts. The First Part has four chapters (2-5 inclusive) that covers general historical exposition on collective labour law and privatisation and the legal frameworks

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<sup>17</sup> In the data collection process, the researcher had difficulties in fixing appointments with the members of the management of the privatized enterprises for interviews. It was only with the assistance of the Director General of the Privatization and Public Enterprises’ Supervising Agency that meeting and discussing with them on the issues was made possible.

thereto in Ethiopia. Chapter 2 deals with the historical development of industrial relation in Ethiopia; with a general introductory background on international experience. As unionisation and collective bargaining are unthinkable without employees, and as there can be no employees without modest and modern industrial activity, in this chapter, the development of industrialisation and industrial relations in Ethiopia is examined from a historical perspective.

Chapter 3 examines the historical development of freedom of association in Ethiopia, with a brief reference to the relevant international source documents. Related to this, the process of identification of the 'core' labour rights, the right to freedom of association being one, is discussed with a view to establishing the current special status the right has been accorded within the ILO system. Freedom of association, as manifested through unionisation in Ethiopia, is assessed, in order to provide insight as to how it has emerged and developed in response to the challenges it has faced overtime.

Chapter 4 considers a subject matter closely related to freedom of association, namely collective bargaining. In an approach similar to that of Chapter 3, this chapter covers the development of collective bargaining in Ethiopia, with a brief reference to the international development of the subject matter. The country's past and present legal framework regulating collective bargaining and collective agreements will be assessed to determine their adequacy to bring about effective collective bargaining.

Chapter 5 analyses the introduction of the Ethiopian privatisation programme with a view to elucidating the reasons, the modalities and the social consequences associated with it. The experiences elsewhere have been documented in order to identify any Ethiopian peculiarities of the programme. The policies, laws and institutions introduced to facilitate the smooth implementation of the programme are elaborated so as to show a broader perspective in that privatisation is above and beyond mere change of ownership from state to private.

The Second Part of the thesis presents case studies organised under two chapters together with another concluding chapter. Accordingly, Chapter 6 investigates the status of unionisation and membership density in the four privatised enterprises which have been selected for the case studies during their pre-and post-privatisation setting. Similar assessment will be undertaken, in

this chapter, for those enterprises still under State ownership so as to determine whether membership density varies along the lines of the type of ownership.

Chapter 7 presents the comparison of the process of collective bargaining and the contents of collective agreements signed before and after privatisation in each privatised enterprise. A comparison is also made between the contents of collective agreements in the State-owned enterprises on the one hand and privatised ones on the other. Moreover economic and legal challenges in bargaining and executing terms of collective agreements will be explored.

Chapter 8 restates and considers the key issues addressed by the thesis and sets out both the reflections and conclusions drawn in relation to the specific research questions and the broader propositions developed from those findings. Moreover, the thesis concludes with the identification of areas where further specific research is warranted.

## **Part-I General Historical Exposition**

### **Chapter 2. Development of Labour Relationships and Labour Law in Ethiopia**

#### **2.1. Introduction**

This chapter examines the historical development of labour relations in Ethiopia and the economic policies and legal frameworks that have been operative at different periods in Ethiopian history. Although the main concern of the study is to evaluate the situation of the collective aspects of labour rights, since unionisation and collective bargaining are unthinkable without employees, some consideration will also be given to the emergence and development of individual employment relations in Ethiopia. In interpreting these developments and to locate the Ethiopian experience within a broader framework, it is informative to draw on insights from other sources, in particular those relating to the development of labour relations internationally. This approach will help form a judgement to be formed about the manner and extent to which the Ethiopian experience distinctive.

In pre-industrial societies, as the economy was local in character and mainly agrarian in nature, it was predominantly dependent on family labour for its operation (Hepple, 2005:257). It was industrialisation that led to the emergence of what we know as 'labour relations'. 'Since industrialism was either largely non-existent or quite relatively new in the rest of the world' (Kaufman, 2004:15), it traces its roots from the historical antecedents in Europe and North America. It was with the onset of industrialisation and industrial development that the need for additional labour outside of the familial sphere was seriously felt. This called for resort to a labour market to satisfy the demand for labour (op cit, 2004:22).

Although the evolution of labour relations had witnessed considerable national variety even in Europe,<sup>18</sup> the general path of development displayed many similarities. As a general pattern of

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<sup>18</sup> For a detailed and interesting analysis on this evolutionary development in Europe (see, *Simon Deakin*,: 'Timing is everything: Industrialization, Legal Origin and the Evolution of the Contract of Employment



development, the landlord-tenant relationship and the guild society of the feudal mode of production gradually gave way to a capitalist system where capital-labour relations prevailed. Under this system, family or kin-related labour supply became no longer sufficient to operate cottage industries or to cultivate sizeable farms. As a result, the labour relationship came to the fore expressing itself through freedom of contract and formal equality (Weiss, 1995:25; Hepple, 2005:257; Dahan *et al*, 2010:452).

Under the principle of freedom of contract, the length of engagement, the amount of wages, any limits on working hours and other related employment issues were left to the determination of the contracting parties. Each party was at liberty to terminate the contract of employment with cause or with no cause at any time, or in some cases only upon giving notice (Davies, 2004:3; ILO, 2000:247). The role of the State then was to provide support or draw up a legal framework mainly intended to enforcing the parties' promises.

The then prevailing understanding was that economic affairs were matters for private actors, and the interaction of capital and labour being considered as one such economic affair<sup>19</sup> to be regulated solely and exclusively by market forces and free bargaining. Labour relations were treated as contracts to sell or lease services in return for remuneration. For all practical purposes, labour, like any other factor of production, was treated as a commodity whose value was to be determined on a supply and demand basis (Kaufman, 2004:23). It was argued that 'efficient equilibrium would result if the legal framework simply allows market forces to follow their natural course' (Njoya, 2007:18).

In such an engagement, capital, with its stronger bargaining power commonly had the advantage over the weaker bargaining position of labour with the consequence that wealth created through the interaction of capital and labour tending to be apportioned in an uneven manner under the veil of 'freedom of contract' (Burkitt, 2001:66). Capital, in the name of profit, managed to appropriate the 'lion's share' of the wealth created while labour received the lesser, at times even the minimal amount, in the form of wages. Indeed, it was not only a matter of monopolising

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in Britain and Continental Europe' in Bercussion, Brian and Estlund Cynthia (eds.) (2008) *Regulating Labour in the Wake of Globalization: New Challenges, New Institutions*, pp. 67-87).

<sup>19</sup> In *Lochner vs. New York* (1905), 198U.S. 45, 25 S.Ct. 539, 49L.Ed. 937: The US Supreme Court struck down a New York law limiting work in bakeries to ten hours a day on the ground that it [the law] interfered with the freedom of contract between employers and employees.

profit; power in labour relations was also exclusively possessed by capital in that the employer had absolute prerogative in commanding and controlling the labour force (Kaufman, 2004:24).

It could be contended that freedom of contract is fair and just because it treats the contracting parties on an equal footing and leaves the parties alone to determine the terms of their relationship themselves. However, when applied to capital and labour interaction freedom of contract doctrine could often result in subjecting labour to employment insecurity, excessively low wages and long working hours coupled with unsafe and unhealthy working conditions. It became manifestly clear that freedom of contract between economic unequals would not bring about mutually acceptable outcomes.

A consequence of this outcome of the application of contractual doctrine was that demand for state intervention in determining matters such as minimum wage levels, maximum working hours, employment security and safe working condition moved to the top of the agenda of many emergent labour movements. With this object in view, employees began to express their discontent towards the so-called 'freedom of contract' and to militate against, through organised and unorganised means, the purely private ordering of labour relations. At times, dissatisfaction was expressed through strikes, thereby beginning to hinder smooth production processes. Such collective voice of protest and frequent strikes not only harmed productivity and industrial peace but also endangered social stability particularly in areas where industrialisation and organisation of labour movements were at a more advanced level.

In some parts of Europe, in parallel with instability in industrial relations, a socialist ideology that militated against the very existence of the capitalist system began to emerge at the level of political orientation. As a result, the social and political dimensions of labour relations obtained wider visibility which warranted state intervention. The operation of the market has been inefficient in addressing the social and political dimensions of the relationship between capital and labour. Thus, the notion that employment relations are purely economic and private affairs began to be challenged. Many governments began to reassess the appropriateness of putting labour relations solely at the mercy of market forces. The need to enact protective labour legislation in order, among other reasons, to counteract the 'structural injustice' was found pertinent (Dahan *et al*, 2010:452).

From a political perspective, as state power began to emanate from the ballot box, securing favourable votes of workers was a factor which competing parties could not afford to ignore. In a system of universal suffrage and votes of equal value, workers inevitably possess a numerical advantage. As a result, the inclusion of pro-labour programmes in electoral campaigns became the norm in party politics (Hepple, 2005:27). Hence, it may be safe to state that the need for industrial peace, social stability and the desire to obtain electoral popularity pressed political parties and national governments to intervene in industrial relations that had formerly been left to private ordering.

Initial attempts of state intervention in labour matters were national in scope and territorial in application without resorting to international cooperation and coordination. It may be argued that appreciating the need for state intervention and beginning to take measures to implement such intervention could itself be considered as a step in the right direction. The problem with a country specific approach, however, was that in cases where other nations failed to adopt similar protective laws in their respective jurisdictions, it could be claimed that the perceived cost implications of protective laws would provide those nations with a competitive advantage in international markets due to their lower labour costs.

With countries trading internationally, it was felt that heterogeneous labour standards would impact competitiveness in international markets in the sense that those countries with a sympathetic or at least supportive attitude towards the claims of labour could stand to lose in international competition. Consequently, countries that adopted protective labour legislation reconsidered their position and began to repeal such laws until their competitive peers introduced laws of equivalent effect so that equilibrium would be established. For instance, a French law limiting daily working to ten hours for all workers was repealed after five months in force due to the fact that other competing countries were reluctant to follow suit and France was not ready to sacrifice its competitiveness by so doing (Hepple, 2005:28). Thus, the reality on the ground demanded internationally coordinated action. However, it does not necessarily follow that low cost of labour is associated with competitiveness. It would rather at times be correlated with low productivity due to labour demotivation, thereby a comparative disadvantage.

## **2.2. International Cooperation in Labour Matters**

The establishment of the International Labour Office (ILO) in 1919<sup>20</sup> under the Treaty of Versailles<sup>21</sup> provided a permanent international and institutional mode of dealing with the welfare and wellbeing of labour at the international level. From its inception, the ILO was entrusted with the responsibility of establishing international minimum labour standards on a wide range of issues with a view to implementation by Member States in their respective jurisdictions. Hence, labour issues obtained international sponsorship and supervision within the ILO's mandate.

Since its establishment, the ILO has been unique in that unlike most, if not all, international organisations whose members are exclusively state officials (public actors), it has included private actors (representatives of trade unions and employers' associations) within its core membership. For instance, As per Article 3 of the ILO Constitution Member States should constitute their respective core delegation with two government representatives, one employers' association representative and another trade union representative in order to formally participate at the ILO Annual Conferences. The Conference deliberates on international labour standards and adopts legal instruments to be ratified or considered by Member States for subsequent implementation. With this arrangement, it could be said that the rule making process under the ILO has been within the framework of stakeholder participation.

The preamble of the ILO Constitution made it explicit that the need for international cooperation and the establishment of the ILO was prompted by a desire to address three social and economic concerns of the time (Kaufmann, 2007:49). These were: 'social injustice'; 'social revolution' and 'social dumping'. As regards the struggle against social injustice, the Constitution underlined that social justice would not be attained without respecting labour rights of both an individual and collective nature. It further reaffirmed that, 'universal and lasting peace can be established only if it is based upon social justice' (preamble of ILO Constitution; Para: 1.)

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<sup>20</sup> In fact, the idea to establish international cooperation on labour reform dates back to the beginning of the 1800s. In 1818 a radical British industrialist, Robert Owen, promoted the idea that 'a cooperative international effort to reform the conditions of labour would be in the interest of all classes of society.' (Burkett 2006: 16).

<sup>21</sup> See, Part XIII of the Treaty of Versailles. The International Labour Office was the predecessor institution with similar responsibility to the current International Labour Organization. The Organization is a Specialized Agency to the United Nations.

With regard to pre-emption of 'social revolution', although the ILO Constitution did not expressly spell it out ( it rather employs the phrase 'social unrest'), it should be noted that the circumstance under which the ILO came into existence had more or less coincided with the assumption of power of the 'Bolsheviks' in Russia in 1917. It was thus feared that so long as hardship, exploitation and injustice towards labour existed, the ideology of the 'dictatorship of proletariat' of the 'Bolsheviks' would widen its sphere of influence beyond Russia (Thomas, 1996:267; Burkett, 2006:18). Hence the capitalist world was convinced that the 'Russian Revolution' would be at least contained within the Russian borders if sympathetic and systematic concessions for the resolution of confrontations in industrial relations were introduced (Sengenberger, 2006:349). As a result, devising a general framework for international 'floors of rights' to employees was considered as one way of pre-empting social revolution (Standing, 2010:307). The fact that the 'Russian Revolution' of 1917 and the establishment of the ILO in 1919 occurred at around the same time is difficult to explain away as being mere coincidence. It can be claimed with some confidence that, although pre-emption of socialist revolution may not have been the sole motive for the establishment of the ILO, its establishment was accelerated by the occurrence of the revolution in 1917.

The commitment of Member States of the ILO to withstand 'social dumping' was much more explicit in the ILO Constitution than the other two ambitions of countering social injustice and social revolution. The third paragraph of the preamble placed an emphasis on this issue: '(...) failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries'. If adopting humane conditions were to require extra cost and thereby increase the cost of production, such products would be less competitive when introduced into a market where they were competing with products produced in less humane working conditions (Macklem 2005:65). Then if such 'regulatory competition' were to be prevalent among states at the international level this could discourage humane concerns towards labour until other competing states embarked upon a similar disposition (Burkett, 2006:19). In order to avoid this practice of 'social dumping' responsibility for international standard setting was entrusted to the ILO.

The three pillars on which the ILO has been erected tend to address the tripartite interests and concerns of the three important stakeholders in labour relations (i.e. employees, employers and government). Struggle against 'social injustice' and expressing a voice for the prevalence of

social justice reflects a predominantly social issue and mainly benefits the labour force due to labour's vulnerability to hardship and exploitation. Fear of 'social revolution' is predominantly a political issue and therefore principally interests governments in power since social unrest or even revolution would mainly target the assumptions of state power. The issue of 'social dumping' has economic implications and mainly and directly affects the interests of capital (employers) as it harms their competitiveness although this can of course have detrimental consequences for the interests of labour also. Thus, it is important to realise that not only at national level but also in the international sphere labour relations have social, political and economic dimensions.

What emerges from the preceding discussion is that labour relationships have undergone a significant transformation. Initially, it was treated as a private contractual matter to be regulated by freedom of contract. It was later that state intervention at national level became desirable. Thereafter, the inadequacy of intervention at nation state level paved the way for international cooperation and establishment of a permanent international institution. Therefore, the general trend of labour regulation has gone through different stages of transformation: from a pure subject matter of private contract of service, it became a subject of national concern where states began to intervene. Finally it attained the status of an item of serious international concern.

With this brief introduction, we will hereafter consider the development of labour relationships in Ethiopia, with a view to shedding light on its similarity with or difference from the general trend of development indicated above.

### **2.3. Evolution of the Economic Basis for Labour Relations in Ethiopia**

The Ethiopian labour relationship is in some degree an outcome of a slow and prolonged economic and social transformation. Historical record indicated that the Ethiopian labour development was very much associated with the emergence of industries and industrial production systems (Guadagni: 1972). For a long time, a mainly an agrarian economy existing alongside handicraft activity was the principal manifestation of Ethiopian economic development. As a result, the capitalist mode of production was slow to develop and limited in coverage (Baudissin, 1965:101). Guadagni argued that the cultural and legal conditions that prevailed in the country have negatively contributed to the sluggish development of the capitalist economy (Guadagni: 1972).

Culturally, Ethiopian society had undervalued labour and labourers and indeed tended to despise both trade and manual work (Redden, 1968:13; Seyoum, 1969:6; Guadagni, 1972:1). There has, for instance, been an Ethiopian (Amharic) proverb which states that *kemesrat barenet, kemenager getnet* (literally meaning - from cleverness of hands comes serfdom and from cleverness of tongue the master). This adverse societal attitude towards labour had annoyed the early twentieth century ruler of the country, Emperor Menelik II, who proclaimed the following in 1908:

Let those who insult the worker on account of his labour cease to do so. You by your insults and insinuations are about to leave my country without artisans who even make the plough. Hereafter any one of you who insults these people is insulting me personally (Mahteme Selassie, 1949:432).

Cultural transformation through education and awareness raising activities may have offered more chance of success, as legal prescription would be less likely to provide a lasting remedy to counteract deep rooted cultural biases. But since the proclamation of the Emperor was not accompanied by any of these measures, the negative attitude persisted. At the beginning of the twentieth century, however, a capitalist mode of production began to emerge in Ethiopia (Daniel, 1986:157). The victory by the Ethiopian forces at the Battle of Adwa (1896) against the Italian invasion was a significant success for Emperor Menelik II and paved the way for subsequent economic changes. The military success enhanced his and Ethiopia's international visibility (Bahru, 2002:111) and enabled the Emperor to discuss with European powers matters of common interest and concern on an equal footing. As a consequence, the Emperor began to establish formal diplomatic ties with the European super powers of the time (Britain, France and Italy) all of whom had a colonial presence bordering the Ethiopian territories.

The neighbouring countries were by then under the occupation of these European powers. Eritrea was then under Italian colonial administration, the Sudan was under British rule, whilst Djibouti was under French domination and Kenya belonged to the British colonial system. Moreover, two of the colonial powers had territorial possessions in present day Somalia (Italian Somaliland and British Somaliland). These colonial territories by then had a relatively more advanced capitalist development than the feudal non-colonised Ethiopia. Nevertheless, through the long and porous borders of the country capitalist elements, ideas and attitudes were being introduced through the

medium of, among other avenues, missionaries and missionary schools, merchants and diplomatic envoys. Thus, initial capitalist modes of production in Ethiopia were transplantations and a spill-over from the neighbouring colonial territories rather than the result of an internally developed dynamism and economic transformation (Bahru, 2008:104).

The conventional path towards capitalist development as observed in many industrial countries has been a transformation from peasant farming to mechanised agriculture and from artisans and handicrafts to factory and machinery establishments (Kaufman: 2004). In the African continent too, industries for primary products mainly mining and agricultural estates were the economic basis for initial industrial relations (Fenwick *et al*, 2010:177). In a sense, it was the agriculture and the manufacturing sectors that developed first and a service sector emerged and developed at a later time in economic transformation (Sheehan, 2008:5).

Conversely, in Ethiopia, railway, telecommunication and banking services were the earliest capitalist establishments (Paul and Clapham, 1967:319; Aberra, 2000:111). The commencement of the construction of the Ethio-Djibouti Railway (in 1889) by the Franco-Ethiopian Railway Company, the project for the establishment of telephone and telegraph connections along the railway lines by the same company and the incorporation of the Bank of Abyssinia by the National Bank of Egypt were the earliest capitalist establishments in Ethiopia (Abera, 2000:113; Bahru, 2008:104). The establishment of these service provider economic entities at the initial phase of the country's capitalist development illustrated that Ethiopia's early capitalist development was not a result of an internal dynamism but rather primarily and predominantly an imported one. It could thus be contended the Ethiopian capitalist development was atypical both in the type of economic activity and in its imported origins.

The infrastructure projects just referred to attracted appreciable numbers of labourers from the countryside but, as the projects had a defined life span, the employment status of the Ethiopians was temporary in nature. Consequently most were compelled to return to their respective agricultural plots after the completion of the projects. Thus they neither had the opportunity to upgrade their skills nor to acquire workplace discipline on a permanent basis. Consequently, the local labour profile at those times was therefore unskilled and casual. Agricultural activity remained the employer of last resort for a long time.



Overtime, however, many foreigners showed heightened interest in the Ethiopian economy and engaged in concessionary arrangements with the Ethiopian government in the mining and agriculture. Since the attempt to occupy and colonise Ethiopia by force proved unsuccessful, concessionary and consensual ties became feasible ways of tapping the country's unexploited resources (Bahru, 2002:100; Bahru, 2008:182). As a result, in 1899 a Swiss Company, owned by Alfred Ilg, a political adviser to the Emperor, invested in the mining industry in Wollega (in the western part of the country) whilst around the same time an English company engaged itself in an agricultural investment in Kaffa (in the south-western part of the country) and mining in Wollega (Aberra, 2000:111). Furthermore, a French company established a farm intended for fibre plantation in the eastern part of the country in Harar (CETU, 1991:114).

Those economic initiatives were complemented by the emergence and subsequent development of urban centres. Emperor Menelik II seemed determined to have a permanent Imperial seat from which central administration would emanate and be handed down. Unlike his predecessors who used to change their Imperial seats frequently, due to various factors including problems of security, and the availability of drinking water and firewood, he eventually opted for a more permanent settlement for his administration.

Based on this more sedentary approach, the beginning of the twentieth century was characterised by the construction of palaces, churches and hotels in and around Addis Ababa which has ever since been the capital city of the country. The Grand Palace of Menelik, Taytu Hotel and the various churches such as Saint Mary, Saint George and Saint Raguel located in and around Addis Ababa were all constructed during those times (Bahru, 2002:68). Moreover, the completion of the Djibouti-Addis Ababa railway led to the establishment of towns such as Dire Dawa along the railway route within the Ethiopian hinterland (op cit: 101).

Those various economic and social activities in service, agriculture, mining and construction sectors in the country brought about the emergence of significant numbers of the workforce detached from an agrarian economy into an urbanised one on a relatively permanent basis. The establishment of the urban centres, for their part, paved the way for a more permanent and settled urban livelihood and hence founded the main economic basis for the emergence of labour relations in Ethiopia.

#### **2.4. The Initial Phases of Labour Relationships in Ethiopia**

The cultural attitude towards labour and labourers and its adverse effect to labour development of the country has already been mentioned. In fact, it was not only the cultural attitude but also the unfavourable legal environment at the time that was responsible for hindering the development of labour relations. Although Ethiopia, as noted previously, is one of the oldest members of both the League of Nations and the ILO, having acceded to both institutions in 1923 (Baudissin, 1965:108), slavery was an entrenched and legally recognised social relation in the country until it was abolished by law in 1942.<sup>22</sup> As labour relationships presuppose the availability of ‘free’ persons who can freely bargain over their services, the prevalence of slavery as a social system was incompatible with the emergence of labour relations. Thus, the negative cultural attitude of Ethiopian society towards labour and the long-standing legal recognition of the status of slavery were among the factors responsible for the slow and limited development of labour relations in Ethiopia.

As can sometimes be the case it was political conflict that provided the starter motor for the engine of economic change. The Italian invasion of Ethiopia at the beginning of the Second World War (1936) led to the emergence of labour-intensive industries supportive to the war efforts of the invading force (such as oil, flour and saw mills; textile, leather, cement, food and beverage factories) (CETU, 1991:26). Due to the labour intensiveness of those manufacturing enterprises and the relative permanent employment status of their labour force together with the formation of garrison towns in different parts of the country the number of people who earned their livelihood through employment increased (Hall, 2003:105). Whilst the labour force showed a significant quantitative increase, there existed no commensurate statutory framework designed to regulate the employment relationship. By default ‘contractual freedom’ became the legal basis for the parties’ relationship and employees then were to a significant extent at the mercy of their employers. It has been even said that for all practical purposes the relationship was more of master and servant rather than an employer and employee one (Seyoum, 1969:19; Teferra, 2007:3).

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<sup>22</sup> Slavery (Abolition) Proclamation of 1942. In fact prior to this, there was a Proclamation issued in 1931 which attempted to abolish slavery but it was not bold enough to do away with the status. The relevant provision in that proclamation stated as follows: ‘*All slaves who wished to be free could become free by asserting their freedom before a judge*’. This was not drastic enough to abolish slavery. First, the proclamation addressed itself to slaves ‘who wished to be free’ but not to all slaves. Second, even for those ‘who wished to be free’, the freedom was not automatic and as of right; it rather expected the blessing of the judge because the law required them to assert their right before a judge. In practice, there had never been any report as to whether this modality was utilised towards asserting freedom.

Three years after the defeat of the Italians, and two years after the 1942 proclamation of the abolition of the status of slavery in Ethiopia, the government promulgated the Factories' Proclamation No.58/1944 an important legal instrument relevant to labour relations. By virtue of this Proclamation, the then Ministry of Commerce and Industry was entrusted with the power to issue rules on:

- the working hours in factories;
- the prevention of accidents in factories;
- the health and safety of all persons employed in factories;
- the conditions under which buildings to be used as factory housing may be erected and constructed;

In addition to these measures, the Ministry was empowered to appoint 'labour inspectors' to carry out supervision and monitoring activities over the factories with a view to ensuring the observance of the rules. From these, the government appeared to have realised the need for a limited state intervention in labour relations mainly on safety and health issues in factories. In real terms, however, records indicated that the Factories' Proclamation of 1944 did not have any impact on the ground (Teferra, 2007:6; Baudissin, 1965:103). This was because for one thing the way it was drafted was not self-executing in the sense that it merely entrusted power to the Ministry to act rather than spelling out precise and enforceable provisions. Second, the Ministry did not make use of any of the powers entrusted to it, nor did the legislature supervise the exercise of such power by the Ministry.

Actually, Seyoum (1969) was of the opinion that the 'Factories' Proclamation' was a premature instrument in that factory development and employment then was too low to warrant state intervention. In so holding, Seyoum tended to view legal rules just from the standpoint of their contribution as a regulatory mechanism. This understanding of law tended to overlook the equally important developmental role that legal rules can serve to guide and design a desired future course of action in society. In fact, the 'social engineering' role of the law in Ethiopian history was more visible in the mid 1950s to 1960s when the then Emperor, advised by west

European legal experts, introduced modern codes<sup>23</sup> with Western values to the then agrarian and traditional Ethiopian society with a view to bring about social modernity (World Bank, 2000:15; Vanderlinden, 1966:259). However, the effort to ‘modernize’ the Ethiopian legal system, was attempted to be implemented through the process of law codification which was spearheaded by foreign experts (Vanderlinden, 1966:257) with little involvement and interest of the majority of the local population limiting its impact to the urban areas of the country (Singer, 1970:122).

Apart from the controversy as to the relevance of the Factories’ Proclamation, a further limitation was that its scope of application was confined to working conditions in factories (i.e. the manufacturing sector). The employees at agricultural plantations or in mining and other sectors of the economy who were equally vulnerable to risks such as excessive working hours, and threats against their health and life at workplaces were outside of its coverage as their places of work were not technically ‘factories’. Indeed, the first recorded workers’ protest in Ethiopian history had been undertaken in 1915 by construction workers in Addis Ababa whose main discontent was associated with unsafe working conditions (CETU, 1991:22).

Notwithstanding the limitations referred to above, it can be argued that the Factories’ Proclamation was a positive step in the sense that it showed that the government realised the need, possibly the desirability, of some level of state intervention in labour affairs. In particular, the adoption of the Factories’ Proclamation only two years after the abolition of slavery indicated that the government recognised the abolition of slavery and replacing it by ‘contractual freedom’ was not a guaranty to protect labour. Nevertheless, since the Ministry entrusted with the responsibility did not act upon its powers, the legislative measure was merely formal and not much more than a mere expression of concern or interest. The issuance of the law though necessary was not sufficient to ensure its implementation.

It was not until 1960 that the 1944 Factories’ Proclamation was supplemented in any way with further legislation and then only as one part of the Civil Code enacted by the then legislature of the Empire of Ethiopia. The 1960 Civil Code comprehensively regulated many of the social relations of private life such as marriage, succession, contracts and property. As part of this comprehensive regulatory effort, it devoted a section (Title XVI) on ‘Contracts for the

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<sup>23</sup> The Ethiopian Penal Code of 1957, The Ethiopian Civil of 1960, The Ethiopian Commercial Code of 1960, The Ethiopian Maritime Code of 1960 and The Ethiopian Criminal Procedure Code of 1961 and The Ethiopian Civil Procedure Code of 1965 were adopted during that period.

Performance of Services’, which mainly addressed issues of the contract of employment. Indeed, ‘it was the most comprehensive legislation ever written in Ethiopia about employment relations’ (Seyoum, 1969:17).

With the coming into force of the Civil Code of 1960, minimum labour conditions which had the effect of restricting the application of the terms of contractual freedom were spelt out. Consequently, the principle of no termination of a contract of employment ‘without good cause’ was introduced, and failure to comply with the law would entitle the dismissed employee to compensation (Civil Code, Art.2573), thereby seeking to protect the employee from arbitrary dismissal.<sup>24</sup> The practice during the pre-Code era in which an employee was not entitled to wages for the days he did not render any service to the employer for whatever reason was revised. Social entitlements in the form of paid annual leave, maternity leave and sick leave were introduced by the Code into the Ethiopian labour relationship for the first time. Provisions were also incorporated in the Civil Code obliging the employer to provide safety and protective equipment with a view to preventing employment injury and to compensate the employee where employment injury was sustained (ibid: Art. 2548-2552). A notable omission, however, was that despite these formal contributions, the Civil Code failed to lay down the legal framework necessary for the establishment of associations for the employers and employees. As a result, issues of unionisation and collective bargaining remained unregulated until the adoption of the Labour Proclamation of 1963, to be discussed in Chapter 3.

Incidentally, it is interesting to recall that Ethiopia adopted a Commercial Code in 1960 which provided, among other things, provisions for the establishment of business organisations such as private limited companies and share companies which in effect were associations of capital. Although an individual employer by virtue of owning capital has already been stronger than the individual employee, the adoption of the law on business organisations further enhanced the strength of capital by providing it an opportunity to further associate. Ironically, employees did not obtain a legal basis and similar opportunity for association although, as we shall see in the next chapter, they badly needed it and their claim for unionisation was long overdue.

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<sup>24</sup> However, termination of employment with cause or without cause by providing advance notice to the employee was held to be a ‘good cause’ reason for termination.

## 2.5. Labour Relations during the Military Rule

On 12 September 1974, Ethiopia entered a new era, one of military rule, after its long-standing Imperial administration through hereditary line. A Military Council, locally known as the *Dergue* (literally ‘a Committee’) seized political power in 1974 (Girma, 1987:3) by ousting the Emperor from the Palace. The assumption of power by the military ‘put an end to a dynasty that traced its origins to King Solomon and the Queen of Sheba’ (Bahru, 2002:235). Immediately after its assumption of power, it dissolved the then existing bicameral parliament and restricted, by law, any form of dissent including peaceful assembly and demonstration (Andargachew, 1993:71; Bahru, 2002:236). Furthermore, in terms of political and economic philosophy, the ‘West’ oriented capitalist path of development of the feudo-capitalist system of the Imperial era became redirected eventually in terms of ideological orientation towards a communist path of development (Henze, 1989:11).

At the initial phases of the military reign, it appeared that the Dergue did not have a clear ‘road map’ as to the direction of its economic policy and ideology. With a view to rallying public support it declared that its motto was to be ‘*Ethiopia Tikdem* (literally ‘Ethiopia First’) an apparently ideology-neutral motto but a nationalist and patriotic slogan. However, the military gradually transformed its way of thinking and slogan into a more ideologically influenced motto of ‘Ethiopian Socialism’ in response to the pressure of left leaning groups including the Ethiopian student movements (Andargachew, 1993:73; Bahru, 2002:244). Gradually the Dergue moved to becoming a communist-oriented in terms of its ideological orientation. Marxist-Leninist writings began to officially appear at the book stores<sup>25</sup> which were prohibited until then. Pictures of Marx, Engels and Lenin were being erected at the main squares of the major cities of the country.

In parallel with the political development mentioned above, a new economic policy for the country was adopted in February, 1975 and an extract from the Economic Policy reads as follows:

(...) the major and immediate economic goal of Ethiopian Socialism cannot be but the elimination of poverty through the development of productive forces and the consequent expansion of production, and the prevention of exploitation of the Ethiopian people. This can be achieved only when the government as the representative of the people, and in the interest of the mass of

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<sup>25</sup> Marxist-Leninist study groups were clandestinely mushrooming in early 1970s in the country (see, Bahru:2002)

Ethiopian workers and peasants, directly owns and controls the natural resources and key industrial, commercial and financial sectors of the economy '(GOE, 1975:3).

Accordingly, the military government adopted practical measures of 'nationalisation' of private property. Major privately owned means of production and distribution were nationalised in January and February 1975. In March of the same year, it was proclaimed that rural land was placed under state ownership to be followed by the nationalisation of privately owned urban land and extra<sup>26</sup> houses in July 1975 (Clapham, 1987:152). This takeover of the private property and means of productions by the government made the latter the major employer, not only in the sphere of public services but also on the economic front more generally.<sup>27</sup> Thus, the State transformed itself from an organ of regulatory power into an economic entity engaged in owning and managing business enterprises while retaining its regulatory power intact.

As a reflection of this political and economic transformation, a new labour law was issued in 1975 (Labour Proclamation No. 64/1975). The political rhetoric, at the time, was that the employee is at the same time the owner of the nationalised enterprises. As a result, the labour proclamation mainly addressed the issue of employment security by stipulating strict labour market provisions on hiring and firing procedures. First, it required 'every enterprise to report all job-vacancies to an Employment Office as soon as they occur' and it was from the registered job-seekers that the enterprise was allowed to hire (Proc. No. 64/1975; Arts. 3 & 4). At the level of firing, it laid down the principle stating that 'any contract of employment shall be deemed to have been concluded for an indefinite period' (Proc. No. 64/1975, Art. 8(2)). Based on this principle, even if the contract of employment was concluded for a definite period, it was considered to have been concluded for an indefinite period, if the job was of a continuous nature. Consequently, it was the nature of the job rather than the terms of the contract of employment that determined the duration of employment. Second, the law exhaustively enumerated what were considered to be lawful grounds for termination of employment and any termination outside of the listing was held to be unlawful and hence entitled the dismissed employee to reinstatement with back pay (ibid, Art. 14(2)).

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<sup>26</sup> Urban house owners were allowed to choose only one residence house to own and the remaining houses of the owner, if any, were to be nationalised being considered as 'extra-houses'.

<sup>27</sup> A survey undertaken in 1983 by the Ministry of Labour and Social Affairs (MOLSA) that covered enterprises employing ten or more persons put the public sector employment at 516,867(out of a total 708, 565 employees in the formal sector which is 73% of employment in the formal sector (IMF, 1999a:39)

This marked a distinct break from the Civil Code legal regime. There, it will be recalled, whether there was ‘good cause’ for termination was a matter to be determined by the employer except that the decision of the employer was subject to revision by a court if the case was brought to the court’s attention by the dismissed employee. Even if the court held that there was no good cause for termination, the employer was never compelled to reinstate the employee. Payment of compensation to the maximum of three months wages<sup>28</sup> of the employee was the sole remedy for terminations without ‘good cause’. However, the labour law of the military rule legislatively determined and exhaustively spelt out the lawful grounds for termination. Thus, the employer or the court had little or no room for case-by-case determination. In cases where the dismissal was found to be unlawful, the sole remedy (unless the employee did not want to be reinstated) was awarding of reinstatement to the employee even against the objection of the employer for unwanted service. In fact, the reinstatement was to be accompanied by back pay as the contract was deemed not to have been terminated.

Incurring the cost of back pay without the enterprise obtaining service from the reinstated employee had serious cost implications for the enterprises.<sup>29</sup> The cost of firing was high and employers had no power to dismiss employees on disciplinary grounds unless prescribed by a collective agreement in which case the trade union would have to agree with the measure (Proc. No.64/1975; Art. 14 (1) (g)). Consequently, during the military rule, the employment relationship became a relationship far more ‘intimate’ than a legally regulated contractual relation, thereby providing higher employment security to the employees. It is interesting to note, however, that as the major employer at those times was the public sector the government incurred the cost of this rigid labour market arrangement.

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<sup>28</sup> Compensatory remedy for termination ‘without good cause’, on the basis of the English version of the Civil Code was a ceiling of **six month** wages of the employee. However, the Amharic version of the same Code stated that the amount of compensation for unjustified termination was a maximum of **three months** wage of the employee. Although, there was no explanation why and how such a discrepancy occurred, in case of inconsistency between the two versions, the accepted rule of interpretation in Ethiopia has been the Amharic version prevails over the English one. After all, the legislature discussed, voted and adopted the Amharic version and the English version is a mere translation.

<sup>29</sup> Due to the *high* expense the State-owned enterprises incurred because of back pay awards, the Government through the then Prime Minister wrote a letter to the labour tribunals of the time ‘calling their due attention’ *to take the necessary care* when deciding to award back pay. The letter reminded them that ‘wage is meant a payment to be given for a service rendered’ implying that one should not be entitled for pay without rendering service. It appeared that the military government realized the cost implication of the rigid provision of the law in this respect. All the same, it did not want to change the law as it would be tantamount to betrayal to the ‘working class’ to whom it claimed to have represented. Thus what it could not do by itself it liked to see done by the labour tribunals.



With regards to the social entitlements, the paid annual leave, maternity leave and sick leave, which had been introduced by the Civil Code of 1960, were maintained by the new proclamation in a prolonged duration and with higher pay benefits.<sup>30</sup> The fact that the military regime adopted the communist-oriented path of economic development seemed to have shaped the content of its labour proclamation towards apparently pro-labour prescriptions. In fact, the preamble of the labour proclamation of the military regime provided that ‘...the worker is the source and foundation of all production and as such his rights to work free from exploitation and the proper protection of his safety and health must be assured in order to improve his standard of living’ (Paragraph-2).

## **2.6. Labour Relations in post-military rule**

Soon after the overthrow of the military regime in 1991 Ethiopia adopted a market-oriented economy<sup>31</sup> mainly due to pressure from lending and donor multilateral institutions such as WB and the IMF. In light of the new economic circumstance of the country, a new labour law was introduced in 1993 (Proc. No. 42/1993) which superseded the labour law of the military government. The labour law of 1993 maintained the social benefits such as annual leave and sick leave with pay which were available to the employees on the basis of the previous law in similar length. Maternity leave has even been extended in duration.<sup>32</sup> The presumption of indefinite employment relationship in which a contract of employment of definite period has been deemed to have been concluded for indefinite period was also retained (Proc. No.42/1993, Art.9).<sup>33</sup>

There were, however, some changes. One area of the law where the new labour proclamation brought a change from that of the military regime is related to free procedure of hiring of employees by the employer as opposed to the military rule when hiring was to be made through Public Employment Office. The other area of variation pertains to grounds of termination of employment and its legal effects. Under both legal regimes grounds for termination have been provided by law and any termination outside of any of these grounds is unlawful. However, there exist three points of difference between the two laws. First, the new law has a longer list of

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<sup>30</sup> Detailed discussion on what additional benefits the new law brings with it has been avoided for the benefit of focusing to the main point of the thesis.

<sup>31</sup> As to the push factors towards adopting a market-oriented economic policy during the post-military period will be discussed in chapter-5 below.

<sup>32</sup> Maternity leave during the military rule was provided as forty five days with pay while the labour law of the post-military period prolonged it to ninety days (thirty days pre-natal and sixty days post-natal) with pay (compare, Proc. No. 64/1975; Art.39 (2) with Proc. No.42/1993; Art. 88(3))

<sup>33</sup> It also has been retained by the currently operative law (Proc. No. 377/2003; Art. 9)

grounds for termination,<sup>34</sup> thereby providing the employer with wider latitude for managerial discretion.

Second, even if termination has been undertaken on a ground other than provided by law, unlike the previous law where reinstatement was the sole remedy, this is no longer the position. It is only when termination is initiated on ‘prohibited grounds’<sup>35</sup> that the new law provides reinstatement as a sole remedy (Proc. No.42/1993, Art.43 (1)). In all other cases, the labour tribunal is empowered to award either reinstatement or compensation as it deems appropriate on a case-by-case basis. Thus, unlike during the military regime where the remedy was dictated by the law itself, the new law gives room for a margin of flexibility to labour tribunals to render case by case decisions, whether to award reinstatement or compensation instead (Proc. No. 42/1993, Art. 43(3)). The third point of difference is that under the current law even if the labour tribunal awards reinstatement it is not to be accompanied by back pay as there is no payment without rendering service.

## **2.7. Summary**

It would have been incomplete to deal with aspects of collective labour law without having an idea on the emergence and development of the very labour relation itself. This chapter was intended to serve as an entry point to collective labour law. It has been shown that in common with the experience of other countries industrial relations in Ethiopia were initially left to private regulation within the framework of ‘contractual freedom’. State intervention in labour matters, through directly legislating substantive employment protections, took place at a later stage (1960s) as an expression of ‘modernity’ in an attempt by the Emperor to modernise the Ethiopian traditional society along the lines of Western values.

Unsurprisingly the economic policy and the political orientation of the successive Ethiopian governments (the Imperial era, the military government and the post-military rule) have had an impact on the content of the legal framework for labour relations. Although the three successive

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<sup>34</sup> Article 27 of the labour provides a long list of misconducts attributable to the employee which warrant dismissal without notice (i.e. summary dismissal). Moreover Article 28 stipulates situations where an employee could be terminated by providing notice or payment in lieu of notice. Many of these grounds of termination were not available in the preceding labour law.

<sup>35</sup> For the purpose of the law termination shall be held to be based on ‘prohibited grounds’ if the ground for the termination at issue is grounded on the employee’s trade union membership, leadership, sex, religion, ethnic origin, union membership, disability and *the like* [other similar grounds] (Proc. No. 42/1993; Art.26 (2)). .

governments replaced one another by force rather than through democratic transfer of power, all of them realised the need for some sort of state intervention in labour affairs. Nevertheless, each of them adopted a labour law that reflected their economic policy and political orientations.

It is certainly possible to identify, even before the 1960s drive to modernise the economy and society, international influences on Ethiopian labour relations and the emerging legal framework. The colonial presence of the great European powers in the early 20<sup>th</sup> century adjacent to Ethiopia and the five years Italian occupation in the late 1930s helped introduce capitalist economic relations. The early ILO membership of Ethiopia and the modernisation of its legal system with the assistance of the European experts in early 1960s contributed in bringing about labour laws in the country. As a reflection of this, the 1960s operative labour law adopted a less rigid stance of law than the labour of the military regime with a view to providing labour market flexibility through which, among other things, the cost of hiring and firing was less costly.

On the other hand, the influence of the communist ideology during the military regime to a great extent influenced the legal framework of labour relations of the time which over-emphasised employment security presumably consistent with its communist-oriented path of development policy. During the post-military period, the influence of the WB and the IMF prescriptions of ‘deregulation’ including labour market deregulation, on the one hand and the commitment towards the ILO principles on the other. It issued a labour law reform that reflected a dilemma to retain what labour formally gained during the military rule on the one hand and to provide labour market flexibility towards privatisation and private sector development as prescribed by the multilateral lending institutions on the other.

The key point here is that although Ethiopia was not physically colonised, the introduction of Western values as a means of attaining modernity in 1960s, the reception of a communist-ideology in mid 1970s and the ‘advice’ of the WB and IMF in 1990s all alien to some degree to Ethiopia have influenced the development of the labour laws. Thus, uncolonisation did not insulate Ethiopia from foreign influences. The issue is whether and to what extent, if any, those influences have been neutralised by changes in local conditions overtime.

The next chapter will therefore assess the historical development of employees’ freedom of association in Ethiopia and what contribution, if any, the international experience offered in this regard.

## **Chapter 3. The Legal Framework for Freedom of Association in Ethiopia: A historical perspective**

### **3.1. Introduction**

The preceding chapter assessed the development of individual labour law in Ethiopia from historical perspective. This chapter will focus on the historical development of the legal framework for trade unionism in Ethiopia in order to have an understanding of its emergence and subsequent progress. In particular, the challenges and opportunities trade unionism have had under the three successive regimes in Ethiopia will be assessed. The first two sub-topics of the chapter will entertain the development of the right to freedom of association and its transformation to the status of one among the ‘core’ labour rights and its mode of operation in the era of the globalised economic order. This will provide a framework for understanding the fundamental nature of the right and within which the rest of the chapter will be analysed.

The failure of ‘freedom of contract’ to bring about fair outcomes in industrial relations principally owing to the imbalance in the bargaining strength of the parties demanded some sort of remedial measure to redress the inequality. Employees tried to mitigate the power imbalance by organising themselves in trade unions, thereby seeking to negotiate as a collectivity instead of individually (Burkitt, 2001:67; Hepple, 2002:2). However, at earlier times in labour history, formation of associations by employees was treated as incompatible with the then prevailing market philosophy of free competition (Hiatt and Greenfield, 2005:40) due to its alleged market distortion effect on the supply of labour.

The collective approach was also, at times, considered as tantamount to conspiring against the economic and property interests of the employer, and hence a prohibited act. For instance, in the United Kingdom the Combination Act of 1799, took a prohibitive stand towards combinations of workers (Dunning, 1998:151). Germany also had a law with similar restriction until it was repealed in 1869 (Weiss, 1995:119). In order to bypass these prohibitions, workers at those times were determined to associate themselves in non-industrial societies, such as social clubs, friendly societies and self-help groups (Slomp, 1996:32).

It was only later that formation of associations was generally tolerated and permitted. Even then, employers at the stage of recruitment or even thereafter would require their employees to commit contractually either not to join or if already a member to withdraw from union membership as a condition to employment or the continuity thereof (Weiss, 1995:121). The ‘yellow dog’<sup>36</sup> contracts of the time were geared towards this purpose and they had been given legal effect as binding contractual terms (Davies and Freedland, 1993:18). Intimidation and dismissal of union organisers and unionists had also been widespread (Dunning, 1998:165). Resistance either by employers and/or governments to workers’ associations emanated from the perceived danger to economic and political stability respectively. Hence uneasiness towards employees’ combinations may emanate from either employers or governments or both. The history of labour movements has recorded this challenge overtime (op cit: 149).<sup>37</sup>

In the context of Africa, the history of industrial relations associations is complicated by the varied traditions and histories of their colonial powers and the continent’s heterogeneous nature in terms of people and cultures (Kaufman, 2004:519). According to Schillinger (2005:2) ‘the setting up of African trade unions took place with the blessing and open support of the colonial administration which saw in it a means of keeping social peace’. Moreover, Kaufman documented that ‘as long as these unions did not become overtly militant and hotbeds for nationalist independence, the British tolerated them and even saw value in their activities’ (2004: 520). However, in French-controlled Africa a relatively repressive stance towards the indigenous labour movement and trade unions prevailed (ibid.). Hence, the pattern of development for trade unionism in Africa had diverse historical grounds.

### **3.2. Freedom of Association: International Sources**

It has been understood that human beings are social animals in that it is difficult to think of a normal human person outside of a collective way of life. Indeed, no matter how rudimentary it may have been, human beings even in traditional societies had a collective dimension to life in

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<sup>36</sup> A type of contract of employment that stated the employee would neither join nor participate in the activities of a trade union.

<sup>37</sup> It was reported that, by mid-1998, the Committee for Freedom of Association had considered 1,972 cases, brought mainly by workers organizations, alleging that principles of freedom of association were being infringed (Dunning 1998, p.165). For detailed presentation on the origin and development of Freedom of Association ( see, Harold Dunning (1998) ‘The Origin of Convention No.87 on Freedom of Association and the Right to Organize’. *International Labour Review*. Vol.137, No.2, pp.149-167

order to collectively counteract powerful natural or man-made challenges. According to Dunning, Pope Leo XIII underlined, in 1891, that ‘the State should not prohibit employers’ and workers’ organizations, because it was the natural right of men to come together in this way’ (1998:151). From an industrial relations perspective, an employees’ association is a source of strength for defending common interests through an organised voice on issues of common concern against comparatively more powerful employers and from a human right perspective, it is an expression of human freedom and hence an end in itself.

Although developments in freedom of association may have features peculiar to specific countries, a degree of commonality is provided to freedom of association at the international level by human rights instruments of both global and regional coverage.<sup>38</sup> Among the instruments of global application are: the UDHR (1948), the ICCPR (1966), and the ICESCR (1966). Article 20(1) of the UDHR provides that ‘everyone has the right to freedom of peaceful assembly and association’ while sub-article (2) of the same Article provides that ‘No one may be compelled to belong to an association’. Article 22 of the ICCPR, for its part, provides: ‘everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.’ The ICESCR also has a provision on ‘the right of everyone to form and join the trade unions of his/her own choice’. Although the UDHR technically is a non-binding instrument, the latter two instruments were adopted through the treaty making process of the UN General Assembly, and theoretically their scope of application is global with respect to states that ratified them.

As regards instruments of regional scope, the right to freedom of association has been incorporated under various human rights instruments such as the European Convention on Human Rights (1950), The American Convention on Human Rights (1969) and the African Charter on Human and Peoples’ Rights (1981). The international human rights instruments have been drawn up under a broad framework in a manner that enables every human person to have the right to associate. This approach covers all possible combinations of an economic, social and political nature, ranging from the formation of political parties and consumers’ associations to associations of hobby clubs (Wedderburn, 2003:249).

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<sup>38</sup> Even though the ILO Conventions on freedom of Association predate many of the International Human Rights instruments, in order to proceed from the general to specific instruments, this part of the discussion is organized on that line instead of through chronological order.

There are also more specific and specialised instruments relevant to freedom of association at workplaces. These are the Freedom of Association and Protection of the Right to Organise Convention No.87 (1948); and the Right to Organize and Collective Bargaining Convention No.98 (1949). Both of these were adopted under the auspices of the International Labour Organisation and hence applicable within the sphere of the ILO's mandate. The right to freedom of association, in this context, is available both to employers and employees. Indeed, the Treaty of Versailles of 1919, the source document for the establishment of the ILO, underlined that 'the right of association for all lawful<sup>39</sup> purposes by the employed as well as by the employers was held to be among the principles of special and urgent importance.

The Philadelphia Declaration of 1944, which has been incorporated into the Constitution of the ILO, reaffirmed the Organisation's commitment to four most important principles among which freedom of association is one.<sup>40</sup> In addition to these principles, membership of the ILO has been made conditional upon formal acceptance of the Constitution including the Declaration of Philadelphia, the right to freedom of association being enshrined in both instruments (ILO 1996, Para.10). However, since these instruments were stated in very broad terms, it was only with the coming into force of Convention No.87 that freedom of association was translated into specific enforceable rights and obligations available to workers as well as employers (Dunning, 1998:163).

It is important to underline, however, that although the right is available both to employees and employers, in practice; it was employees who demanded and most in need of associations. The urge for collectivity mainly emanated from the weak bargaining positions when and if employees sought to bargain individually. It can after all be argued by way of justification that 'the individual employer is already a collective power in being a holder of capital' (Deakin and Morris, 2009:675). Records of the Committee on Freedom of Association confirmed that almost

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<sup>39</sup> See, Art. 427 of the Treaty of Versailles of 1919. It was feared that the phrase 'for lawful purposes' would provide an opportunity for heavy handed governmental interference against 'unwanted' associations on the pretext that their purpose is 'unlawful'. (see, *Dunning; 1998: 156*)

<sup>40</sup> The text of the Declaration states that the Philadelphia Conference reaffirms the fundamental principles on which the Organisation is based and, in particular, that:

- a) labour is not a commodity;
- b) **freedom of** expression and of **association** are essential to sustained progress;
- c) poverty anywhere constitutes a danger to prosperity everywhere;
- d) the war against want requires to be carried on with unrelenting vigour within each nation (...).

all of the complaints before it that are associated with impediments to freedom of association have been brought by trade unions (ILO, 1996:5).

In fact, the framers of various international instruments seemed to be conscious of the needs-based approach, when they introduced a specific provision on the right to form and join trade unions addressed solely to workers. This was in addition to the general provision on freedom of association, which entitled both employer and employee to associate. This should not, however, lead us to the conclusion that freedom of association is irrelevant to the employer altogether.<sup>41</sup> On the contrary, in the face of organised labour, a single employer may relatively prove to be weak and hence the need also for employers' to associate. Moreover, an employers' association may also help them in their dealings with governments with a view to lobby for *business-friendly* policies and laws.

In the African context, trade unionism had distinctive political as well as economic dimensions. It was very much associated with the introduction of industrialisation, and the latter was closely related to colonisation. Except for small scale indigenous handicraft activities, industrialisation and industrial relations were brought with colonial powers into Africa. Industrial relations during colonialism expressed itself, among other things, in discriminatory treatment in general, and discrimination between foreigners and the indigenous labour force in particular. A struggle against this discriminatory treatment appeared to be one among the many objectives of trade unionism in Africa. Unionisation was also instrumental in expressing the organised voice of labour against exploitation by capital and, in some cases; it was instrumental in the struggle against colonialism (Ananaba: 1979; Bean: 1994; Anyemedu: 2000). It, thus, had social, economic and political objectives as a result of which significant overlap between the various goals being observed in union activities. Hence, unionisation, in colonial Africa, had multiple objectives and responsibilities to accomplish (Bean, 1994:221). It is also recorded that in some cases colonial authorities legally recognised the establishment of unions in an attempt to prevent resentment generated within employment relations from being utilised for political ends (Koser and Hayter, 2011:25).

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<sup>41</sup> At the time of the drafting of the instrument, Government delegates from two Eastern European States [socialist bloc] proposed that the word 'employers' be deleted from the text on freedom of association and the Convention would therefore provide only for the rights of workers. However, this was rejected by the conference members including by workers' representatives (Dunning, 1998: 162).



### 3.3. Freedom of Association: one among the ‘core’ Labour Rights

In 1995, world leaders convened in Copenhagen, Norway, to discuss ‘(...) on the need to put people at the centre of development agenda’. This Social Summit underscored that:

(...) social development and social justice are indispensable for the achievement and maintenance of peace and security within and among nations. In turn social development and social justice cannot be attained in the absence of peace and security or in the absence of respect for all human rights and freedoms<sup>42</sup>(...)  
(Paragraph: 5)

Fully aware of the interdependence and interconnection of the various human rights principles, the Summit, among other things, committed itself to safeguard *basic rights* and interests of workers all over the globe and called on all countries to ratify and apply ‘(...) the relevant ILO conventions, including those on the prohibition of forced and child labour, freedom of association, the right to organise and bargain collectively, and the principle of non-discrimination’ (Paragraph: 54(b)).

Only a year later, in 1996, at the Singapore Ministerial Conference, which was the first Ministerial Conference of the World Trade Organization (WTO), members of the WTO asserted that they renewed their commitment to the observance of ‘*internationally recognized core labour standards*’. Unlike the Copenhagen Summit, the Ministerial Conference, did not list those ‘internationally recognised core labour standards’. The Conference rather left the identification and the standard setting exercise to the ILO as the latter has been considered to be more competent and specialised on the subject matter (Alston, 2004:472; Hepple, 2005:57; Kaufmann, 2007:69).

On a regional level, around the same time as the Singapore Ministerial Conference, a study conducted by the Organization of Economic Cooperation and Development (OECD) on trade and labour standards adopted a list of labour standards similar to those of the Copenhagen Summit and which need to be observed by all trading partners of the Organisation. This study argued that respecting these labour rights would not have any negative consequence on the international competitiveness of countries complying with them (Hepple, 2005:57).

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<sup>42</sup> Available at: <http://www.un.org/esa/socdev/wssd/text-version/agreements/decparti..htm> (accessed on 20 June 2009)

Moreover, under a Free Trade Agreement (NAFTA) entered into by and between the North American countries of United States of America, Canada and Mexico in 1992, a side agreement on labour (the North American Agreement on Labour Cooperation (NAALC) was signed parallel to their trade negotiation. Although the side agreement did not impose binding obligations on the Member States, they drew up ‘guiding principles’ to which they were committed to promote. The list of the guiding principles included the subject matters listed under the ‘core’ labour standards (Stone, 1999:18).

At the individual country level, even though the United States has ratified only two<sup>43</sup> of the eight fundamental ILO conventions, (Stone, 1999:27; Alston, 2004:467; Hiatt and Greenfield, 2005:43) its Congress has, since 1984, required the observance by developing countries of ‘internationally recognized labour rights’ as one of the preconditions to be an eligible beneficiary (Hiatt and Greenfield, 2005:52) for the US ‘Generalized System of Preference’ (GSP).<sup>44</sup> Nevertheless, for purposes of the United States GSP scheme, the ‘internationally recognized labour rights’ are: workers’ rights to association; workers’ rights to organise and bargain collectively; prohibition of forced or compulsory labour; the abolition of child labour and stipulation of minimum wage, working hours restriction together with occupational health and safety (op cit : 53). This listing slightly varies from that of the ‘basic rights’ of the Copenhagen Summit. While the Summit included the principle of non-discrimination in its list, the US Congress opted for minimum wage and occupational safety instead. They were however substantially similar in content and purpose.

Although the various forums employed different designations and terminologies such as ‘basic rights’, ‘internationally recognized core labour standards’ and ‘internationally recognized labour rights’, it is evident that the desire to observe certain labour rights has been gathering momentum at the level of the international community. The ILO seized this opportunity of consensus and in its 86<sup>th</sup> Session of the 1998 International Labour Conference, adopted the ‘ILO Declaration on Fundamental Principles and Rights at Work’.

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<sup>43</sup> The United States ratified only conventions No. 105 and 182 out of the eight ‘Core’ conventions.

<sup>44</sup> The GSP is a non-reciprocal preferential treatment scheme (zero tariff and quota free) accorded by developed countries in favour of eligible developing countries to introduce products originating from the latter into the domestic market of the former. The President of the United States has been authorized by a Trade Act of the Congress, to withdraw the US preferential treatment scheme when these are not complied with by any benefit recipient developing country.

Principally, the Declaration identified certain fundamental workplace human rights and designated them, as core labour principles. It declared that members of the ILO are required to respect, promote and realise those labour rights by virtue of their mere membership in the Organisation regardless of ratification of the respective conventions. In short, the obligation of member states towards those rights has emanated from the Constitution of the ILO itself (Hepple, 2005:59). Thus, non-ratification of the specific conventions would not serve as a defence for not complying with them.

Even from a practical point of view, the nomination of these ‘core’ subject matters was not arbitrary.<sup>45</sup> In the words of Hepple:

The choice of these subject matters, and not others, rests on the view that they are, in the words of the Preamble [of the Declaration], of ‘particular significance’ in maintaining ‘the link between social progress and economic growth’. This linkage exists because the conventions enable ‘the persons concerned to claim freely and on the basis of equality of opportunity their fair share of the wealth which they helped to generate and to achieve fully their human potential (2005:59).

Furthermore obtaining global consensus on those items has been much easier than in respect of other labour issues (Davies, 2004:56; Burkett, 2006:40; Meknassi, 2010:76). Rights which are enshrined in those subject matters are ‘so fundamental that they should be assured for all people regardless of the culture and level of development of the countries in which they live’ (Hepple, 2005:57). Thus, the choice was based on the assumption that they are so fundamental and that their implementation would provide the foundation for all other workers’ rights to be respected.

Indeed, immediately after its adoption by the International Labour Conference in 1998, the Declaration secured the full support of the UN when the then Secretary-General of the UN, Kofi Annan, tabled this subject matter, in addition to other human right and environmental issues, as an item on the agenda for the World Economic Forum in 1999 at Davos, Switzerland before representatives of private actors (trans-national companies, trade unions and civil society organisations). Those private actors were required to *voluntarily* respect and promote these rights as an expression of their ‘corporate social responsibility’. Through this arrangement, ‘core’

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<sup>45</sup> Alston in contrast argued that , ‘core’ principles represent ‘(...) a highly selective even arbitrary choice from a lengthy list of worthy candidates (...)’ (2004: 483)

labour rights have been officially brought to the attention of private actors who were expected to contribute towards their observance and promotion.

Furthermore, the Cotonou Agreement<sup>46</sup> of 2000 which was signed between the EU and ACP in its Article 50 has cross referenced the ‘core’ labour standards as one among the commitments towards their partnership. Therefore, it seems reasonable to conclude that the notion that these fundamental workplace rights, freedom of association being one, are ‘core’ is widely shared by public and private actors around the globe.

In terms of a legal framework, the core labour rights represented eight ILO conventions<sup>47</sup> which were selected from more than 150 ILO conventions adopted within a period of almost seventy years of the ILO’s operation (1930-1999). Six of the conventions covering three subject matters have been framed in a prohibitive language (Prohibition of forced and compulsory labour; Prohibition of child labour and prohibition of discrimination) while the other two are phrased in the form of entitlements ( the right to freedom of association and the recognition of the right to collective bargaining) (Palley, 2004:23).

There exists a political will and a global consensus to respect, promote and protect the ‘core’ labour rights as expressed in the various high level forums of public and private actors. It is not only for its instrumentality to attain other objectives that these rights have been accorded recognition. It is rather for being rights for their own sake and an expression of human freedom and development. However, there are legal and practical constraints in the implementation of these rights. In the section below, in line within the goal of this chapter, the current challenges to unionisation will be examined in order to appreciate the problems and prospects ahead.

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<sup>46</sup> ACP-EU partnership agreement signed in Cotonou on 23 June 2000.

<sup>47</sup> These are: Freedom of Association and Protection of the Right to Organize Convention, July 9, 1948, C87; Right to Organize and Collectively Bargain Convention, July 1, 1949, C98; Forced Labour Convention, June 28, 1930, C29; Abolition of Forced Labour Convention, June 25, 1957, C105; Equal Remuneration Convention, June 19, 1951, C100; Discrimination (Employment and Occupation) Convention, June 25, 1958, C111; Minimum Age Convention, June 26, 1973, C138; Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, June 17, 1999; *all available at: <http://www.ilo.org/ilolex/english>*

It is worth noting that the Convention on the Worst Forms of Child Labour (ILO Convention No.182 of 1999) was adopted one year after the adoption of the Declaration.

For a detailed discussion on arguments revolving around whether a relationship was established or not between the Declaration and the relevant ILO Conventions, (see generally: Philip Alston (2004) ‘Core Labour Standards and the Transformation of the International Labour Rights Regime’ *European Journal of International Law*, Vol.15, No.3, pp.457-521)

### **3.4. Production and Regulatory Challenges to Trade Unionism**

The current global economic order and social interactions have brought their own unique features on the manner of production and marketing of goods and services. With the advent of globalisation, production processes have undergone profound transformation in terms of location and organisation (Morin, 2005:12). The underpinning rationale is that in order to obtain maximum benefit out of comparative advantage variables, the part of the production process requiring intensive labour will be undertaken in territories where cheap, compliant and appropriately skilled labour exists and the remaining aspect of the production would be processed in an area where the required input is less costly. One consequence of such a decentralised production process has been the emergence of more flexible labour markets (Cazes and Nesporova, 2003:43; Stone, 2008:118).

To benefit from labour market flexibility, the use of home workers, casual or part-time employees, rather than permanent ones, the out-sourcing and sub-contracting of aspects of the production process rather than performing it in-house have become the norm of workplace arrangement and management (Arthurs, 2001:281; Hepple, 2005:6; Estlund, 2008:93). As a result, the workforce profile has significantly changed from permanent employment to more of temporary engagement.

As opposed to the period of the steam engine and later during the industrial revolution where thousands of employees worked in assembly lines in close proximity to each other, in full-time arrangements and under a common employer, the current economic order has introduced decentralised production, thereby bringing in multi-employers to the production process (Morin, 2005:12). The conventional in-house and assembly line production system sometimes referred to as the 'Fordist' model has been transformed into extra-territorial production chains where a single product would cross multiple national borders while undergoing its transformation process (ICFTU, 2004:17; Sheehan, 2008:11; Dahan *et al*, 2010:455). This decentralisation of production process has been made possible due to, among other things, cheap and smooth transportation, together with quick and user-friendly information and communication technology (Palley, 2004:25).

Such transnational production systems and labour arrangements have made the formation of trade unions in their conventional forms and composition less attractive and at times unfeasible.

‘Laws on unionisation have remained mainly local, while the production process has become transnational’ (Stone, 2008:121). Moreover, in the developed world, with the fast development of the service sector, the labour force profile has changed from predominantly manual to more of a ‘white collar’ work often of a clerical type and the latter appears to be less interested in unionisation than the former (Slomp, 1996:48). Even from the perspective of the developing countries, Fashoyin recorded a substantial increase of temporary and fixed-term employees and informalisation in Kenya since the 1990s. According to him this labour force profile has adversely affected union membership as these workers have been uninterested or less interested in unionisation (2010:15).

Furthermore, globalisation has provided favourable condition for the easier movement of capital across borders (Hepple, 2005:251). Legal assurances for international movement of capital which have been secured through bilateral, regional and multilateral agreements have made movement of capital easier than ever before. Conversely, relative to capital, labour, particularly unskilled and semi-skilled labour, is less mobile and at times immobile altogether. Owing to its mobility and threat of mobility, capital has gained strong bargaining leverage in its relation with host governments and trade unions (Lee, 1997:181; ICFTU, 2004:46). As a consequence, countries have entered into competition among each other in attracting and retaining capital through the provision of facilitative policy and legal frameworks (Palley, 2004:26).

Making political stability and infrastructure facilities available, though still necessary, has no longer been sufficient to attract and retain investment. In addition to these considerations, tax holidays, lax environmental regulations and low labour standards have become additional offers of incentive from some investment destinations particularly from the developing world (ICFTU, 2004:48). Compa in his general report documented that ‘many countries have adopted labour law reforms that reduce labour standards’ (2006:4). In fact, there have been attempts to attract capital through the establishment of *de jure* or *de facto* ‘union free’ workplaces (Sengenberger, 2006:350).

For instance, in some developing countries, measures have been taken for the establishment of Export Processing Zones (EPZs) where protective labour laws were withdrawn from application. In some situations, although the protective labour law may not be expressly repealed for fear of political backlash, their enforcement would be deliberately ignored or delayed (Blackett,

2004:2). One of the protective laws that may be at risk in such circumstances has been the right to unionisation (Hepple, 2005:10) as there is a perception that organised labour is much more demanding than would be the case with a non-unionised workforce. Unlike the pro-active attitude of many states in labour affairs at the early and mid-twentieth century, the era of globalisation brings about '*business-friendly*' states, which hesitate and, at times, seem incapable of intervening in labour relations. As a result, a tendency to postpone enforcement and to stay the execution of labour rights until such time economic growth is attained has developed (Sen: 1999).

However, the position of the ILO Committee on Freedom of Association is explicit in this regard stating that 'where governments of host countries offer special incentives to attract investment, these incentives should not include any limitation of workers' freedom of association (...)' (ILO 1996, Para: 12). It is, thus, in contravention of such an express ILO position that countries enter into a 'race to the bottom' competition to attract capital at the expense of labour rights.

In this regard, there are theoretical and empirical arguments that contend that lower labour standards do not necessarily attract investment. Theoretically, motivation, productivity and innovation could be obtained only when employees are granted freedom of action and humane treatment (Fashoyin, 2004:347). The argument is that lower labour standards would bring about de-motivated and at times ill-motivated labour to the detriment of industrial peace, productivity and investment. It is contended that higher labour standards do not necessarily imply higher labour costs (Lee, 1997:181). Empirical studies also show that the general flow of investment is towards the high labour standard jurisdictions (Banks, 2006:85; Sengenberger, 2006:340). It is even argued that 'in most cases jurisdictions with higher labour standards have been successful in impressing investors' (Law, 2008:1320).

It seems that investors are more interested in the availability of factors such as, political and macro-economic stability; infrastructure facilities and independent and expeditious forums of dispute resolution and skilled and disciplined labour rather than low labour standards. Under this view, the decision where to locate an investment is mainly dictated by considerations other than labour standards (ibid, 1319). Moreover, it was said, economic liberalisation will have an effect of upgrading labour standards as transnational companies have had the tendency of bringing in

‘management technique more respectful of workers and often pay higher wages than the local firms’ (Banks, 2006:85).

While the establishment of ‘union free’ workplaces approach tends to consider labour standards as the decisive factor in determining investment locations, the countervailing argument that labour standards do not impact investment decisions fails to appreciate that labour standards constitute one among the many factors that will be taken into account in selecting investment destinations. In particular, when the investment under consideration is a labour intensive one, consideration of labour costs would not be taken lightly as it impacts cost of production-thereby competitiveness. Of course, factors such as infrastructure, political stability, and the existence of independent dispute resolution machinery are important factors to be considered in determining investment locations. However, when the competing jurisdictions are more or less similar in respect of these factors, the issue of labour standards may come to the scene. It is important to note that ‘a marginal increase in labour costs due to higher labour standards will put a nation at a competitive disadvantage in relation to its competitors’ (Scherer, 2007:137).

An illustration of this labour cost factor can be found in a plant level study conducted in 2003 of a decision by Nike to relocate production. The study found that Nike, one of the major sportswear companies, had plans to relocate to Vietnam some of its factories situated in Indonesia apparently on grounds of better political stability in the former although the actual reason for the relocation was the wage level which was much lower at the new destination (Harrison and Scores, 2003:52). Similarly, in the United States where the other factors relevant for investment such as infrastructure, market access, political stability, and an independent judiciary have been evenly distributed among the federated states, studies have shown that ‘(...) those states with high rates of unionisation and high wage rates have had significantly lower rates of manufacturing growth over a long period of time’ (Banks, 2006:88).

In general, regardless of the diversified views in this regard, in the current economic order, the overall trend towards unionisation, union density and the role of unions have been on the decline (Stone, 2008:120; Hepple, 2005:10; Slomp, 1996:48). These are mainly the outcome of the changes in production and regulatory regimes dictated by the global economic order and fierce global competition.



The situation of trade union in Africa is more or less similar with what has been mentioned above in the sense that similar cost sensitive relocation measure from Nigeria was undertaken (Adefolaju, 2012: 98). Moreover, Kosor and Hayter recently described the African situation in the following manner:

(...) privatization began reducing the employment in state enterprises which has been hitherto the bastion of unionism across Africa. Export processing zones where associational rights are constrained began to emerge in crucial locations, and the number of hostile private employers began to increase [as a result] trade unions lost substantial part of their constituency and potential members (2011: 27).

With this broader framework on the subject of trade unionism in mind, in the subsequent sections, an assessment will be made on the development of unionisation in Ethiopia in historical perspective to understand where and how it emerged and where it now stands in relation to the global developments described here so that future challenges and opportunities could be anticipated.

### **3.5. Early labour combinations in Ethiopia**

As mentioned previously (*see, p.30*), there is evidence that awareness of modern industrial relations practices first came about during the early to mid-20<sup>th</sup> century when Ethiopian workers had the opportunity to work with or under the supervision of French and Italian nationals. Some Franco-Ethiopian railway company employees had working visits to France through which personal observation on labour relations was obtained (CETU, 1991:161). This integration was more visible with the influx of many Italians as workers and supervisors during the Italian occupation of Ethiopia in the Second World War. The opportunity to work alongside Europeans enabled the Ethiopian employees to gain experience as to how labour relations operated elsewhere where industrial relations were well-established.

Working in close proximity with foreign workers, though advantageous in terms of acquiring experience, was also associated with discriminatory treatment in general and discriminatory payment in particular (Pankrust, 1971:32). Foreign workers were relatively favourably treated compared to their Ethiopian counterparts in comparable job positions. Thus, although all employees had common grievances against their employers, Ethiopian employees had additional grounds for discontent. Among the common concerns to all workers were issues such as job

security, safe and healthy working environment, excessive working hours and absence of paid leave.

There was, for instance, an incident resulting in discontent of workers which was associated with sick leave of an employee. This incident occurred, in 1951, at the 'Ethio-fibre factory' which employed 200 workers at that time.

A female employee of the factory fell sick and was absent from work. Her relatives communicated this fact to the employer in due time. However, the employer was suspicious as to the accuracy of the information and demanded that the employee should somehow appear before it. Relatives of the employee took her to the premises of the factory on a stretcher. Unfortunately, the patient employee died while on the shoulders of the people carrying her back home, after verifying to the satisfaction of the employer that she was indeed seriously ill (CETU, 1991:38).

Immediately after that incident, a wild-cat strike broke out within the workers' community in general and at the premises of Ethio-fibre factory in particular. Indeed, prior to the incident, there had been another similar strike, in Dire Dawa, at the Franco-Ethiopian Railway Company<sup>48</sup> where around 1500 workers consisting of French, Italian, Greek, Djiboutian and Ethiopian nationals demanded, among other things, wage increments, limitation of daily working hours and decent working conditions (CETU, 1991:22). The incident suggested that employees' differences in nationality or other variables did not necessarily pose any impediment to waging a united struggle towards a common purpose. Moreover, the fact that these incidents ignited such wide ranging anger indicated that there was a deep-rooted and accumulated but hidden sense of dissatisfaction in the workforce waiting for an opportune moment.

There was no room for an 'organised voice' to be heard until 1963 as laws for trade union formation were introduced in Ethiopia at the time. In the absence of a legal basis for association, there were times when workers had to march to the Palace to present petitions directly to the Emperor (Morehous, 1970:242). Nevertheless, with the numerical increase of the labour force and the increase in volume and complexity of the discontent, the personal contact with the Emperor was not readily available whenever the workers wanted it (Voice of Labour, 1971:5).

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<sup>48</sup> This was a joint venture company owned by the governments of France and Ethiopia. Djibouti by then was the East African colonial territory of France. The Company was later converted into the Ethio-Djibouti Rail way Company after Djibouti achieved independence from France in early 1970s.

The absence of any legal basis did not, however, completely inhibit attempts to organise. The Franco-Ethiopian Railway Company employees, for instance, formed an association, named ‘*Syndicate des Cheminots Ethiopien*’ and managed to obtain *de facto* recognition by the employer in 1947. By representing its members, it gained concessions from the employer in narrowing the wage differential between Ethiopian and expatriate employees and in limiting the employer’s arbitrary measure of dismissal (Voice of Labour, 1970:13). Inspired by the successes of the employees of the Franco-Ethiopian Railway Company, many employees in various enterprises occupied themselves in establishing groups and friendship societies among co-workers, locally known as *Idir* (self-help association) and *meredaja* (mutual assistance) in their respective premises (Morehous, 1970:241). However, these associations did not have direct dealings with the employers. They, nevertheless, helped in mitigating the employees’ economic hardships created by employers’ unilateral and arbitrary measures such as dismissals and uncompensated employment injuries, old age and illnesses (op cit :242). Thus, at the early stages of labour movements in Ethiopia, as the formation of trade unions was not permitted by law, employees were inclined to associate themselves in the form of mutual assistance and cooperative societies. This historical trend seemed to resemble the early labour movements in other jurisdictions where ‘friendly societies’ of employees were the way towards helping each other among the co-workers in times of need (Slomp, 1996:32).

### **3. 6. Constitutional Recognition of Freedom of Association in Ethiopia**

With the promulgation of the 1955 Revised Constitution of Ethiopia, freedom of association was for the first time officially and constitutionally recognised in the country.<sup>49</sup> The then Emperor, Haileselassie I, handed down the Constitution to his ‘subjects’ with the following introductory remark in the preamble: ‘We, Haileselassie I, (...)hereby proclaim and place into force and effect as from today the Revised Constitution of the Empire of Ethiopia, for the benefit, welfare and progress of Our beloved people’.

The Revised Constitution devoted a full chapter to the ‘Rights and Duties of the People’ (Arts. 37-65). Among the rights relevant to labour relations and enshrined in the instrument were

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<sup>49</sup> Art 47 of the Revised Constitution provided that ‘*Every Ethiopian subject has the right to engage in any occupation and, to that end, to form or join associations, in accordance with the law*’. The phrase ‘... in accordance with the law’ implied the precondition for the existence of law granting authorisation to form associations. However there was no such a law at the time.

‘freedom of speech’ (Art.41), the right to ‘peaceful assembly’ (Art.45) and ‘the right to form or join associations’ (Art.47). On the other hand, all of those provisions were accompanied by a limiting phrase such as ‘*in accordance with the law*’ or ‘*within the limits of the law*.’<sup>50</sup> This presupposed the need for legislation for the proper implementation of the constitutional provisions to be issued (Morehous, 1970:242). Thus, in order to make freedom of association meaningful, the Revised Constitution should have been followed by legislation with detailed rules for implementation. However, until the adoption eight years later of the Labour Relations Proclamation of 1963, no implementing legislation was put in place pertaining to the formation of industrial associations.<sup>51</sup> Rather, the 1957 Penal Code of Ethiopia which was proclaimed two years after the coming into force of the Revised Constitution had a provision with a chilling effect for trade unionists and organisers.<sup>52</sup> Due to this, Bahru was of the view that ‘the human rights provisions, such as freedom of speech and of assembly, were inserted [in the Revised Constitution] largely for public relation exercises meant mainly to appease international partners rather than a genuine commitment at respecting and implementing the specified rights’ (2002:206).

Meanwhile, workers were inclined to conduct clandestine meetings as to how they should best deal with their employers. For instance in 1961, leaders from self-help workers’ organisations representing eleven companies met secretly in Addis Ababa to discuss a ‘united front’ to deal with their respective employers and the government (Morehous, 1970:243). Following this, a series of wild-cat strikes and demonstrations were held at the companies. The most serious of the strikes was one called by the Franco-Ethiopian Railroad Company workers which lasted more

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<sup>50</sup> Incidentally, it is important to recall that the way the Revised Constitution’s provision on Freedom of Association was crafted resembled the provision in the Treaty of Versailles which provided ‘the right of association for all lawful purposes by the employed as well as by the employers. (See, Art. 427 of the Treaty of Versailles of 1919). The phrase ‘for lawful purpose’ was feared to provide heavy handed interference by governments against ‘unwanted’ associations on the pretext that the purpose is ‘unlawful’ (See, Dunning 1998, p. 156).

<sup>51</sup> Of course the Civil Code of 1960 possessed a Chapter on the ‘*Formation and Administration of Associations established for Non- profit purposes*’ (Arts.404-482 of Civil Code). But it was only relevant for non-profit making civil associations such as association of mutual assistance among members rather than for trade unionism in which dealing with the employers is of paramount importance.

<sup>52</sup> Article 476 of the Penal Code provided that ‘Whosoever:

- a) Founds, organizes or commands a society, band, meetings or assemblies forbidden, either generally or from time to time by law, by government or by the competent authority; or
- b) Knowingly takes part in such activities; (...) is punishable with a fine not exceeding five hundred [Ethiopian] dollars. Ring-leaders, organizers or commanders are punishable with simple imprisonment not exceeding six months. (Penal Code of the Empire of Ethiopia, Proclamation No. 158/1957, *Negarit Gazetta* 16<sup>th</sup> Year No.1 Addis Ababa )

than a month (Seyoum, 1969:28). Frequent and wild-cat strikes not only adversely affected the production process and industrial peace but also began to harm social and political stability.

Although the country's employed workforce was no more than 50,000 at the time, the geographic concentration of the labour force was within and adjacent to the Addis Ababa-Dire Dawa railway route which was then an 'industrial corridor'. Hence, 'the small number of the labour force was compensated for by its concentration' (Bahru, 2002:200) in close proximity to the political centre of the country. This provided the labour force with the leverage to pressure the government to address these concerns and the government was 'unable to resist the pressure from labour any longer' (ibid.). Therefore, the need to prevent or at least to regulate strikes came to the forefront so that production process could be unhampered and social and political stability maintained. Hence, at around the first half of the 1960s the need to avoid trade union suppression, rather legalising their existence and regulating their activities was considered leading for the adoption of Labour Proclamation in 1963.

### **3.7. Formal Establishment of Industrial Relations Unions in Ethiopia**

The 1960s in Ethiopian history, as indicated in the preceding chapter, was a period when 'modernity' along the lines of Western values through legal reform was attempted to be introduced. Until this time, despite its longstanding ILO membership, Ethiopia appeared to have dragged its feet in laying down the necessary legal framework for the formation of associations. It was in 1963 (after 40 years of ILO membership) that it adopted a law (Proc. No.210/1963) to regulate the formation of industrial associations and their mode of operation. Incidentally, it is also worth noting that the two important ILO conventions on freedom of association (Conventions No.87 and 98) were also ratified by the country in 1963.<sup>53</sup>

The decision to adopt the Labour Relations Proclamation, it can be argued, might have been dictated by a combination of domestic, regional and international situations. Domestically, it had been seen that demands for respect to unionisation were usually accompanied by wild-cat strikes, which not only affected the production process but also brought social unrest. Moreover, whilst

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<sup>53</sup> Ethiopia ratified 22 ILO conventions in which the eight core conventions are included and the eight core conventions, for their part include the Freedom of Association and the Right to Organize Convention (NO.87) and the Convention on the Right to Organize and Collective Bargaining (NO. 98) (Source: <http://www.ilo.org/ilolex/cgi-lex/ratificc.pl>? Ethiopia; accessed on 02 February/2009).

the labour force was displaying such a sense of discontent against the contemporary legal and social order, an attempted military coup, in December, 1960, had promised, among other things, job creation and respect for fundamental and democratic rights. It appeared that by raising economic and social issues pertinent to the labour force, the *coup* organisers were looking for the support of the Ethiopian labour force in their effort to overthrow the government. Even though the *coup* failed, the government seemed to have felt the need to respond positively to the labour force's long-standing demand for unionisation in order to pre-empt social and political unrest (Bahru, 2002; Kale Kristos, 2005).

There was also a regional factor to be considered here. With some African countries gaining independence from the second half of the 1950s onwards, preparation for the establishment of an 'Organization of African Unity' (OAU) was under way in the early 1960s. Addis Ababa was selected to host the first meeting of the African Heads of State in May, 1963. By then most of the newly independent African states had vibrant trade union movements symbolising an organised voice against both exploitation and colonialism (Stutz, 1962:35). The fact that Ethiopia was not physically colonised by any colonial force was believed to be one of the main reasons for selecting Addis Ababa to host the Summit. Given this impression, it would have been ironic if Ethiopia the 'symbol of independence' were devoid of trade unions (Seyoum, 1969:32; Morehous, 1970:244). On this issue, Ananaba stated that 'policy makers in Addis Ababa thought that it would be most embarrassing if it were known, particularly by the more militant African leaders, that Ethiopia was the only independent country which had no trade union movement (...) ' (1979:45).

Beyond the region, at the international level there was an ILO influence to be taken into account. Formal participation at the ILO Conferences requires Member States to comprise their respective core delegation with two government representatives, one employers' association and another trade union representative (ILO Constitution, Art.3). As a result, formation of associations was a precondition for fully-fledged attendance at the ILO Conferences. The ratification of Conventions No. 87 and 98 had also required an implementing instrument to give them effect domestically.

An additional influence at that time was a by-product of the 'Cold War'. The International Confederation of Free Trade Unions (ICFTU) representing the 'Western bloc' labour movements

was actively involved in African labour movements with a view to broadening its ideological sphere of influence. Similarly, the World Federation of Trade Union (WFTU) representing the 'Eastern bloc' labour movement was engaged in a functionally equivalent effort (Stutz, 1962:36). Both were putting pressure on governments to introduce labour-friendly laws and policies everywhere. In general, it is argued that the second half of the twentieth century has been called the 'age of rights' (Twining, 2009:430). All these internal and external factual circumstances seemed to have pressed the then Ethiopian Emperor to urgently issue a 'Decree' without even waiting for the parliament to reconvene from its recess.<sup>54</sup>

The consequence was that as soon as the Labour Relations Proclamation (1963) entered into force, 109 trade unions consisting of 60,000-70,000 workers were formed and registered with an appropriate agency within less than a year (Tefferu, 2007:21).<sup>55</sup> The significantly high number of trade unions being formed within a short period indicated that workers were eager for unionisation. In April 1963, within months of the promulgation of the Proclamation, the Confederation of Ethiopian Labour Unions (CELU) was established, as an umbrella labour organisation at the national level (Voice of Labour: 1970). This development was mirrored on the employers' side by the creation of an organisation named the 'Ethiopian Employers' Federation'. The formation of associations for both employees and employers enabled an Ethiopian tripartite delegation to attend an ILO General Conference for the first time, the 47<sup>th</sup> annual General Conference in June 1963 (CETU, 1991:161; Ananaba, 1979:46; Baudissin, 1965:109).<sup>56</sup>

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<sup>54</sup> This Proclamation was first issued in the form of a 'Decree'. Decree in the then prevailing Ethiopian legal parlance was a legal instrument emanating from the Emperor at a time when the parliament was in recess and *an urgent circumstance occurs*. Constitutionally, its submission to parliament was mandatory once the Parliament reconvenes. Officially, the end of June to the beginning of November had been parliamentary recess at those times. The Decree was issued in September 1962 designated as Decree No.49/1962. It was later deliberated upon by Parliament and obtained its approval, with minor amendments, to be renamed as Proclamation. No.210/1963. It appeared that the pressure for drawing up the legal framework to the implementation of freedom of association was an issue that required urgent action at the time.

<sup>55</sup> *Beyene Solomon*, the then Secretary General of the Confederation of Ethiopian Labour Unions estimated the membership to be no more than 65,000 and the number of trade unions to twenty nine (Beyene, 2010:78). Ananaba (1979:45) stated that within six months of the promulgation of the law, forty-two unions representing 10,000 members had been formed and registered. Tefferu was a higher government official at the time who had better access to data than Beyene and Ananaba.

<sup>56</sup> Beyene has had a slightly different version in this regard in the sense that although the tripartite Ethiopian delegation went to attend the 47th ILO Conference, it, together with other African delegates, boycotted the meeting in protest of the South African Apartheid Regime attending the same Conference (Beyene, 2010:78).

Although its adoption was considered a success for workers, the Proclamation appeared to have an explicit objective of restricting the labour force from general political activities. In this regard, the law had an express provision prohibiting associations from engaging in any political activity whatsoever (Proc. No.210/1963, Art.22(c)). The then Secretary General of CELU, Beyene, documented the challenge of the time in the following manner:

(....) we [the trade union leaders] continued organizing workers in enterprises; however, the political atmosphere was very tense and members of the National Security and the Palace were hindering the progress of our undertakings. Some of our members would be arrested while others were physically intimidated (2010:67).

It is debatable whether the Ethiopian labour movements at the time had political inclinations since their major concerns were ‘bread and butter’ issues (Daniel, 1986:127). Unlike trade unions in many parts of the African continent whose activities were combined against, and at times overlapped with the struggle against colonialism, this was not the case in Ethiopia since it was never physically colonised. Nevertheless, it is believed that the express exclusion of industrial associations from political activities was geared towards disciplining labour in their relation with the government by requiring them to be apolitical.

Moreover, in order to avoid frequent strikes, the Proclamation spelt out a long list of what amounts to ‘unfair labour practice’ for the parties which included initiating industrial action ‘prior to submission of the labour dispute to the Labour Relations’ Board and before the expiration of a period of sixty days following such submission’ (Proc. No.210/1963, Art. 2(d) and (2) (s)). Thus, the law, while granting the right to unionisation also had an implicit objective of minimising the frequency of strikes to the maximum extent possible (Ananaba, 1979:45).

In this regard the following highly critical reaction to the labour law by a union leader is very revealing and worth quoting at length:

Your union has tied our hands and feet. Before you organized us we used to get substantial concessions from employers by merely threatening to walkout. The employers know that we do not kid when we threaten-the work [walk-out], even the equipment was not safe. Yet now you have advised us that through the union we have first to discuss with our employers, then if we are not satisfied we have to submit our grievances to the Labour Relations Section of the Ministry and if we are not reconciled by the Section we have to lodge our dispute with the ‘Labour Relations Board’.



The case does not stop there; either employers or employees can appeal to the Supreme Imperial Court on the decision of the Board (...). We neither have the money, the time nor the manpower to follow up our disputes through these channels. Your union has only tied us to the benefit of our employers (Voice of Labour, 1970: 11).

On the other hand, the employers' side was of the view that the coming into effect of the law which legalised unionisation was not necessary to the country's then prevailing stage of industrial development. An employer in a major enterprise had, then, spelt out his objection to the labour law in the following manner.

Trade unionism to developing Ethiopia is a luxury. You merely follow the system and practices of developed countries like England and France and are crippling our budding economy. You are discouraging foreign investment [by issuing such a law] (...)' (Voice of Labour, 1970:11).

Although the representativeness of the above mentioned views may be debatable, in general terms, union activists seemed to consider the law as restrictive to union activities while employers were of the view that it was a premature and untimely instrument to then existing infant industrial development. Regardless of these divergent views, however, the coming into force of the 'Labour Relations Proclamation' paved the way for the development of labour law as a distinct branch of law outside the Civil Code in terms of structure and content. Its distinct nature may be inferred from the contents of the proclamation among which the following points are particularly noteworthy.

First, the labour law incorporated detailed rules for the formation of employer and employee associations and spelling out their rights and obligations. Second, the registration of these associations was entrusted to a distinct ministry (the Ministry of National Community Development and Social Affairs) a different ministry from the Ministry of Internal Affairs which was empowered to register and monitor all other not-for-profit associations in the country. Third, detailed rules on collective bargaining and collective agreements were put in place. Fourth, the labour provided for the establishment of a 'Labour Relations Board', tripartite labour dispute settlement machinery outside the ordinary courts.<sup>57</sup>

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<sup>57</sup> The Labour Relations Board at the time was required to be composed of 'five persons knowledgeable on industrial relation and persons of integrity'. They were appointed by the Emperor upon nomination by the Ministry of National Community Development and Social Affairs (Art. 5). The trade unions and the employers' association had the right to present their candidates for the post. In practice, out of the five, two were from trade union

As regards the substantive power of the Ministry, it had no mandate to provide prior authorisation for the formation of associations; its power was limited merely to the registration of associations. Even with registration, 'if the Ministry failed to take any action with respect to the application for registration within thirty days, the association was deemed to be registered' (Proc. No.210/1963, Art.21(e)). Thus, any delay in taking action on an application for registration amounted to an acceptance of registration which provided a relaxed procedure for the formation of associations. Furthermore, the Ministry, being an administrative organ, was not empowered to dissolve associations. Its power was limited to petitioning the regular courts to declare dissolution (Proc. No.210/1963, Art.3 (g)) which is consistent with the ILO prescription in this regard (Convention No.87, Art.4).

Apparently these were suitable measures towards union formation. Nevertheless, the labour law fixed a threshold of fifty employees in an enterprise to form a first level trade union (Proc. No.210/1963, Art. 20 (c)). Given the low level of industrial development in the country at the time, this threshold was considered high since there were very few enterprises that employed that size of workforce. Thus, it was argued that although the adoption of the labour law providing for union formation was considered a positive step, the high threshold placed a substantial restriction in the exercise of the right (Teffer, 2007: 22). Subsequent labour legislations, as will be seen later, have progressively reduced the minimum membership required to form a trade union.

The Committee on Freedom of Association of the ILO Governing Body, in principle, has not been against laws prescribing minimum level of membership to form a trade union. It, however, has been of the view that 'union formation should not be considerably hindered or even rendered impossible by fixing too high a figure'. Indeed, the Committee had expressly stated that 'a law that required a threshold of fifty employees was too high' (ILO 1996, Para. 255). Therefore, the law was inconsistent with Ethiopia's international obligation under the ILO in this respect.

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representatives and the other two were from the employers' side. The Chairperson of the Board came from the government side.

The establishment of the Labour Relations Board did not take out all labour disputes from the jurisdiction of the regular courts. It was only over the so-called 'collective labour disputes' that the Labour Relations Board had an exclusive jurisdiction. In connection with individual labour disputes arising from the individual contract of employment, it was at the choice of the employee to take his/her case either to the court or to the Board. (For an elaborate discussion on this issue; See *Mammo Yinberberu v. Yirgu Abebe*. *Journal of Ethiopian Law* (1964), Vol.I p.36).

### 3.8. Industrial Unions under the Military Rule

It was mentioned in the previous chapter that the military government claimed to have followed a communist-oriented ideology. With this ideological disposition, the Labour Proclamation of 1963 which was designed to treat employers and employees on equal footing in the formation of associations was superseded by another labour law (Proc. No.64/1975) that entitled employees to form trade unions without providing any similar opportunity to the employers. The ILO Committee of Experts was regularly criticizing and reminding Ethiopian authorities that their measure, in this regard, was in contradistinction with Ethiopia's obligation under the ILO Convention No.87 (Sommer: 2003). However, this discriminatory law remained in force until the demise of the military rule and subsequent repeal of its labour law in 1993.

On the other side however the labour law of the military rule reduced the minimum level of membership to form a trade union at the enterprise level to twenty employees, a figure less than half of the threshold of the preceding law. Indeed, workers were being encouraged to become members of trade unions as they were considered essential partners to the fulfilment of the centrally planned and command economy which was an important feature of the economy. As a result, encouraged by the new political setting, around 290,000 employees were organised under various industrial unions within a short period of time (Beyene, 2010:165).

Unlike during the time of the Emperor, where some employers were hostile towards trade unionists and union organisers, there was no fear of retaliation during the military regime as long as unions were not acting against the political system (Asseffa, 2010:19). Although private enterprises were nationalised, in some cases, the old management group remained in office to administer those enterprises as replacing the technocrats within short period of time was not practicable. Thus, trade unions were considered as '*vigilante groups*' entrusted with the role 'to check possible economic sabotages by the management group that was considered ideologically hostile to the new political system' (Daniel, 1986:125).

Moreover, the labour law of the military government included provisions which granted immunity to trade union leaders from managerial measures of control and discipline. For instance, with the coming into force of the Trade Unions' Proclamation of 1982, employers were prohibited from suspending a trade union leader from work on disciplinary grounds without prior

approval of the Minister.<sup>58</sup> Transfer of a trade union leader from one place of work to another was not lawful without the consent of the employee concerned or the prior approval of the Minister (Proc. No. 222/1982, Art. 26). Although taking disciplinary measure against employees and deciding on transfer of employees were conventionally among the managerial prerogatives, this law had significantly limited the power of the management over trade union leaders in this regard. It granted immunity to trade union leaders making the management powerless against them. However, the law's protection was limited to trade union leaders without according similar safeguards towards union organisers and union members.

In this state of affairs and on the perception that the then prevailing ideology was favourable towards trade unionism trade unions were extensively organised and, as of 1985, there were 174 first level trade unions made up of around 300,000 members across the country (Tamiru *et al*, 2005:127). Moreover, there was no law empowering the Ministry to suspend or dissolve associations except that it was authorised to refuse registration of an association on legally enumerated grounds in which case the association had the right to appeal to a court of law (Proc. No.64/75, Art.54).

There was, however, a trade-off against such a 'union-friendly' environment. The labour proclamation prescribed that it was only a single trade union that could be lawfully established at an enterprise level (Proc. No.64/1975, Art.49 (2)), thereby expressly declaring the 'unitary union' policy. It was also politically affiliated with the ruling party. At times, there existed an overlapping of responsibilities in the sense that trade union leaders were at the same time influential figures in the political structure. For instance in 1980s, the then President of the All Ethiopian Trade Union was at the same time a Central Committee member of the Workers' Party of Ethiopia (the only lawful and ruling party). The affiliation between the Party and the trade union was so intimate that the line of demarcation was blurred.

Interestingly, as indicated above, the Imperial regime had put legislative measures in place and employed surveillance activities to restrict trade unions from engaging in political activities. Conversely, the military government introduced a paradigm shift by encouraging trade unions to step into the political arena. Hence a degree of politicisation of trade unions was unavoidable. The politicisation of trade unions was not, however, a blank cheque given to the unions in that

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<sup>58</sup> The Minister as defined in the law was the Minister of Labour and Social Affairs (Proc. No.222/1982, Art.2 (7)).

they were not at liberty to make affiliation with any political party of their own choosing. On the contrary, trade union leaderships who were not politically allied with the military regime were subjected to ill treatment.<sup>59</sup>

An additional constraint was that the law made first level trade unions subordinate to higher ones (Proc. No.64/1975, Art.50 (4)). Article 50(7), for instance provided that ‘lower level trade unions shall be obliged to accept and implement the decisions of the higher trade unions’. Finally, the law provided for the establishment of an ‘All Ethiopia Trade Union’ as a single umbrella trade union at the national level (Proc. No.64/1975, Art.51 (2)) instead of leaving such issues to be decided internally by the unions themselves. As a result, first level trade unions were in effect treated as branch offices to the higher levels.

A further restrictive dimension relates to international affiliations. Article 51(2) of the labour law limited the establishment of international affiliation so that it could be undertaken only by the national association at the top without offering such an opportunity to first level or mid-level trade unions. Nevertheless, the relevant ILO conventions allow associations at all levels to freely establish international affiliations (ILO 1996, Para. 623). It is, therefore, arguable that the apparently favourable legal framework towards unionisation during the military government had a trade-off in terms of loss of autonomy and independence of the trade unions.<sup>60</sup>

As indicated previously, private employers were denied the right to associate under the military rule. As the government was the major employer even in the economic sphere due to the nationalisation of the major means of production, it can be said that there were few private employers, as such, to be organised. But there were numerous enterprises such as garages, bars and bakeries still under private ownership co-existing with the state ownership system (Clapham: 1987). In consequence, the denial to employers of the right of establishing associations was a decision more of ideological than practical considerations. Moreover, the command economy

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<sup>59</sup> Beyene Solomon, then Secretary General of the Confederation of Ethiopian Labour Union (CELU), in his book documented that the military regime had imprisoned (the author was detained for years without trial) and at times undertook extra-judicial executions on senior leaders of CELU including the likes of Markos Hagos (the then President of CELU) and Girmachew Lemma whom it considered were politically opposed to it (see generally; Beyene Solomon (2010) *Fighter for Democracy: the Saga of an Ethiopian Labour Leader*. (Baltimore: Publish America).

<sup>60</sup> The International Labour Conference was repeatedly and seriously criticizing the Ethiopia government on these issues. (see generally, Observation(CEACR)-adopted 1989, published 76<sup>th</sup> ILC session) (available at:[http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::No:13100\\_COMMENT\\_ID:2077703](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::No:13100_COMMENT_ID:2077703))

and the lack of managerial autonomy did not enable the State-owned enterprises to run their businesses in an economically rational way. Due to this, most State-owned enterprises, at the time, were loss making-thereby regularly being subsidised from the State treasury (Hishe, 2005).

This state of affairs suggested that, in the absence of a favourable policy environment towards private sector development economic growth would not be achieved and in the absence of economic growth, no matter how well labour rights might be articulated in paper, they would remain an empty shell. Thus the feasible way appears to be to strike a reasonable balance between providing an economic space for private sector development on the one hand and ensuring the promotion and protection of fundamental labour rights on the other.

The non-existence of employers' associations had an impact on the tripartite working systems of labour relations internationally. As indicated above, a tripartite country delegation comprising two government representatives and one from trade union and another from employers' association representatives have been expected to attend regular annual ILO Conferences. With the absence of a representative from the employers' associations, the Ethiopian government was trying to fill the representation gap from an alternative source.<sup>61</sup> Owing to such denial of the right of association during the military rule, employers were highly marginalised not only economically due to nationalisation of property but also organisationally. Thus, it may be argued that neither the employers nor the employees benefited from such an arrangement. Regardless of the outcome however the era of trade union regulation of the Imperial rule was transformed to an over-regulated trade unionism during the military regime in terms of autonomy, independence and political orientation of the unions.

### **3.9. The Downfall of the Military Rule: A renewed approach to Industrial Associations**

With the collapse of the military regime in 1991, a change in ideological orientation and a new economic policy were introduced. Communist-oriented ideology gave way to a capitalist path of development whilst the command economy was replaced by market-led political economy. The international climate since the early 1980s, as will be seen in Chapter 5, was one of economic

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<sup>61</sup> A former labour expert who was working at the Ministry of Labour and Social Affairs at the time recalled that 'at times, the Government was bringing in a representative of the Ethiopian Chamber of Commerce into the tripartite country delegation as a substitute for the representative of Employers' Association' ( 23 April 2009, Addis Ababa). The Chamber was mainly constituted to establish links between the business community and the government while employers' association mainly dealt with labour relations.

liberalisation mainly manifested through privatisation accompanied by, among other things, market and price deregulation. The fall of the Berlin Wall and the dismemberment of the ‘communist bloc’, in Central and Eastern Europe was also taking place at those times, thereby eroding the ideological basis for a highly visible state involvement in the economy.

Moreover, the poor economic performance under the military rule meant that a command economy had not been viable. It was even argued that ‘war and *Dergue*’s policies had left a crippled economy and an impoverished people’ (Addison and Alemayehu, 2001:2). Consequently, although the incoming force, the EPRDF which toppled the military government was a socialist in words and deeds<sup>62</sup>, it was neither willing nor capable of ignoring such a visible change of circumstances (Tamiru, *et al*, 2005:34). The national and international situation at the relevant time (1991) was not conducive to governments with leftist inclinations. Therefore, the EPRDF led Transitional Government adopted a market-led economic policy within six months after assuming power a policy which was incompatible with its former political orientation.

With a market-oriented and liberalised policy framework, the government declared its preparedness to withdraw from micro-managing state enterprises in order to providing autonomy and economic space for private sector development-except in those ‘key establishments’ for the economy (TEP, 1991). Hence, privatisation of State-owned enterprises, to be considered in Chapter 5 in greater detail, was commenced. In conformity with this political and economic disposition, a new labour proclamation which repealed that of the military government was issued in 1993. It was stated in the preamble for the proclamation that one of the rationales for its adoption was to ensure compliance of the labour law with the international [ILO] conventions and other legal commitments to which Ethiopia is a party.

More specifically where freedom of association is concerned, by contrast with the previous law which only granted the right to form association to the employees, the right to establish organisations was recognised and became even-handedly available both to employers and

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<sup>62</sup> The EPRDF was a united front of various ethnic political groups opposed to the military regime. The TPLF (Tigray People’s Liberation Front) which was more experienced and powerful at the time than the other members of the Front had an Albanian style Marxist- Leninist party at its leadership named ‘Marxist-Leninist League of Tigray’. (For a detailed discussion on the political orientation of the front; see *generally*, Aregawi Berhe (2008) *A Political History of the Tigray People’s Liberation Front (1975-1991): Revolt, Ideology and Mobilization in Ethiopia*). In fact, the author of the book, Mr. Aregawi Berhe himself was, at one time, a top leader of the TPLF.

employees (Art. 113 (1)). From the employees' perspective, the minimum level of membership to form a first level trade union was maintained at twenty by the Labour Proclamation of 1993. Moreover, neither political affiliation to the ruling party<sup>63</sup> nor subordination of first-level trade unions to that of the higher levels is express requirement for unions to operate. Finally, protection against anti-union discrimination has been explicitly legislated for the benefit of trade unionists, union organisers and trade union leaders (Art. 14(1)(d)).

This did not initially mean, however, the removal of all direct potential administrative control. The Ministry of Labour and Social Affairs, an administrative organ, was empowered to cancel the registration<sup>64</sup> of an association by providing thirty days prior notice specifying the reason(s) for cancellation and the opportunity to challenge it (Proc. No.42/1993, Art.120 & 121). This stipulation was inconsistent with the ILO jurisprudence which expressly stated that 'administrative dissolution of trade union organisations constitutes a clear violation of Article 4 of Convention No.87' (ILO 1996, Para. 665) to which Ethiopia is a party. Furthermore, the single trade union system of the military regime was also carried over to the subsequent labour proclamation (Proc. No.42/1993, Art.114 (1)).

However, with the adoption of Labour Proclamation No.377/2003 and the repeal to Proclamation No. 42/1993, further liberalisation towards union formation and administration has been observed. Accordingly, the minimum membership level to form a first-level trade union has been again reduced to ten by virtue of Article 114 of Labour Proclamation of 2003. This change further paves the way for employees of small enterprises to unionise. The possibility of forming more than one trade union in an enterprise (diversity of unions' policy) has also been expressly legislated for (Proc. No.377/2003, Art. 115(1)). Moreover, since the issuance of the Labour Proclamation of 2003, the power of the administrative organ to cancel the registration of an association has been withdrawn by the new proclamation. As a result, it is the regular court, as prescribed by the ILO jurisprudence, which has the power to decide on cancellation of

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<sup>63</sup> It is important to note however that the Transitional Government had confrontational relations with the All Ethiopian Trade Union of the time and the Ethiopian Teachers Association. The then President of the Trade Union, Dawi Ibrahim, went to exile in Europe in mid 1990s, alleging government persecution. Moreover, the then President of the Ethiopian Teachers Association was also prosecuted and convicted to serve 15 years of imprisonment on charges of treason in 1996 who was released from prison after serving six years of imprisonment (*see, supra note at 65*)

<sup>64</sup> In fact, the Ministry cancelled the registration of CETU when the leadership of the association had controversies with the government a measure which was bitterly and repeatedly criticized by the International Labour Conference in its observation reports of the late 1990s (*see, supra note at 65*).



registration issues. The right of the administrative body is limited to making application to the court to order dissolution of the association (Proc. No.377/2003, Art.120). With these legislative reforms, many of the outstanding issues as to the non-conformity of the previous law with ILO standards were addressed.<sup>65</sup>

Nevertheless, it may also be argued that the current labour law brought a fresh problem of its own from the standpoint of a suitable legal framework for trade unionism. This is associated with the exclusion of the management staff from joining trade unions and how the ‘management staff’ is defined. The ILO jurisprudence accepts the exclusion of ‘management and supervisory staff’ from union membership of non-managerial employees so long as they are allowed to form their own organisation as managerial employees are believed to be representing the interest of the employer at workplaces (ILO 1996, Para.231). However, the Committee on Freedom of Association of the ILO Governing Body is of the view that ‘(...) the categories of such staff [the management staff] are not to be defined so broadly as to weaken the organizations of other workers in the enterprise or branch of activity by depriving them of a substantial proportion of their present or potential membership’ (ibid, Para.232). Similarly, the ILO Committee of Experts on the Application of Conventions and Recommendations has been of the view that the ‘scope for managerial staff should not be defined so widely as to weaken trade unions by depriving them of a substantial proportion of their potential membership’ (ILO 1994, Para:66).

It should be recalled that the labour proclamations of the previous regimes (i.e. the Emperor and the military government) defined the ‘management staff’ from the organisational structure perspective whereby ‘only those officials directly accountable to the General Manager or his [her] deputy were categorised within it and hence excluded from trade union membership’.<sup>66</sup>

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<sup>65</sup> The explanatory note prepared and submitted by the Ministry of Labour and Social Affairs when the draft proclamation was presented to the parliament for deliberation and adoption provided the need to make the domestic law in conformity with the ILO standard as one of the reasons for the introduction of the new labour law (*Report available in Amharic at the archives of the Ministry in Addis Ababa*).

<sup>66</sup> Under Proclamation No. 210/1963; exclusion was made by title in that a manager, director or a person performing similar duties on behalf of the employer was categorized as a member of the management team and hence excluded from the application of the labour law. Similarly, based on Proclamation No.64/1975 ‘management staff’ was defined structurally in the sense that any official who was accountable to the General Manager or to the deputy thereof fell within the category and hence excluded from unionisation. Under the existing law, ‘management staff’ has been defined in terms of function in the sense that it was the function rather than the post one occupies in the structure of the enterprise concerned that will determine. Managerial functions have been broadly defined to include not only policy formulation and strategic decision making but also recruitment and disciplining. In a decentralised enterprise structure, the latter particularly disciplining, could be undertaken by lower supervisors as a result of which they are excluded from membership. (*For more elaborated understanding it is advisable to compare; Art. 2(f)*)

The residual part of the labour force outside of this structural linkage was entitled to establish or join trade unions of their own choosing.

The existing labour law, however, defines the ‘management staff’ from the angle of the function the employee performs rather than the post he assumes in the enterprise’s organisational structure. Accordingly all employees engaged in managerial functions, regardless of their structural position are considered to be members of the management staff. For the purpose of the present law, managerial function includes, *inter alia*, possessing the power to ‘(...) take disciplinary measure (...)’ (Proc. No.377/2003, Art.3 (2) (c)). Disciplinary measures, for their part, range from the issuing of a written reprimand or-even an oral warning for that matter- to imposing disciplinary dismissal decisions. Hence, as far as the formulation of the law is concerned, any employee who is authorised to hand down any or many of such measures is categorised as a member of the management team. According to a senior member of CETU<sup>67</sup>, the broad definition accorded to the ‘management staff’, excluded appreciable number of potential members from union membership, thereby making unions weak economically and in leadership quality.

The government’s position seems ambivalent in this regard. On the one hand the desire to respond positively to the ILO’s outstanding concerns on the non-conformity of the labour laws with Ethiopia’s obligations led to their prescribing lower threshold of membership for trade union formation, protection against anti-union discrimination, free international affiliation of trade unions and immunity of trade unions from administrative dissolution. On the other hand the interest to create a strong management team at workplaces for the benefit investors resulted in significantly limiting the trade union membership recruitment range due to broadly defined exclusion.

### **3.10. Summary**

As with the development of organised labour movements elsewhere, unionisation in Ethiopia was transformed from self-help associations to fully-fledged trade unionism overtime. Although

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(1) of proclamation No.210/1963; Art. 2(27)(g) of Proclamation No.64/1975 and Art.3(2)(c ) of Proclamation No.42/ 1993 and 377/2003)

<sup>67</sup> Interview conducted with one of the top leadership of the Confederation of the Ethiopian Trade Unions (CETU). Detailed contents of his interview will be reproduced in Chapter 6 of the study.

Ethiopia was one of the oldest members of the ILO and although the ILO Constitution required Member States to accord freedom of association as a matter of urgent importance, it had to wait for forty years (1923-1963) before introducing the law on freedom of association. Even after forty years it could be argued that it was mainly due to pressure from the labour force together with favourable regional and international situations rather than governmental political will that the law was brought into being.

At a time when many countries in colonial Africa had laws on trade unionism which through time paved the way for the establishment of vibrant trade unions which were instrumental in the struggle against economic exploitation and colonisation, the Imperial regime of independent Ethiopia was wary that organised labour would endanger the very foundation of the absolute monarchy of the royal dynasty. The Imperial view was that social peace could be maintained by denying the collective rights rather than granting them. From this perspective, it can be said that the fact that Ethiopia was not physically colonised by any foreign power did not bring about any better protection for labour rights. Petitioning the Emperor for justice and at times strike or threat of strikes was the modality the labour movement had adopted as a course of action.

However, with the attempt to introduce modernity to the traditional Ethiopian society through legal reform in early 1960s, a policy of suppression of trade unionism gave way to recognising trade unionism but accompanied by restrictions from engaging in any political activities. Only apolitical trade unions were tolerated. A dramatic change of direction came with the military period with highly centralised and partisan approach to trade unionism in which politicisation of trade union, 'single trade union system' and 'democratic centralism' in trade union administrative structure were introduced and right to associate for employers was denied. Finally the labour law of the post-military rule progressively adopted more liberal positions. Thus the general pattern of the legal framework for trade unionism has moved from suppression to regulation, and from regulation to over-regulation; and finally from over-regulation to minimal regulation. The pattern reflected the economic and political disposition of the three regimes in that the over-regulation was associated with the command economy of the military rule whilst the minimalist regulation has been correlated with the market-oriented economy.

Generally, although the development has been slow and incremental, and at times registering significant regression, the general trend is that the ILO conventions on freedom of association

have positively influenced the contents of the successive Ethiopian formal labour laws as many of the stipulations of the conventions have been incorporated overtime. However, due to lack of uniform and consistent policy towards unionisation by the three successive Ethiopian regimes industrial associations have been weak owing to lack of continuity.

An ILO Country Report<sup>68</sup> on ‘Decent Work Country Programme’ on Ethiopia has summarised the situation in the following manner:

Trade unions were first created in 1945[sic], and have been largely under the control of the government most of the time, particularly under the communist regime until 1991. The employers established a national federation in 1965[sic], but did not become a significant organization until 1990s. Both social partners re-establish themselves in 1997[sic], following the change that occurred in the political and legal frameworks after the fall of the communist regime in 1991 (Decent Work Country Programme (DWCP) – Ethiopia (2009-2012) (2009:4).

As a result, unlike the colonial and post-colonial Africa where vibrant labour movements existed in many countries, labour movement in Ethiopia has not been strong and vocal in economic, social or political issues. However, the fact that the labour force was concentrated in the ‘industrial corridor’ which is also in close proximity to the centre of the politic pressed the successive regimes in Ethiopia to put the labour force at close surveillance. In practical terms, their role in the political arena was very minimal except during the time of the military regime where they were considered as vigilante group to protect nationalised means of production. How and to what extent the weakness of trade unionism affected the overall activities of the labour movement will be explored in the subsequent chapters.

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<sup>68</sup> Available at: [http://www.ilo.org/public/english/bureau/program/dwcp/download/ethiopia.pdf/\(visited](http://www.ilo.org/public/english/bureau/program/dwcp/download/ethiopia.pdf/(visited) on 30 June 2010)

## Chapter 4 The Development of Legal Frameworks for Collective Bargaining in Ethiopia

### 4.1. Introduction

This chapter assesses issues pertaining to the development of laws on collective bargaining and collective agreements in Ethiopia and tries to identify whether it has any distinctive aspects to be considered in the light of the international experience. The first part is intended to highlight a general overview of the development of collective bargaining and the challenges facing it in an era of globalised economic order. The discussion for the Ethiopian legal framework in this regard will follow thereafter.

Although ILO Convention No.98 on the Right to Organise and Collective Bargaining did not itself provide a definition as to how ‘collective bargaining’ should be understood, the Collective Bargaining Convention (No.154 of 1981), defines it in the following manner in Art.2:

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

By negotiation is meant any formal or informal discussion between the social partners with a view to arriving at an agreement on issues of common interest and benefit (Gernigon *et al*, 2000:35). Collective bargaining served as a method or process of rule making of a private nature (Schregle, 1993:435) which is intended to regulate the relations of both negotiating parties. It is also a way of attaining beneficial and productive solutions to potentially conflictual relations between the social partners (ILO, 2008: Para.12). In effect, collective bargaining is a process in which the social partners to industrial relations are left on their own to regulate and manage their industrial relations by their own through a ‘give and take’ mode of operation.

Leaving the parties alone does not, however, imply that the State has no role in collective bargaining. On the contrary, it has an irreplaceable role in establishing a suitable environment for the parties by laying down the basic rules of the game for negotiation and in some cases to mediate and conciliate between the negotiating parties. There are jurisdictions where organs of

the state have been entrusted with the responsibility to enforce the terms of the collective agreement and provide sanctions for breach of the agreements in a manner similar to any other breach of contract. Some other systems rely on extra-judicial sanctions such as industrial action for the enforcement of the terms of an agreement. In short, collective bargaining is a regulatory mechanism of private nature for industrial relations.

As indicated in Chapter 2 many States intervened in individual labour relations by prescribing substantive benefits in the form of ‘minimum labour conditions’ which employers are required to ‘meet or exceed’ in their dealings with individual employees or their collectivity. The nature of State intervention in collective bargaining is, however, primarily limited to drawing up procedural mechanisms to be complied with by the parties when seeking to reach an agreement. It is for the parties to determine and fix the substantive matters by themselves. While the intervention of the State in individual labour relations is prescribing substantive issues, it usually has more of a procedure establishing role in cases of collective bargaining.

However, the sort of facilitative role by the state suggested above is not inevitable. Indeed, in earlier periods of industrial relations, collective bargaining was considered as a ‘restraint of trade’ and hence inconsistent with then prevailing free market economic philosophy (Davies, 2004:4). It was feared that such ‘concerted action’ would give a monopolistic power to employees to take away profit and power from employers and was viewed with hostility by the latter (Hameed, 1970:542). As a result, both the formation of trade unions and collective bargaining were held to be undesirable working systems, with market distortion effects, within the framework of the freedom of contract and market-oriented economy. In fact, such an understanding persists even in recent times (Sengenberger, 2006:351).

Even after unionisation was tolerated and had eventually become permitted, collective bargaining did not necessarily operate simultaneously with unionisation because ‘recognition’ of trade unions for collective bargaining purposes remained at the discretion of the employers. Hence, in many countries collective bargaining was left to ‘private ordering’ even after freedom of association was legally recognised. In such an arrangement well organised and strong trade unions succeeded in bringing reluctant employers to the bargaining table through collective action or the threat of such action (Davies, 2004:183). Conversely, poorly-organised and weak unions did not succeed in obtaining recognition from employers. Therefore, the decision whether

or not to undertake collective bargain was the private decision of the parties, mainly of the employers.

Within the ILO legal framework, the scope of the right to collective bargaining lacked sufficient clarity. Even though the ILO Constitution of 1919 had an explicit statement on the right to freedom of association, it was silent about the issue of collective bargaining. Similarly, although the Philadelphia Declaration (1944), which has been an integral part of the ILO Constitution, indicates ‘the recognition of effective collective bargaining’, it was not made part of the four ‘fundamental principles on which the Organisation is based (*see, p.43, foot note, 40*).

Moreover, ILO Convention No. 87, which regulates the right to freedom of association in a detailed manner, is directed towards regulating the autonomy and independence of associations from governmental interference (Wedderburn, 2003:246) rather than regulating the relationship of the social partners. Art. 10 of the Convention merely indicated the objective for formation of association to be ‘furthering and defending the interest of the members’. More importantly, the ILO Convention No.98 <sup>69</sup> of 1949 on the Right to Organize and Collective Bargaining failed to expressly provide for the right to collective bargaining. It rather limited its regulatory scope to the prohibition of interference by the social partners with each other and prohibits anti-union discriminations of various types. Therefore at the international level too, the right to collective bargaining was not expressly spelt-out even if freedom of association was regulated and legally recognised.

It may be argued that in most cases formation of association is not an end in itself. It is rather to protect members’ interests that associations are formed. It could, thus, be contended that freedom of association should be interpreted to include the right to collective bargaining (Macklem, 2005:65) because one of the measures for ensuring members’ interest is believed to be collective bargaining. The Committee on Freedom Association of the ILO Governing Body has interpreted the right to freedom of association to encompass ‘the right to bargain freely with employers with respect to conditions of work as it constitutes an *essential* element in freedom of association’ (...) (ILO 1996, Para:782; *emphasis added*).

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<sup>69</sup> Convention concerning the Application of the Right to Organise and to Bargain Collectively (Convention No.98) adopted at the 32<sup>nd</sup> Session of the International Labour Conference.

At supra national level, a similar conclusion has been reached by the European Court of Human Rights, in interpreting Art. 11 (1) of the European Human Rights Convention<sup>70</sup>, which is similarly phrased to that of other human right instruments. Accordingly, the Court in *Demir and Bayraka v. Turkey*, through the evolution of case-law,<sup>71</sup> held that ‘the right to bargain collectively with the employer has, in principle, become one of the *essential* elements of the rights to form and to join trade unions for the protection of one’s interests’ (paragraph:154; *emphasis added*).

It might even be noted that the ECJ has taken the interpretation a step further. The ECJ<sup>72</sup> in disposing cases before it such as *Viking*<sup>73</sup> and *Laval*<sup>74</sup> consistently held that the right to freedom of association appearing in the various international and regional instruments implicitly grants the *fundamental right to collective action* (*Viking*, Para:77; *Laval*, Para:91; *emphasis added*). Indeed, the Court interpreted the phrase ‘collective action’ not only in the limited sense of collective bargaining but further extended its meaning to include the right to strike (*Viking*, Para:44). As a result, although there is no explicit provision on the right to collective bargaining in the various instruments, through a purpose-oriented interpretation, the right to collective bargaining was read into ‘the right to form or join a trade union to protect one’s interest’.

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<sup>70</sup> Convention for the Protection of Human Rights and Fundamental Freedoms; available at: <http://www.echr.coe.int/nr/rdonlyres/d5cc24a7-dc13-4318-b457-5c9014916d7a/0/englishanglaia.pdf> (accessed on 27 May 2010)

<sup>71</sup> The Court initially considered that ‘Art.11 did not secure any particular treatment of trade unions such as a right for them to enter into collective agreements’ (see, *Swedish Engine Drivers Case*). It [the Court] further stated that this right [the right to enter into collective agreement] in *no way constituted* an element necessarily inherent in a right guaranteed by the convention (see, *Schmidt and Dahlstrom*). At a later date in time, the Court slightly modified its position in stating that ‘even if collective bargaining was *not indispensable* for effective enjoyment of trade union freedom, *it might be one of the ways* by which trade unions could be enabled to protect their members’ interests (see, *Wilson, National Union of Journalists and others*). In the present case, the Court held that ‘(...) having regard to the developments in labour law, both international and national, and to the practice of contracting parties in such matters, the right to bargain collectively with the employer has in principle, become *one of the essential elements* of the right to form and to join trade unions for the protection of [one’s] interests (...)’ (Paragraph:154) In order to justify such a flexibility, the Court reasoned that: ‘(...) *the Court considers that its case-law to the effect that the right to bargaining collectively and enter into collective agreements does not constitute an inherent element of Article 11 should be reconsidered, so as to take account of the perceptible evolution in such matters, in both international law and domestic legal systems. While it is in the interest of legal certainty, foreseeability and equality before the law that the Court should not depart, without good reasons, from precedents established in previous cases, a failure by the Court to maintain a dynamic and evolutionary approach would risk rendering it a bar to reform or improvement*’ (paragraph: 153; See, generally *Demir and Bayraka v Turkey, Application No 34503/97*, 12 November 2008).

<sup>72</sup> It has been renamed as the Court of Justice of the European Union- (EU-Court) through the Lisbon Treaty since 01 December 2009.

<sup>73</sup> Case C-438/05, *International Transport Workers’ Federation and Finnish Seamen’s Union v Viking Line ABP and OU Viking Line Eesti* (Judgement 11 December 2007)

<sup>74</sup> Case C-341/05, *Laval un Partneri Ltd v svenska Byggnadsarbetareförbundet and others* (Judgement 18 December 2007)



Ethiopian legal system, as will be seen below has expressly recognised the right to collective bargaining both in its Constitution and labour laws rather than relying in the interpretation of the enforcement machineries.

However, even when the right to collective bargaining is recognised expressly or implicitly, there remains another outstanding issue. Whether the right to collective bargaining for one party would impose a duty on the other party to appear for bargaining against its will needs to be resolved. In this connection, the Committee on Freedom of Association has held that ‘Member States should ensure collective bargaining assumes a voluntary character and not entail recourse to measures of compulsion which would alter the voluntary nature of such bargaining’ (ILO 1996, Para:845). This seems to imply that collective bargaining is a juridical act that should be entered into voluntarily and hence neither party would be compelled to bargain unwillingly. Similarly, Gernigon *et al* (2000:52) have contended that collective bargaining may not be imposed by law on the parties.

The European Court of Human Rights appeared to have held similar position in this regard. In *Wilson v. UK*<sup>75</sup> while interpreting Art.11 (1) of the European Convention of Human Rights, the Court accepted that the right to organise and join trade unions for the protection members’ interests should enable trade unions to engage in collective action towards that end (*Wilson*, Para:42). However, the Court stated that Article 11(1) should not be construed as imposing an obligation on the employer to engage in collective bargaining against its will (*Wilson*, Para: 44). The Court was of the view that the Convention did not impose a duty on an employer (a private actor) to bargain without its consent. The Convention is rather addressed to the State, the public power, to ensure that unions are not prevented from representing their members in negotiations with a view to regulating working conditions with their employers.

It is worth noting, however, that Article 4 of ILO Convention No. 98 obligates Member States ‘to take, where deemed necessary, measures appropriate to national conditions to encourage and promote the use of collective bargaining with a view to regulating conditions of employment’. It seems to offer ‘a margin of discretion’ to nation states to undertake measures, including legislative measures, which they consider necessary and feasible in order to encourage and

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<sup>75</sup> *Wilson, National Union of Journalists and Others v. the United Kingdom*, Applications Nos.30668/96, 30671/96 and 30678/96 (Judgement 2 July 2002) ECtHR.

promote collective bargaining appropriate to their particular circumstances (Davies, 2004: 177). This interpretation has been reinforced by Article 5 (1) of the ILO Convention No.154 which prescribed that ‘measures adapted to national conditions *shall be taken* to promote collective bargaining’ in order to make collective bargaining practicable and effective’ (emphasis added). As a result, it could be argued that Member States are within their duty of promoting collective bargaining if they prescribe mandatory procedures for collective bargaining so long as they do not impose an obligation on the parties to reach an agreement.

It thus seems that how to encourage and promote collective bargaining has been left to Member States as a result of which they are entitled to come up with facilitative legislation towards bargaining (Ewing and Hendy QC, 2010:31). In fact, Schregle contended that ‘in most countries of the Third World [developing countries] governments cannot sit back and adopt a purely passive role in industrial relations but must, in a spirit of innovation and imagination, take the initiative in promoting sound industrial relations through legislation and promotional action’ (1976:5).

Due to these divergent views as to the scope of the right to collective bargaining, national labour laws adopt heterogeneous positions in this respect.<sup>76</sup> In some jurisdictions the right to bargain collectively merely imposes a negative duty not to interfere in the other party’s collective representations while in others it goes as far as imposing a positive duty to bargain on the other party on pain of sanction (Gladstone and Ozaki, 1975:186; ILO 1994, Para: 243). In particular, the desire of nation states to maintain harmonious industrial relations and to avoid or limit frequent industrial action compels them to resort not only to draw up a facilitative legal framework for bargaining but also to impose a duty on the social partners to bargain. In support of such a pro-active governmental measure, Cox remarked that:

By imposing the duty to bargain what the law actually does is to escort the trade union representatives to the door of the employer and say, ‘here they are, the legal representatives of your employees’. What happens behind the doors is not inquired into and the law does not seek to inquire into it (...) (1958:1402).

Similarly, Davies has also been of the view that:

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<sup>76</sup> For detailed presentation of the issue, *see generally* Alan Gladstone and Muneto Ozaki, (1975) ‘Trade Union Recognition for Collective Bargaining Purposes’. *International Labour Review*. Vol.112, Nos.2-3, pp. 163-189

Where the union has a high level of support but cannot persuade the employer to bargain, the law should intervene. This would not contradict the inherent voluntariness of negotiations because the law only forces the employer to take part in the procedure, not to reach a particular agreement (2004:185).

#### **4.2. Current Challenges to Collective Bargaining**

Even though the Convention on the recognition of collective bargaining (1949) was adopted one year after the adoption of the Convention on Freedom of Association and Protection of the Right to Organize (1948), due to the interdependence of the two instruments, their developmental pattern has mainly been inseparably linked. It is contended that effective collective bargaining could be best served in situations where there exists an independent union committed to the interests of its members. In this sense unionisation is a basic prerequisite for collective bargaining (ILO, 2008: Para.15). Conversely, collective bargaining enables the labour force to articulate an organised voice in industrial relations, thereby strengthening unity and solidarity of the labour force.

It was noted in the preceding chapter that there have been challenges of production decentralisation and measures of regulatory competition and, at times, hostility towards unionisation in the global economic order. Similar challenges are prevalent with respect to collective bargaining. In fact, the employers' uneasiness to union formation under the stiff competition of globalisation mainly emanates from the fear that organised labour will, in the final analysis, seek to establish collective bargaining with a possible outcome where the amount of profit and managerial power available to the employer becomes more limited. Thus, it could even be argued that, from the employers' perspective, it has been mainly to pre-empt collective bargaining that unionisation has been held at bay.

Notwithstanding the claim that organised labour is more beneficial to the employer than a non-organised workforce in terms of productivity, efficiency and stability (ILO 1996, Para. 847) there still exists in many cases a constant and consistent fear by employers towards unionised labour. The source of such a concern has commonly been the perception that collective bargaining would enable unions to raise wages and other benefits above productivity levels, thereby adversely affect competitiveness. In particular, the intense global competition raised the extent of

the fear to the highest level as multiple competitors originating from diverse locations with heterogeneous labour standards compete at international markets. The perception is that products originating from those jurisdictions where higher labour standards apply tend to be uncompetitive due to high labour cost associated with it. 'Employers argue that diminished labour standards are needed in order to be globally competitive' (Compa, 2006:4). However, such an understanding fails to appreciate the fact that while low labour cost may be associated with demotivation and low productivity, higher labour standards are also likely to bring about motivated, initiated and productive labour force. This implies that it does not necessarily follow low labour standards is associated with competitiveness.

Nonetheless it is indisputable that fear of an organised voice in the workplace is present in many cases. As manifestations of such a fear, there have been instances where companies have threatened to relocate if workers propose collective bargaining on the anticipation that collective bargaining may propose for better concession for the labour force, thereby increasing cost of labour. As mentioned in the previous chapter, in the global economic order various multilateral and bilateral arrangements and agreements have been put in place and created conducive condition for capital to move freely across national borders with little or no restriction. This ease of capital mobility provides capital enhanced bargaining leverage against trade unions (Hayter, 2009:30). Faced with the possible flight of capital and jobs, trade unions could not afford to risk taking an action detrimental to the interest of their members (Boeri *et al*, 2001:120). Hence, there are views that the role of collective bargaining and the power of trade unions in protecting the interests of labour have been on the decline (Rodgers, 2005:3).

The general impression is that collective bargaining has been weakened as globalisation 'boosts the bargaining [power] of capital at the expense of labour' (Neumayer and Soysa, 2007:1532). Even where collective bargaining results in collective agreement, 'legal requirements that conditions of employment remain in place when collective agreements expire and negotiation for new agreements are still underway have been eliminated' in labour law reforms in many countries (Compa, 2006:8). Earlier the position towards collective agreement, for instance in Ethiopia, was 'unless replaced by another collective agreement, conditions of work, benefits and other workers' rights stipulated in a collective agreement shall remain in force' (Proc. No.42/1993, Art.133(2). As will be seen later in this chapter (*p.91*), this position of Ethiopian

labour law has been withdrawn since the adoption of the Labour Proclamation of 2003. These phenomena indicate that collective bargaining and its outcome are at risk.

In addition to the economic factors favouring capital over labour mentioned above, influential supra-national institutions such as the ECJ seem to adopt an interpretation that tended to make the right to collective bargaining subordinate to the right to the freedom of movement of capital and other economic freedoms. For instance, the ECJ held that the right to collective action is a fundamental right but it might be subject to limitations for the benefit of other rights in the EU Treaty (*Viking*, Para: 90). According to the Court, without prejudice to its fundamental nature, collective action should not be exercised and applied in a manner that will restrict ‘economic freedoms’ emanating from the EU Treaty such as ‘freedom of establishment’ and ‘freedom to provide services,’ thereby granting unfettered opportunity of relocation for economic establishments within the borders of Member States.

Although the ECJ accepted the right to collective action as a fundamental right, it, nonetheless, held that collective action is not an absolute right but rather its exercise must be reconciled with economic rights such as ‘freedom of establishment’ and freedom to provide services in accordance with the principle of proportionality and provided that there is no other least restrictive measure to attain the objective (*Laval*, Para: 101). The Court’s view is that ‘freedom of establishment and freedom to provide services are to be exercised freely while collective action is to be employed *on condition* that it does not impose disproportionate restriction on these freedoms’ (Davies, 2008:141; *emphasis added*). The holding of the Court tended to accord higher emphasis on the economic goals to which social goals can readily be sacrificed.

This perspective can also be seen, arguably in a more extreme fashion, in the approach of the WB. The WB’s influential annual survey entitled *Doing business*, assesses the level of business friendliness of the various countries in the world and allocates grades to them. The rankings in ‘*Doing Business*’<sup>77</sup> use ‘Employment Indicators’ such as ease of hiring and firing with the

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<sup>77</sup> For the 2013 *Doing Business* publication, the WB claimed that Employment Indicators have not been considered for ranking purposes (Available at: <http://www.doingbusiness.org/methodology/employing-workers>) Although it could be said that it is a good step to disregard (rather than retaining ) the Employment Indicators from the ranking check list, it would have been much more constructive had compliance with core labour rights including freedom of association and collective bargaining have been given credit in the ranking exercise.

outcome that in some degree the lower the cost of hiring and firing, the higher grade the country receives. It does not take into account the candidate country's compliance or non-compliance with the 'core' labour rights as these are not included in Bank's check list. In so doing, it awards low grades, among other things, to those whose laws comply with the ILO's international standards whilst highest points are accorded to countries which deny freedom of association and the right to collective bargaining (Faundez, 2010:14).

Faundez has a valid concern when he pinpointed the implications of the *Doing business* publication in which business-friendly and flexible labour markets have been encouraged. However, his contention that the *Doing business* material allocates highest grades for those countries that deny freedom of association is not strictly accurate because it is not for denying freedom of association that they have been accorded higher grades in the assessment. It is rather for adopting flexible labour markets in terms of such matters as ease of hiring and firing of employees that higher marks has been allotted. This is not to deny that the WB approach as manifested in *Doing Business* may have an adverse effect on collective bargaining but it would be indirect rather than a direct and explicit one.

The approaches of the ECJ and the WB described here all tend to suggest that collective bargaining has been exposed to challenges of various legal and practical constraints. Moreover, in domestic setting, although African experience was not included in his national reports, Compa summarised various national reports indicating that in some jurisdictions 'national courts have been influenced by globalisation debate to favour employers' interests and more receptive to changes in the economic winds' (2006: 12), thereby adopting investment-friendly interpretations at the expense of labour rights.

Despite the precarious situation in which collective bargaining has found itself, studies have shown that collective bargaining has been instrumental in creating industrial peace, productivity and equitable income distribution. For instance, empirical studies found a positive correlation between workers' participation in decision making on the one hand and workers' motivation and productivity on the other (ILO, 2004:16). One way of enabling workers to participate in decision making is through collective bargaining. Palley also argued that '(...) by allowing for formation of independent trade unions that bargain collectively, recalibration of the system of income distribution could be ensured' (2004:30). Furthermore, Hayter argued that '(...) countries with

strong collective bargaining institutions including strong trade unions and employers' organizations, high levels of collective bargaining coverage (...) are those with better measures of income distribution' (2009:35). Critics of globalisation accuse the global economic order of aggravating an inequitable benefit sharing within social groups both domestically and among states internationally (Stiglitz, 2002:248). It is thus claimed that strengthening collective bargaining institutions would have added value to the credibility, legitimacy and sustainability of the new global economic order.

However, under the global economic order the tendency has been mainly to view collective bargaining as a man-made constraint against the smooth and natural course of the market (Deakin and Morris, 2009:691). Consequently, developing countries and transition economies that are engaged in economic reforms and adjustment programmes have been advised, by multilateral lending and donor institutions, to sidestep strong labour institutions due to the perception that such institutions are obstacles to the smooth running of the anticipated reforms (Tekle, 2010:28). Thus, nation-states particularly in the developing world have been unable or reluctant to exert pressure to adjust the power imbalance between capital and labour.

In order to fill the regulatory gap emanating from the unwillingness or inability of state actors in this regard, 'self-regulation' of companies through corporate code of conducts towards voluntary compliance with labour standards has been proposed as a feasible measure of protection. Moreover, certification of companies by independent firms for 'socially responsible production process' was also proposed as another option to ensure compliance with labour standards among which the right to collective bargaining is one (Blackett:2004).

However, trying to resolve the issue through self-regulation or certification of companies does not seem a reliable way of tackling the problem. Firstly, many certification firms have been much more interested in environmental issues, and if they show any concern for labour friendly production processes this tends to revolve around an audit of the non-occurrence of forced labour, child labour and non-discrimination (Compa, 2006:24). Secondly, corporate code of conducts or certification exercises will have meaningful effect if their implementation is impartially monitored. In reality, however, monitoring activities are being conducted in the form of in-house audit through self assessment, hired auditor or retained 'independent' private consultants without the involvement of public actors or other stakeholders (Neal, 2008:472;

Hepple, 2005:87; Blackett, 2001:7). In effect, companies are becoming rule makers and judges in their own cause. It is even argued that these mechanisms are more of public relation exercises aimed at preventing damage to the reputation of corporations (Locke *et al*, 2006:6). In the words of Arthurs '(...) codes of conducts help them [transnational companies] pacify workers, neutralize unions, and reassure NGOs and governments' (2002: 479). As a result, efforts to enforce core labour standards through measures and activities of private and voluntary nature, though necessary and important, do not also seem sufficient and effective to be fully relied upon.

The ILO, which is entrusted, amongst other responsibilities, with promoting collective bargaining, seemed to find itself also in a challenging position in its effort to promote and protect collective bargaining in the global economic order. With due credit to its effort and success in incorporating the right to collective bargaining as one among the 'core' labour rights, effective collective bargaining in many cases appears to be an aspiration. Presumably by considering the reality on the ground where capital occupies a strong bargaining position over labour, the ILO began to employ softer terminologies of industrial relations such as 'social partners', 'social dialogue' 'consultation' and 'consensus' instead of more pressing relationship and binding arrangements such as 'bargaining agents', 'collective bargaining' and 'collective agreement' (Standing, 2010:314) in formulating its recent working documents. It does not mean that the soft and more of co-operational, rather than conflictual, terminologies are ineffective to industrial relations. It only means that they tended to manifest a milder commitment to the concern of collective labour. By realising these facts, Davies remarked that 'globalization is often regarded as having created an 'identity crisis' for the ILO' (2004: 56).

In summary, although the positive contribution of collective bargaining in bringing about industrial peace, productivity and competitiveness seemed to obtain visibility to a certain extent; and even though its role in bringing about fair and equitable distribution of wealth and power between the social actors is also noted, it appears that collective bargaining finds itself in a precarious condition. In particular, in the African continent, the role of collective bargaining has diminished due to, among other things, the withdrawal of the State from the economy, the expansion of the informal sector and the casualisation of employment (Koser and Hayter: 2011). Bearing in mind the above mentioned broad context, the remaining part of this chapter will examine the Ethiopian situation on the subject in order to determine whether it is distinctive.



### 4.3. Emergence of Collective Bargaining in Ethiopia

The proposition that the history of collective bargaining has been co-extensive with the history of unionisation since the former would not be meaningful and effective in the absence of the latter seemed to hold good in the Ethiopian context, too. Undeniably, there was an instance where the workers' association at the Franco-Ethiopian Railroad Company had ever since the late 1940s bargained and obtained concessions from the employer prior to the issuance of the 1963 labour law that paved the way for unionisation and collective bargaining, however, this was an isolated incident rather than a general rule.

Even though the 1955 Revised Constitution recognised 'the right to freedom of association' as a constitutional right, the subsequent instrument, the Civil Code of 1960, contained provisions only applicable for the establishment of 'not for profit' civil associations. Thus, there was no law for the regulation of issues relating to recognition of unions, negotiation procedures, or the scope and status of collective agreements.

Even where the Civil Code mentioned collective bargaining, the reference was formulated in such a way that collective bargaining remained a voluntary engagement in which the government undertook no role to prescribe 'recognition' and other rules and procedures for collective bargaining (Civil Code, Art. 2516). Thus employers were at liberty to extend or deny recognition to associations of employees. Employees of large companies such as the Franco-Ethiopian Railroad Company had frequently employed their power of collective action and sanction in the form of wild-cat strikes to obtain 'volunteerism', thereby bringing reluctant employers to the bargaining table. However, the Ethiopian Penal Code of 1957, in its Article 570 (1) had the following proscription:

Whosoever, by intimidation, violence, fraud or any other unlawful means, whether alone or with others, compels another(...) to refuse or withhold his labour, with the object of imposing on an employer by force the acceptance or modification of terms of employment is punishable upon complaint with simple imprisonment or fine.<sup>78</sup>

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<sup>78</sup> This provision of the Criminal Code has been carried forward into the current Criminal Code (Proclamation No.414/2004; Art.603 (1)). However, as there are clear procedures to be followed to call upon a strike under the current labour law, the applicability of this criminal law provision has to be examined by reference to the labour provisions to determine whether it is a lawful or a criminal act.

What the express words of that provision of the Penal Code criminalised was ‘intimidation, compulsion, fraudulent act or any other unlawful act upon another’. It could, thus, be argued that *persuading* another to withhold his service with the object of imposing on the employer terms of employment was beyond the scope of the Penal Code and hence non-punishable. The problem, however, is, at the margin and in practice, it is difficult to demarcate exactly where *persuasion* ends and *intimidation* or compulsion begins. Although not ‘tried and tested’, a strike or threat of strike with a view to bringing the employer to the bargaining table theoretically carried with it a criminal liability at the time. In particular, the fact that the Penal Code of 1957 was adopted subsequent to the promulgation of the Revised Constitution of 1955 placed the political commitment of the Imperial regime towards collective bargaining in a highly questionable position.

Here again, once a collective agreement was signed by the parties, the Civil Code required the *approval* of the collective agreement by ‘competent public authorities’ for its validity (Civil Code, Art.2517 (1)). As a result, the parties had no ultimate control over the contents of collective agreements. Given the fact that the terms of the collective agreements might have an impact on the general interest of the public and the national economy at large, it seemed that government intervention in content verification was considered appropriate. The approval mechanism might also be necessary in order to ensure that the terms of the collective agreements did not fall below the legally stipulated minimum labour condition of the Civil Code.

Indeed, the duration of the collective agreement was also to be fixed by the law. The duration was limited by law to one year after which either party might terminate it by giving six months’ prior notice to the other party even if contrary provisions were spelt out in the collective agreement (Civil Code, Art. 2517(2)). Based on these arrangements, whether to conduct collective bargaining and the manner of conducting thereof was left to the decision of the parties. But once collective agreement was reached it was no longer the parties’ private affair as the competent public authorities (the government) were empowered to step in to deal with content verification and determination of the agreement’s life span.

Consequently the government appeared to be in a dilemma between regulating and deregulating the collective bargaining and its outcome in that it deregulated the process but regulated the substance and the duration of validity. Under subsequent labour laws, as will be seen later, the

authority of public authorities has been limited to *registering* (not to approving) the collective agreements. The content and the duration of the collective agreement are to be fixed by the parties and it is only if and when the parties fail to spell out the duration that the duration stipulated by law will serve as a gap filling instrument (Proc. No. 210/1963, Art. 24(a)).

In earlier times, the long-standing master and servant mentality of understanding the relationship, in Ethiopia, made some employers reluctant to make themselves available to bargain on an equal footing with their ‘servants’ (Ananaba, 1979:46; Seyoum, 1969:69). There existed records of various modalities of ‘feet dragging’ tactics from the employers’ side with a view to avoiding, delaying or frustrating collective bargaining engagements. For instance, the bargaining process for the first collective agreement in Ethiopian labour history which was signed between the Wenji-Showa Sugar Factory and the Wenji-Showa Sugar Factory Trade union, after eight months of intense negotiation (CETU, 1991:120).

Ananaba further cited another incident in relation to the Ethiopian Printing Workers’ Union that tried to bargain with the employers for two years but failed in its efforts. The first-level trade union subsequently reported the matter to the national labour association (CELU) and the latter took up the case with the Government. ‘The appropriate Government organ invited the employer for discussions but it failed to appear with impunity’ (1979:46). Hence, unionisation, in Ethiopia, did not automatically pave the way towards effective collective bargaining. Although the Labour Proclamation of 1963 introduced concepts such as ‘recognising each other for bargaining’ and ‘bargaining in good faith’, it did not attach sanctions with a view to making them effective.

#### **4.4. Subject Matter of Collective Bargaining in Ethiopia**

The history of labour movements has shown that the initial objective of collective bargaining was just to regulate ‘working conditions’. Traditionally, the term ‘working conditions’ was narrowly understood to mean terms such as working hours, overtime pay, rest periods and wages, which were predominantly economic matters (Gernigon *et al*, 2000:33). Overtime, however, the scope of collective bargaining began to widen to include social issues such as paid leave of different sorts (annual leave, maternity leave, sick leave etc.). Social security benefits and skill development measures such as education and training have also been included in many collective bargaining agendas. A further step is where managerial issues such as employees’

recruitment, transfer, promotion, disciplinary issues and retrenchment, all conventionally within the employers' 'managerial prerogatives', have been included in collective bargaining negotiations in many countries (op cit,: 39). Consequently, the subject matter of collective bargaining has ranged from purely economic issues to various aspects of social security and power sharing items with its scope of coverage gradually but steadily expanding. In this regard, Schregle observes that:

Developments in many countries in various parts of the world show that collective bargaining is no longer limited to the determination of wages and working conditions. More and more matters which, in the past, were considered management prerogatives are being included in the scope of collective bargaining (1976:7).

The more expansive agenda is reflected in the Report of the Committee of Experts on the Application of Conventions and Recommendations of the ILO to the effect that 'it would be contrary to the principles of Convention No. 98 to exclude from collective bargaining any issue relating to conditions of employment' (ILO 1994, Para.265). However in connection with the appropriateness of employees' participation in management, the position is not yet settled. It might be argued that whereas exigencies of business transaction anticipate prompt decision making, 'employees' participation in such decisions is likely to have a delaying effect to the detriment of the enterprises' legitimate business interests' (Hunter, 1980:35).<sup>79</sup> Moreover, shareholders and potential investors may lose confidence in the decision making process of the enterprise once 'non-owners' are involved in the decision taking.

However, there are also compelling reasons to support employees' participation. As Schregle notes 'workers are entitled to have a say in the management of their enterprises irrespective of ownership simply because they work there' (1976:3). More practically mutual understanding of the views and concerns of the parties could be enhanced, as a result of which tensions and industrial disputes could be reduced. Employees, it may be claimed, would cultivate an enhanced commitment to the causes of the enterprise and a sense of belonging to the enterprise would be improved. Hepple also argued 'giving workers a voice generally improves efficiency' (2005:255). Conversely, however, Compa's Report documented that in the global economic

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<sup>79</sup> For a fairly extensive discussion on the economic pros and cons of 'Industrial democracy' from an economic perspective; (see generally Laurence Hunter (1980) 'Some economic aspects of industrial democracy' *Industrial Relations Journal*. Vol.11, Issue-3, pp. 35-45)

order the general trend is towards widening management's prerogative to unilaterally run the enterprise by excluding trade union participation on personnel management issues (2006:8).

Turning then to consider how the Ethiopian experience reflects the several points raised above, it can be immediately noted that the first labour proclamation that recognised the right to collective bargaining (Proc. No.210/1963) stipulated the subject matter in general terms, stating simply that 'labour conditions' shall be the objects for bargaining (Art. 20 (a)). However, apart from providing an illustrative listing as to which subject matters could be included, the law did not provide a working definition for the phrase 'labour conditions'. This tended to imply that the subject matter for bargaining would be demarcated by the parties themselves. This 'open-ended' approach of the law was consistent with the view held by the Committee of Experts on the Application of Conventions and Recommendations stated above (*see, p.88*). In reality, however, due to lack of experience and weak organisational set up of trade unions in Ethiopia, at the time, the issues at the bargaining table were no more than 'bread and butter' issues, such as wages, overtime pay and working hours (Daniel, 1986:127).

Nevertheless, overtime, the subject matter for collective bargaining began to become more diverse in content. In particular, with the adoption of Proc. No.64/1975 at the time of the military regime, items for bargaining extended beyond economic issues to cover social and managerial issues. The proclamation specifically stated that improvement of workers' educational standards and vocational skills and workers' participation in the management of the enterprises shall be among the subjects eligible for collective bargaining (Proc. No.64/1975, Art. 66).

It may be argued that as most of the enterprises during the military rule were under State ownership; such an extensive coverage of bargainable subject matter was intended to apply to these State-owned enterprises. However, the scope of application of the labour proclamation was not restricted to State-owned enterprises. It was applicable to any 'undertaking', private or public, regardless of ownership issues (Proc. No.64/1975, Art.2 (25)). Consequently employees including employees of private enterprises which employed twenty or more employees were entitled to form trade unions and to collectively bargain on the issues identified above.

Thus issues of development of employees' skills and participation in managerial matters, both in State-owned and private enterprises, which were conventionally within the realm of the

employers' prerogative, were made subject matters open for collective negotiation. Since then collective agreements, in Ethiopia, have begun to insert provisions dealing with employees' skill development schemes and participation in managerial activities in addition to the traditional 'bread and butter issues' of everyday life.

There are countries where the right of employees' participation in management emanates from legislation not from a collective agreement. For instance, India adopts the right of employees' participation in management by stipulating law to this effect rather than leaving it for collective bargaining (Sen, 2012:4). Accordingly, employees' representatives for the purpose are to be elected by the general meeting of the labour force (unionised and non-unionised) rather than through trade unions. Its application was also in enterprises that at least employ 100 workers (op cit: 7). As far as the Ethiopian situation is concerned it is different in this respect. Firstly, the right to participate does not emanate from legislation but rather from a collective agreement. Second, since a trade union has been the sole bargaining agent under Ethiopian law there will not be other organ that will be elected for the purpose of workers' participation. Third its application has also been open to enterprises where trade unions are established.

With the overthrow of the military rule and a change in government, to a certain extent, an approach similar to that of India emerged as regard employees' participation in managerial activities. Based on the Public Enterprises Proclamation, employees' representatives have been entitled to not more than one third vote in the Managing Board of the enterprise. Employees, representatives for the Managing Board are also to be elected by the general assembly of the labour force even if a trade union exists ((Proc. No.25/1992, Art. 12). On the basis of this arrangement, participation emanates from legislation and the representatives are elected from and represent all the employees both unionised and non-unionised. Thus, employees at State-owned enterprises have obtained a co-decision making power by law.

From this perspective, employees' participation in top management at State-owned enterprises has been legally guaranteed, rather than being left to the negotiation of the social partners. Nevertheless, as the Public Enterprise Proclamation applies only to State-owned enterprises, this working arrangement is also applicable only to employees of State-owned enterprises. In the private sector, employee participation in managerial activities emanates from a collective bargaining. Notwithstanding this variation between State-owned and private enterprises the

general pattern of the laws of Ethiopia has been gradually but consistently to expand, at least formally the scope and coverage of employees' participation in the managerial affairs to penetrate deeper into the province of the management prerogatives regardless of the nature of ownership.

It should be noted that conducting collective bargaining and concluding collective agreement though necessary are not sufficient achievements unless the terms of the collective agreement are implemented and remain stable until replaced. In this regard, the successive labour laws of the country have addressed the issue in the following manner. Under the labour proclamation of 1975 it was stated that 'unless replaced by legislation or other collective agreement, conditions of work, benefits and workers' right stipulated in a collective agreement shall remain in force' (Art.73(3). This stipulation was retained by the labour proclamation that superseded it (Proc. No.42/1993; Art.133 (2).

However, this principle of maintaining the status quo until replaced by another collective agreement has been withdrawn since the adoption of the labour proclamation of 2003. There it has been stipulated that employment conditions formulated by an expiring collective agreement will lose their binding force unless replaced by another collective agreement within three months from the expiry date of the previous collective agreement (Art. 130(6). This recent position of Ethiopian labour law resembles what Compa observed in other countries' labour law reforms (*see, p.80*). In fact, by an amendment issued in 2006 it is provided that it is not the whole terms of the collective agreement that will cease to be effective, but rather those terms of the collective agreement pertaining to 'wages and other benefits' (which are of high value to the employees) that will lose their binding effect (Proc. No.494/2006; Art.2 (3).

Earlier (*see p.82*) we noted how the economic orthodoxy evident in the approach of the WB was employed so as to attempt to discourage collective bargaining and marginalise its role on the assumption that its anticipated outcome of increasing labour cost made it incompatible with competing globally. Measures such as relocation and threat of relocation when request for collective bargaining is raised and withdrawal of its binding effect even when it is not replaced by another have been some of the manifestations. Even though the Ethiopian economy is not well integrated into the global economic order and hence a relatively insignificant trading partner in the economy, its formal legal framework seems to be influenced by the global trend as

observed from the Ethiopian labour law reform above. Its effect at the empirical level will be examined in Chapter 7.

#### **4.5. The Duty to Bargain and to Bargain in Good Faith**

As indicated earlier (*see, p. 57*), the 1963 Labour Proclamation introduced, for the first time in Ethiopian labour history, provisions for the formation of employers' and employees' associations. These provisions included the procedures for collective bargaining and registration of collective agreements and the definition and prohibition of 'unlawful labour practices'. Concepts such as 'the duty to bargain' and 'bargaining in good faith' have also been incorporated since then into the Ethiopian labour law.

However, the way in which the provision on 'the duty of bargaining in good faith' was incorporated in the 1963 proclamation was ambiguous as regards the scope of the duty. Article 26 of the law read as follows: 'Each party engaged in collective bargaining shall be required to recognize all of the other parties thereto and to negotiate with them in good faith'. The first impression from a close reading of the above provision is that once the parties voluntarily agree to engage in bargaining, they were expected and, in fact required, to bargain in good faith. Nevertheless, it was unclear as to whether there was in fact a duty to bargain in the first place. This is because the law seemed to imply that it was only after engagement between the parties that the duty of good faith operates in relation to collective bargaining. It is thus doubtful whether this provision had, indeed, imposed a duty on the parties to bargain. Furthermore, although the law had a long list of 'unfair labour practices' for both parties, failure to appear for bargaining was not among them (Proc. No.210/1963, Art.2 (s)). Hence, no sanction was attached to it in case of violations.

In reality, as indicated in section 4.3 above, employers were rejecting request for bargaining from trade unions with no legal consequences attaching to the refusal. This ambiguity in the scope of the duty was similar to that we observed in the interpretations of international experience. Even if interpreted in a manner to mean that there was a legal duty to bargain, the labour law did not provide any sanction if and when one of the parties failed to appear for bargaining nor did it provide a time-limit within which negotiations should commence. It thus remained as an empty promise with no enforcement mechanism in place.



Another important collective bargaining issue which the 1963 Proclamation failed to address was the issue of ‘disclosure’. The law was silent as to whether each party was duty bound to disclose relevant information to the other so that well-informed and meaningful bargaining would be undertaken. It may be argued that the duty to negotiate in good faith should be interpreted to include the obligation to provide information at one’s disposal essential for the negotiation and that withholding relevant information from the other negotiating party is a manifestation of bad faith (Cox, 1958:1428). Nevertheless, for the benefit of clarity, duties should have been expressly stated so as not to provide room for doubt and debate. The ILO seemed to realize such a lack of uniform interpretation in disclosure when it drew up a Recommendation (Recommendation No.163) in 1981 recommending Member States ‘to formulate measures adapted to national conditions (...) so that parties have access to the information required for meaningful negotiations’ (Art. 7(2)).

It was indicated in the preceding chapter (*see, p.56*) that the implementing legislation for the establishment of trade unions was substantially delayed even after freedom of association was recognised by the 1955 Revised Constitution. Even after the law on unionisation was adopted, the threshold to form a trade union was set at a high figure, thereby limiting its use. In the context of collective bargaining also, rules and procedures lacked clarity as to the scope and nature of the parties’ duties. There was no express duty of disclosure nor was there a sanction against non-compliance even if the duty was held to exist. It could thus be said that, during the era of the Emperor, the laws on unionisation and collective bargaining were too late in coming into force and too ambiguous to implement. The introduction of a legal framework consequently appeared to be more of a public relations exercise than a serious political commitment to implement the rights concerned. This conclusion is consistent with Bahru’s view of the lack of genuine political will by the Imperial regime towards freedom of association (2002:206).

A very different picture was presented by the approach of the successor military regime. The 1975 Labour Proclamation remedied some of the shortcomings in the duty to bargain of the 1963 labour law. For instance, Proc. No.64/1975 made ‘availability for collective bargaining’ one of the duties of the parties. The relevant part of the proclamation (Art.67 (2)) reads as follows: ‘the party to whom a request under sub-article (1) [request for bargaining] has been made shall within five days of receiving the request appear for collective negotiations’. With this stipulation in

place, the parties were duty bound to make themselves available for bargaining within five days of receiving the request. Thus, the issue of recognition for bargaining purposes was no longer left to the voluntarism of the employers. Consequently, the principle of ‘mandatory recognition’ for collective bargaining purposes has been introduced in Ethiopian labour law ever since the coming into effect of the Labour Proclamation of 1975.

Unlike the labour law of the imperial era that did not provide any sanctions for non-compliance with bargaining obligations, the 1975 labour proclamation prescribed a penalty (Proc. No. 64/1975; Art. 113(1)). Thus failure to appear for bargaining *within five days* was not only a violation of a duty but also a punishable offence. There is, however, no record of any prosecution for non-compliance with this duty ever resulting.<sup>80</sup> It may be that as most enterprises during the military regime were under State hands, recognition of trade unions for bargaining purposes was not a serious problem.

The 1975 proclamation also marked a clear change from the preceding position on disclosure of information. The law expressly spelt out the duties imposed on the employer during and in connection with bargaining. It obligated the employer with the responsibility of submitting all pertinent evidence and documents required during the negotiation’ on pain of sanction (Proc. No 64/1975, Art. 77 (2) and Art. 113). In employment relationships, it is commonly the employer who possesses essential information such as financial reports of the enterprise and who may be reluctant to disclose those to the other party. It can be argued that the absence of such information handicaps enabled the trade unions to develop well-informed and even possibly objective bargaining proposals. Disclosure helped in avoiding this kind of information gap. The outcome, due to at least in part to the proactive legislative measure of the military rule, was a significant increase in the number of registered collective agreements at that time. A study conducted by MOLSA in 1983 found that the yearly number of registered collective agreements was twelve in 1973, nine in 1974<sup>81</sup>, twenty three in 1975, and one hundred sixty nine in 1976 (MOLSA, 1983:35).

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<sup>80</sup> In order to verify whether there were in fact court cases in connection with prosecutions for failure to observe the duty to bargain within the prescribed period, the files at the prosecution office within the Ministry of Justice were examined. However, there was not even a single case associated with the issue before us. With the ideology of the ‘dictatorship of the working class’ prevailing at the time, employers would not afford to reject requests for bargaining made by trade unions.

<sup>81</sup> This period marked the final days of the Emperor’s rule and the beginning of the military take over.

However, although there were favourable legal frameworks for collective bargaining during the military regime, measurable benefits from collective bargaining were less evident. Almost all State-owned enterprises at the time were loss makers (Hishe, 2005:26) and a World Bank Report assessed the overall economic situation of the country at the time in the following manner:

Production growth was impeded by the low level of investment reflecting relatively low levels of both domestic savings and external resource flows. Public savings have diminished as government current expenditure, especially for defence and public administration, rose faster than revenue. Meanwhile private saving and investment did not respond adequately to various government initiatives (World Bank Report No. 582ET, 1987:15).

Thus, in practice, there was little or no benefit to be shared through collective bargaining. It can be argued that the mismatch between the apparently favourable legal framework for collective bargaining, on the one hand, and the adverse consequences of a restrictive and command economic policy of the time on the other, did not bring any measurable gain to the labour force.

The next political change in Ethiopia, the overthrow of the military regime, led again in due course in 1993 to a new labour proclamation, one intended to reflect a change towards a more market-oriented economy (Proc. No 42/1993). The Proclamation brought with it a slightly different approach towards issues of collective bargaining and collective agreements. Making one-self available for bargaining and bargaining in good faith were retained as express duties of the parties as was the provision of sanctions for non-compliance (Proc. No.42/1993, Art.185 (2)). Nevertheless, the sanction was now limited to a fine, with a maximum of Birr 1200 to be assessed by the First Instance Court Labour Division. Imprisonment as a possible sanction for labour law violation was withdrawn, and the criminal bench was no longer involved in entertaining labour matters. Moreover, since then, the responsibility to prosecute labour law violations has been entrusted to labour inspection service taking it out from the prosecution office.

However, the inspection service in Ethiopia has been under-staffed<sup>82</sup>, under-resourced and lacked the necessary skill to prosecute violations (De Gobbi: 2006; ILO: 2009). It was reported

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<sup>82</sup> The record showed that labour inspectors totaled about 123 (16 females and 107 males). The ILO has estimated that the ratio of labour inspectors to workers should be about 1:40,000 in less developed countries. It is estimated that Ethiopia has around 38 million working force (Wheeler and Goddard, 2013:22). The labour inspection services of the Regional Labour Offices have been notoriously ill-equipped and under staffed. Their major activity has been

that they have prosecuted only two cases in court in recent years (Wheeler and Goddard, 2013:10). The inspection service complained that ‘officials from other ministries, such as the Ministry of Trade and Industry, become involved in cases pending in court asserting that the inspectors should withdraw charges [against violators] because public knowledge of alleged violations [prosecutions] may interfere with investment strategies’ (op cit: 11). This shows the ambivalent position of the Government in the sense that the desire to enforce labour rights from the side of the inspection office was in conflict with the desire to encourage investment even at the expense of labour rights as reflected by the position of the Ministry of Industry and Trade.

The other area where the post-military rule labour laws deviate from the labour law of the military regime is in the area of disclosure of information during bargaining. The duty of disclosure has been withdrawn from the list of duties specifically imposed on employers. It might be argued that this is not a significant deviation from the past in that even if the obligation to disclose information was not expressly spelt out, such a duty may be inferred from the duty to negotiate in good faith, and hence, the duty to disclose pertinent information remains intact. It may therefore be argued that an employer’s duty to bargain in good faith includes the duty to equip the trade union representatives with adequate information to enable them understand and discuss the issues raised by the employer so that effective collective bargaining can take place.

The alternative and equally plausible argument is that the duty to disclose information to the other party does not exist under the existing legal framework for the following reasons. First, legal duties should be expressly spelt out with a view to avoiding doubt and unnecessary controversy as to their existence. Second, in cases where the previous law expressly provided it as a duty and the subsequent law omitted it, a reasonable assumption would be that the duty no longer exists because had the legislature intended to retain such a duty, it would have spelt it out expressly as previously.

Trade union leaders complain<sup>83</sup> that private employers have been reluctant to disclose particularly financial information of the enterprise to trade unions, alleging not only that it is a

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to supervise occupational health and safety at workplaces although they have also been empowered to monitor compliance and prosecute violations of labour standards including failure to bargain in good faith.

<sup>83</sup> Interview with one of the top leadership of CETU revealed that many first level trade union leaders have petitioned the Confederation to press for the issuance of law requiring employers to disclose relevant information during collective bargaining. In the meantime, trade unions have been trying to fill their information gap by soliciting such information through informal consultation with their members working in the Finance Unit of the

‘business secret’ which should not be divulged to persons other than the shareholders but also that they no longer have the duty to disclose such information under the law. Nevertheless, the ‘business secret’ defence is less persuasive given that the Commercial Code of Ethiopia of 1960 requires business organisations to annually submit the balance sheet and profit and loss statements of the company to the Ministry of Commerce and Industry for publication in the Official Commercial Gazette (Commercial Code, Art.461). This legal duty on business organisations tends to suggest that the financial information is not a ‘business secret’. Rather, it is a public document that should be made public at the end of every budget year.

#### **4.6. Summary**

The legal frameworks for collective bargaining in Ethiopia have undergone significant transformation overtime. Union ‘recognition’ for collective bargaining purposes, moved from the ‘voluntary recognition’ policy of the Civil Code (1960) and an ambivalent position of the 1963 Labour Proclamation, to the ‘mandatory recognition’ approach since the issuance of the 1975 labour law. Thus, unlike the relevant ILO instruments which do not expressly impose the duty to bargain on the parties, Ethiopian labour laws have since 1975 explicitly provided for the duty to bargain and to bargain in good faith at the pain of sanctions. It is safe to conclude that since the laws do not impose the duty to reach at an agreement on the negotiating parties to a collective bargaining this legislative measure is consistent with the intent and purpose of Convention No.98 which is promoting effective collective bargaining.

In terms of subject matter eligible for collective bargaining, the international experience has shown the tendency of expanding the subject matter on the bargaining table from purely economic issues to social and managerial issues. Similarly, the Ethiopian successive labour legislation gradually but steadily broadened the scope from purely economic matters of ‘bread and butter’ issues, into, among other things, the territory of the managerial prerogatives and skill development issues. Consequently, as far as the letter of the law is concerned, economic, social and managerial issues have been opened up for collective bargaining. However, development in the legal rules do not necessarily tell us anything about the practical impact of those rules and

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enterprise. The problem, however, is for one thing, it is not appropriate for trade unions to resort to such an unlawful means of obtaining information. Secondly, as high functionaries of the finance department will be members of the management staff and hence non union members, trade unions are to rely on the information of the junior staff that may not contain the essential information in this respect and at times misleading.

what obstacles, if any, there are to their implementation and effectiveness. This critical issue, within the framework of privatised enterprises, is considered at a later stage in this study, particularly in Chapter 7.

Notwithstanding these positive legal developments, there are also appreciable reversals militating against effective collective bargaining, which were introduced side by side with the introduction of the market-oriented economic policy. For instance, it was noted above that with the coming into power of the post-military rule and the adoption of a new labour law, the express duty of disclosure has been removed from the law. It may be that with the change to a more investment-friendly economic policy, the post-1991 government might have considered that maintaining employers' duty of disclosure would be an undue regulatory burden to business and therefore inconsistent with the government's market oriented economic policy. However, the effect is to shift the legal balance in a manner that is at the expense of equally important commitment of promoting effective collective bargaining which is handicapped unless there is disclosure of relevant information. It was indicated in the preceding chapter that trade unions in Ethiopia proved to be weak in terms of organisational strength and experience and these limitations require and justify facilitative state measures such as imposing the duty of disclosure if collective bargaining is to be meaningful and effective.

A further reversal concerns the pre-2003 provision that in order to ensure continuity of stipulated terms and conditions of employment collective agreements were to remain in force until replaced by new collective agreements. The current law (2003) stipulates for the withdrawal of the binding force of employment conditions established by a collective agreement even when renegotiation to replace it is not yet finalised which tends to affect the status quo in collective labour relations. In fact, Compa (2006) documented a similarly flexible approach in labour law reforms of other jurisdictions which were covered by his Report.

The other area of concern is that although the labour inspection service has been entrusted with wider powers of supervision and prosecutorial responsibilities against labour standard violations including violation of the duty to bargain in good faith, the inspection service is organised in such a manner that it is ill-equipped and understaffed to efficiently discharge its responsibilities. Even when it attempts to take prosecutorial actions within its mandate, pro-investment agencies such as the Ministry of Trade and Industry have tended to undermine the monitoring activities of

the labour inspection service contending that supervision may discourage investors and investment. Thus the tendency has been that either the laws are being formulated in investment-friendly manner or the protective laws may be left intact but with their implementation neutralised by executive measures, thereby making them merely ‘surface laws’. The literature on the current challenges on trade unionism (*see, p.50*) has recorded that there have been tendencies to withdraw protective labour laws or to deliberately ignore their enforcement with a view to attract and retain investment.

What influence, if any, this trend has in the context of the privatised enterprises will be empirically assessed in Chapter 7. However, prior to dealing with these issues an examination of the Ethiopian privatisation programme is considered appropriate because of the fact that it is in the light of the privatisation programme that the changes are to be evaluated. Thus the next chapter is devoted towards elaborating the privatisation programme in Ethiopia.

## Chapter 5 Privatisation in Ethiopia

### 5.1. Introduction

The preceding chapters discussed the developmental path of the legal framework for labour law in general and the collective aspects of labour law in particular in Ethiopia. This chapter, as a precursor to the case studies in Chapters 6 and 7, will review how and why privatisation was introduced and implemented in Ethiopia because the analysis in the case studies is to be undertaken within the framework of the privatised enterprises. Privatisation is, of course, not a phenomenon peculiar to Ethiopia but to fully understand the Ethiopian model and its implications for collective labour law it is necessary to have some understanding of the overall more general concept of privatisation and its mode of implementation elsewhere as a basis for comparison.

The term ‘privatisation’ may denote different meanings in different contexts. In its narrow meaning, it means a total and full transfer of State property to the private hands (Jackson and Price, 1994:4; Estrin, 1994:3; Roland, 2008:200) with other modalities of transfer of state asset short of full divestiture being characterised as alternatives to privatisation but not privatisation proper (Kikeri, *et al*, 1992:14).

The term also sometimes refers to the utilisation of private entities to provide services conventionally delivered by the public sector. For instance, contracting-out to the private sector the provision of services such as the management of prison facilities and security services, which were mainly being provided by state agencies, has been understood to constitute aspects of privatisation (Ramamurti, 1992:232). Indeed it has even been suggested that at its broadest understanding the term privatisation can represent any measure which provides the private sector with sufficient economic space for private initiative and entrepreneurship in an area previously seen as the province of the state (Egorov, 1996:89; Cao, 2000:17).

In between the narrower and the broader understanding of the term, there is also a middle way of interpreting it. Accordingly, the middle way considers total sale or the partial transfer of public property or just the outsourcing of the management aspect of it to the private sector to be a modality of privatisation (Chang, 2006:108). For Ramanadham ‘privatisation may be expressed in terms of privatisation of ownership or privatisation of management or privatisation of



enterprise disciplines' (1993b:2). In this line of understanding, Sader (1995:2) defines it as 'the complete or partial transfer or control over publicly-owned assets to the private sector in exchange for payment'. Therefore, for a measure to be considered as privatisation, even partial relinquishment of public control may suffice (Nellis, 2007:3). The government may therefore still retain the bare ownership but surrender the management aspect to the private sector and still satisfy the definitional elements of privatisation. It is important to note, however, that no one definition is correct. All are only working definitions designed to serve the purpose in mind (Jackson and Price, 1994:4).

With such a heterogeneous definitional understanding in mind, it is felt proper to examine privatisation from a historical perspective in order to have a broader understanding about its emergence and development so that the Ethiopia's privatisation process can be examined in light of that perspective. A point to note at this juncture, however, is that the meaning of privatisation adopted by Ethiopia has changed overtime. During the initial periods the term was understood and applied in its narrower sense of changing ownership of state property to the private sector. It has subsequently received a relatively broader legal definition as the privatisation process has proceeded to include modalities such as joint venture arrangement, lease and management contract within its ambit in addition to the total transfer of ownership (*see, p.122, footnote 93*).

Why, though, has the currency of privatisation achieved such prominence internationally? This is clearly not a question that can or needs to be answered here but an outline of the various rationales is necessary to help inform an understanding of its application within the Ethiopian context. Some proponents of the capitalist system, with a libertarian ideology, contend that initiative, efficiency and freedom can most reliably be attained under a system of private ownership and entrepreneurship (Brabant, 1992:160). According to this view, economic affairs should be left to the private domain and to market forces free from state intervention. Thus, supremacy of private property and superiority of market forces were among the main economic manifestations of a capitalist system.

This does not, however, mean that the capitalist system does not entertain State ownership in its practical economic application. It only means that private ownership is the rule, while State ownership of economic means is the exception. Thus, in the real world, regardless of the rhetoric that economic activities should be left to private affairs, governments, even the most libertarian

ones, have been engaged, with varying degrees, in operating economic activities. In particular, industries of 'strategic importance' and 'natural monopolies' have been under governmental ownership and management in many countries (Mcgowan, 1994:26; Nellis, 2007:5).

The justification for such governmental involvement in industries of strategic importance is said to be either the socio-economic importance of the sectors to the overall economy (Jackson and Price, 1994:5) or the fact that the size of the capital required for such projects is large and its return is too slow and low and the private sector may not have the capacity and/ or the willingness to engage in such ventures.

Moreover, in cases of 'natural monopolies', the monopolistic nature may not provide room for competition, as a result of which private monopoly may take advantage to the detriment of social welfare (Roland, 2008:210). Thus, it was feared that the market will not work well in such circumstances unless the State intervenes either by operating or regulating the economy. Particularly, the 'Great Economic Depression' of the late 1920s to early 1940s in the Western industrial world witnessed a generous State intervention in economic affairs and gave rise to '(...) the need to put the State in command [of the economy]' (Brett, 1988:47).

More importantly, after World War II, as much of the infrastructural and other economic facilities of many European countries had been seriously damaged during the war, reconstruction and employment creation were then at the top of those governments' economic and social agendas. Since the then existing private sector was not capable of engaging in such a huge task, many governments in Europe were compelled to undertake the economic and social responsibilities by themselves (ibid.). Consequently, the period from the 1940s until the 1960s recorded massive establishment of State-owned enterprises with multiple objectives in Western Europe (Kikeri, *et al*, 1994:242).

The situation in Central and Eastern Europe manifested a much more visible State involvement in the economy than in the West (Estrin, 1994:3). In that geographical area, intensive and extensive presence of the State in economic affairs had been justified not only on economic but also on ideological grounds. Immediately after World War II, Central and Eastern Europe were experiencing predominantly socialist and pro-communist ruling parties (Chang, 2006:94). As a communist ideology emphasised the need for centrally planned and command economies, the

feasible way to attain command economy was considered to be through the ‘nationalisation’ of the major private means of production and distribution. Consequently, during that period, in Central and Eastern Europe, intensive and extensive nationalisation programmes were carried out.

The situation of the developing countries was also more or less in line with the then prevailing interventionist and statist approach in economic affairs. Indeed, State intervention was much more relevant here due to a weak private sector, massive unemployment and the perceived need to protect fledgling industries (Brett, 1988:56). As the private sector and market infrastructures were under-developed in those countries, State command of the economy was considered appropriate and State-owned enterprises were given significant economic space to operate (Jackson and Price, 1994:25). In line with this mode of operation, newly independent States in Africa and elsewhere were engaged in massive ‘nationalisation’ activities (Bennell, 2003:310) of the means of productions of the former colonisers, thereby symbolising permanent separation from the colonial past (Price, 1994:238; Chang, 2006:4). Hence, in those countries, nationalisation was not merely an economic policy instrument but also had ideological and political dimensions.

In fact, it was not only at the level of nation-States that active government involvement in economic affairs was considered desirable. The international climate was also supportive to such a statist approach. Multilateral financial institutions, such as the WB and the IMF, had entertained, endorsed and, at times, encouraged national economic policies of developing countries guided by a statist line of thought. The then prevailing inward looking economic policy of ‘import substitution’ of many developing countries demanded active and strong involvement of States in the economy, a policy fully supported by the WB and the IMF (Price, 1994:238). In the words of Price, ‘in the two decades before the 1980s these international financial institutions [WB and IMF] had been active proponents of state intervention in the development processes’ (op cit: 247).

State-owned enterprises in developing countries were entrusted with responsibilities such as employment creation, foreign exchange earnings, creation of an industrial base for ‘self reliance’, ‘economic independence’ and ‘planned development’ (Zhou and Cheng, 2007:133). The stated objectives were not only multiple and, at times, non-economic, but conflicting with

each other as well (Nellis, 2007:6). Even worse, in most cases, the objectives were ill-defined (Jackson and Price, 1994:2) and non-quantifiable (Roland, 2008:21).

With a view to attaining those multiple and conflicting objectives, the enterprises were being safeguarded from internal and external competition through the use of various protectionist tools. They were also made regular beneficiaries of various kinds of subsidies from national treasuries. Their treatment with such excessive care made them extremely fragile and arguably resulted in economic inefficiency and perpetual dependence on public funds for survival (Sader, 1995:1), thereby misallocation of public resources. Therefore, the poor performance of the State-owned enterprises was accompanied by high costs to governments in order to maintain them at the expense of tax payers (Cook and Kirkpatrick, 2003:211).

As a consequence, societies began to witness serious drawbacks associated with State-owned enterprises from the perspective of factors such as economic efficiency, accountability and allocation of resources, and began to rethink the wisdom of maintaining them. For instance, in the 1970s and the 1980s, many developing countries attempted to remedy the poor performance of State-owned enterprises through measures and programmes of ‘enterprise reform’ short of resorting to change of ownership (Kikeri *et al*, 1992:2; Nellis, 2007:6). However, as those reform measures were fragmented efforts rather than comprehensive and sustainable (Kikeri *et al*, 1994:246), they failed to bring about the desired outcome as a result of which embarking upon change of ownership (privatisation) came for consideration.

In particular, in the 1970s, to some extent associated with the ‘oil shocks’ of 1973/74, the Western world saw rising unemployment and closure of industries. This called for urgent and mandatory macro-economic reform (Brett, 1988:49). The problem was felt seriously in-UK whose economic condition was then characterised by ‘low growth and high inflation’ which were of concern on the economic front (Hodge, 2006:9). It was in this climate of economic shock that the Conservative Party under the leadership of Mrs Margaret Thatcher won an electoral contest, in 1979, in Britain, and embarked upon a policy of ‘privatisation’.<sup>84</sup> This policy

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<sup>84</sup> In fact there are writers who argue that privatisation began in Chile under the Pinochet Regime and not in Britain (see, Roland, 2008:5). Others even went further to trace the origin of privatisation to 1961 Federal Democratic Republic of Germany (Bortolitti and Siniscalco, 2003:1) and Federal Republic of Germany’ government’s sale of majority its stake in Volkswagen to private investors in 1957 (Filipovic, Adnan (2005) ‘Impact of privatization on Economic Growth’ *Issues in political economy Vol.14* p.2). All the same, almost all writers agree that *large scale*

was a paradigm shift from the post-war economic consensus of mixed economy type (Yarrow, 1993:75; Hodge, 2006:10), adopted with a view to checking the country's economic decline. Interestingly, although the role of the State in the economy was more robust in the Eastern and Central Europe and in developing countries, the privatisation process was first initiated in the capitalist world in which the role of the State in the economy was relatively less visible.

Generally, it could be said that real or perceived 'market failures' of the 1930s and 1940s fuelled calls for a State controlling system of the 'commanding heights' of the economy. In a similar vein, real or perceived 'governmental failure' manifested through the economic inefficiency of State-owned enterprises brought privatisation schemes across the globe beginning from the early 1980s (Chang, 2006:79; Hodge, 2006:20; Gong, 2006:3; Megginson and Netter, 2001:329). It was said that, 'ideas of market failure, which had provided a role for government intervention, were challenged by notions of government failure' (Jackson and Price, 1994:2).

For developing countries, 'just as the WB and the IMF played a pivotal role in enabling the public sector to develop, they were also crucial in the reversal process' (Price, 1994:247) by prescribing economic liberalisation in general, and privatisation in particular, as a precondition to financial and technical assistance for developing countries and transition economies (Chang, 2006:95; Roland, 2008:112; Shutt, 2010:66).

In the words of Chang (2006:95), for developing countries, 'privatisation was not an option but a requirement; often under the IMF's Enhanced Structural Adjustment Facility (ESAF)'. The IMF pushed countries to privatise as much as and as fast as they could (Stiglitz, 2002:56). Such a push was not to be taken lightly, as it has had far-reaching economic, political and diplomatic consequences. With mounting external pressure to privatise, at some stages, it became no longer an issue whether or not and what to privatise; the issue was rather a matter of how and when to privatise.

## **5.2. Social Consequences of Privatisation**

The role of privatisation in bringing about economic benefits, which has been considered as the main driving force of the programme has been extensively dealt within the existing theoretical

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privatisation and the word "privatisation" was associated with the period of Mrs. Margaret Thatcher of Great Britain.

and empirical studies. On this front, although there have been mixed outcomes, it was claimed that privatisation has proved encouraging in the sense that the shift to private ownership, with notable exceptions, has improved firm and macro-economic performance (Kikeri and Nellis, 2004:95; Nellis, 2007:18). It is rather the social effect of privatisation which has not been accorded sufficient attention and comparable treatment with that of the economic goals.

In this connection, Buchs concluded that 'it is not an overstatement to claim that social impacts of privatization have been by and large overlooked, reflecting the tendency to focus on privatization transactions, rather than on sector reorganization at large, including wider social objectives' (2003:40). Zhou and Cheng expressed a similar view in holding that, 'despite its importance, labour is one of the least addressed issues in public enterprise transition to privatization' (2007:161).

However, from what is available, Galal *et al* (1994) wrote on '*Welfare Consequences of selling public enterprises*' where they conducted an investigation about privatisation's impact on consumers and employees. They found that 11 out of 12 developing and industrial countries managed to record improved consumer and labour welfare despite layoffs after privatisation. Furthermore, in a study conducted on the impact of privatisation on domestic welfare, by the WB, in four countries -namely; Chile, Malaysia, Mexico and the UK-it was found that eleven out of the twelve cases showed improvement (Kikeri, *et al*, 1992:3). Nevertheless, these studies of the early 1990s appear to be too premature to evaluate the medium and long term effect of privatisation as the programme itself was in its commencement stage in many countries in early 1990s.

Another study by the IMF stated that from consumers' perspective, when an enterprise proves to be economically efficient, consumers will have the opportunity to obtain quality products at cheaper prices (1999a:8). In particular, in a competitive environment, consumers will be introduced to interchangeable products from diverse sources, thereby broadening their choices. Conversely, some contend that, unlike the State-owned enterprises, where prices of essential goods and services are controlled or being subsidised, privatisation raises the price of goods and services to a higher level and at a faster pace ((Nellis, 2007:16). In fact, in cases of 'natural monopolies' where competition would not be available, unless privatisation is accompanied by a

strong regulatory tool, state monopoly will be replaced by private monopoly (Kikeri and Nellis, 2004:109; Cook and Kirkpatrick, 2003:212).

As regards the effect of privatisation on labour, since one of the main objectives for the establishment of public enterprises has been employment creation, State-owned enterprises appeared to be notoriously over-staffed (Bennell, 2003:319; Cook and Kirkpatrick, 2003:216; Galal, *et al*, 1994:546). In fact, the over-staffing was considered one of the reasons for their poor performance in the economic front (Kikeri and Nellis, 2004:101) due to redundant and high labour costs. With the introduction of privatisation, therefore, more often than not, labour shedding will be undertaken either during preparation for privatisation or immediately after the change of ownership or even at both periods (Ramanadham, 1993b:36; Yarrow, 1993:79). As a result, privatisation was accused of throwing many people out of work or forcing them to accept jobs with lower pay, less security and fewer benefits.

On the other hand, there are studies that tend to support a contrary view. For instance, according to Kikeri *et al*, empirical studies conducted in Mexico, Philippines and Tunisia showed that privatisation led to increased employment and they concluded that ‘lay-offs do not always accompany privatisation’(1992:8). Similarly, in Ghana, although there were fears that privatisation could be associated with job losses, the actual result showed that employment in privatised enterprises has gone up by 59%. It was further found that privatisation in Ghana was associated with ‘increased labour remuneration and better service conditions for workers of the newly privatised enterprises’ (Kubi, 2001:217).

Another view, which somehow tended to adopt a middle position, accepted the contention that privatisation has been associated with lay-offs but suggested that these lay-offs were only temporary (IMF, 1999a:3). Studies conducted in Latin American countries on the impact of privatisation on employment found that privatisations have been accompanied by reductions in the workforce. These studies, however, argued that the reduction was only temporary in that employment opportunities were regained (Birdsall and Nellis, 2003:1623; Nellis, 2007:18). Furthermore, Cook and Kirkpatrick have, among other things, assessed the impact of privatisation on employment in developing countries and arrived at the conclusion that ‘even if privatization does not have a major adverse impact on total employment over time, there will inevitably be short-term job losses and labour adjustment costs’ (2003:217). In fact, for Galal *et*

*al* (1994:529), even the temporary dislocation of employees is limited to individual employees and not to workers *as a class* and as a whole.

Meanwhile, Megginson *et al*: 1994 in their study of post-privatisation financial and operating performance on some enterprises incidentally found that ‘employment on the average does not decline after privatisation’ (1994: 439). It was mentioned in their study that they were asked to explain why trade union leaders world-wide have been consistently and strongly opposed to privatisation if privatisation did not result in a decline in employment. They speculated on this point but conceded that their study did not address the concerns of trade unions (*ibid.*). Similarly, Nola and Rueda (1998) examined the social dimension of privatisation from labour’s point of view but limited their discussion to issues of redundancies associated with the programme and how to undertake consultation with trade unions to minimise redundancy and how to compensate retrenched employees.

It should be noted that some of the above cited studies on privatisation’s impact on labour viewed the issue solely from the perspective of job losses associated with privatisation. The studies did not examine the effect of privatisation on those who managed to retain their jobs post-privatisation as to their collective rights in areas such as unionisation and collective bargaining. However, in order to have a holistic understanding of the issue, it is necessary also to examine the situation of the employees who retain their jobs. Indeed, unlike job losses, issues of unionisation and collective bargaining are more of long-term, collective concerns, non-quantifiable in monetary terms and non-compensable in cash. With this gap in the studies, it appears difficult to comprehend fully the magnitude of the challenge and to accept the conclusion that workers *as a class* are not affected by privatisation.

Having set out the broader context of privatisation policies, their rationales and their perceived economic and social effects, the rest of the chapter will focus on Ethiopia’s privatisation programme as regards its introduction, reasons for the introduction and the regulatory mechanisms put in place for the purpose.

### **5.3. The ‘pull factors’ towards Privatisation in Ethiopia**

During the reign of the Emperor, although the economy was predominantly agrarian, capitalist tendencies and elements were being cultivated within the womb of the feudal system.



Mechanised agriculture, medium size factories and mining concessions were established in various locations of the country both during and after the Italian occupation (1936-1941). Beginning from the late 1950s, as an expression of economic modernity and a manifestation of the introduction of an embryonic capitalist mode of production, successive five year development plans were adopted and implemented.

The First Five Year Development Plan which covered the period 1957-1962 concentrated on developing infrastructural networks with special emphasis on transportation, construction and communication (Adejumobi, 2007:100). This was succeeded by the Second Five Year Development Plan covering the period 1963-1967 and the Third Five Year Plan was implemented between the years 1968-1973 (ibid.) after which the 1974 military coup brought this line of development planning to an end.

In terms of State involvement in economic activities, although the Imperial regime had a monopoly in air transport, telecommunications and postal services, together with power generation facilities, the private sector was beginning to obtain an economic foothold in the remaining spheres of economic activity. However, as soon as the military government assumed power, in 1974, it issued, an economic policy prescribing strong government involvement in the economy through ownership, management, strict regulation and surveillance over almost all economic activities within the country (GOE: 1975).

Under the economic policy of the military regime, the country's economic activities were classified into three categories. There were those major economic activities which were exclusively reserved to the State. There were also activities where the State and the private sector could operate jointly. Finally, there were those activities which were left to the private sector subject to strict government regulation (GOE, 1975:10). In such a heavily regulated arrangement, the private sector was sidelined to economic activities which were mainly service providers and small enterprises. Not only were the economic activities reserved to the private sector limited and exhaustively spelt out by law, but further restrictions were also put in place on how to operate them in terms of capital ceiling and persons eligible to form partnership.

It was provided, for instance, that ‘a commercial activity<sup>85</sup> shall be carried on only by an individual enterpriser’ (Proc. No.76/1975, Art.4 (3)). The legislation also prescribed the following capital ceilings for commercial activities: Birr 300,000 (at the then official exchange rate approximately US\$150,000) for engaging in wholesale trade (Proc. No.76/1975, Art.5); Birr 200,000 (approximately US\$100,000) for retail trade; Birr 500,000 (approximately US\$250,000) for the establishment of an industrial plant (ibid; Art.8). Finally, it was provided that ‘no person shall obtain more than one license or possess more than one business or establish a branch’ (ibid: Art.4). Hence, commercial activity through partnership was prohibited, which in effect rendered the Commercial Code of the country on business organisations inoperative. Consequently, the role of the private sector at those times was undermined, and private capital was deliberately and legally marginalised from the major economic sphere (Admit, 2008:241).

With this policy of deliberate exclusion of the private sector from the national economy, the role of the government went far beyond its traditional functions (i.e. law and policy formulation, law execution and law interpretation) to the level of micro-managing business enterprises because in 1975 the privately owned major means of production and distribution were put under State ownership and management through ‘nationalisation’ (Clapham, 1987:152). Further centralisation of the economy was facilitated by the establishment of a high-level State organ called ‘Central Planning Supreme Council’, in 1978, which was empowered to plan the economy, allocate and control national resources (Admit, 2008:242). Thus, the communist-oriented military government was, thus, becoming omnipresent, in that its presence was visibly felt in policy formulation and in business, in administration and in trading, in regulation and production.

Moreover, governmental management of business enterprises was associated with central planning and centrally designed objectives for which, at times, non-economic objectives were being factored in. Enterprises were not autonomous in running their respective business affairs, nor did they have an independent legal personality. Instead, ‘corporations’ were established by law to serve as macro-managing organs of the enterprises and act as a bridge between the enterprises and the sector ministries (Eshete, 1994:3). State-owned enterprises were made administratively accountable to corporations in which legal personality resided. The

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<sup>85</sup> For the purpose of the law, ‘commercial activity’ was defined as ‘any trade and industrial activity’ (Proc. No. 76/1975, Art. 3(5)).

corporations, for their part, were accountable to the line ministries. The manner of accountability can be illustrated by the fact that all State-owned textile factories were made accountable to the 'National Textile Corporation' and the latter was responsible to the then Ministry of Industry. Similar administrative arrangements were put in place as regards State-owned enterprises in other sectors.

More importantly, the command economy was characterised by centralised decision making which, it is argued, was incompatible with the exigencies of business demanding fast and flexible decision making processes. Operational activities were handed down from above and contracts had to be entered into not at the enterprise level but rather at the level of corporations. Hence, State-owned enterprises were deprived of the 'right to manage' their own affairs in a commercially and economically viable way (Hishe, 2005:26). Within the system of centralised decision making, the market was not relevant, or at least less relevant in determining the quality, quantity and prices of products or services. Quantity and prices were rather centrally prescribed. Management, too, was more of a state administration type than a business style (Eshete, 1994:2). It may be argued that such a tight bureaucratic style enterprise management would help in realising the central plan. Nevertheless, undermining the role of the market and a heavy reliance on centralised decision taking contributed towards making almost all State-owned enterprises loss-makers (Hishe, 2005:26). According to a study conducted by ADBG 'the State-owned enterprises were, for the most part, inefficient, wasteful and constituted a heavy burden on the budget as a result of subsidies from the Government' (2000: 9)

Another contributory factor to State-owned enterprises' loss making outcome was that their administrative costs were high on account of over-staffing as the enterprises tended to be committed towards the creation and retention of employment for the workforce. In this connection, in a speech the late Ethiopian Prime Minister of Ethiopia made to trade union leaders on the need for public sector structural adjustment and privatisation, he stated that 'in a government sponsored study conducted in 180 State-owned enterprises pertaining to the size of their workforce, it was found that 40% of the labour force was surplus labour to the production process' (Addis Zemen: 2008). Ernst and Young, an international consulting company, found a similar figure of surplus labour force in their survey of State-owned enterprises in Ethiopia (Ericsson, 2009:14). This problem of over-staffing of State-owned enterprises is consistent with

the literature indicated above. Thus labour over-staffing had also aggravated the poor productivity performance of the State-owned enterprises.

In fact, there was also a country specific issue that contributed towards aggravating the problem. The protracted civil war and recurrent famine that consumed huge human and material resources of the country (World Bank, 1987:3) further aggravated the poor performance of the economy. However, the military government was not ready to revisit its economic and political policies because, it had been said, it was politically and ideologically ‘suicidal’ to back down, even though the government was fully aware of the poor economic performance of the State sector (Getachew, 1994:77).

It was in such a precarious circumstance that the military government was eventually and forcefully overthrown by the EPRDF forces and a new government assumed power in May 1991. The new Government soon noted that the previous government’s economic record was characterised by a poor rate of gross domestic product, low per capita income, serious balance of payment deficit, meagre foreign exchange reserves, absence of savings and investments, and other negative economic indicators (TEP 1991:5) all of which called for prompt remedial action.

Externally, in the 1980s and 1990s, multilateral lending institutions such as the IMF and the WB were calling upon their member states, including those in sub-Saharan Africa, to embark on economic liberalisation including privatisation programmes (Bennell, 2003:317). In fact, introducing these measures was made a precondition to obtaining loans and grants from bilateral or multilateral sources (Stiglitz, 2002:28; ADBG: 2000). Consequently, developing countries were engaged in massive privatisation exercises since this period. Whatever may have been the initial political perspectives of the post-military government, Ethiopia could not afford to resist the conditionalities.

Indeed, Stiglitz documented the pressure that IMF had exerted on Ethiopian authorities for economic liberalisation including the liberalisation of the financial sector (2002:25-35). For instance, during his visit to Ethiopia, in 1997, in his capacity as a Chief economist of the WB, Stiglitz recalled that, the then Prime Minister told him that ‘he [the Prime Minister] had not fought so hard for seventeen years [of guerrilla war] to be instructed by some international bureaucrat that he could not build schools and clinics for his people (...)’ (2002: 29). Stiglitz

observed that the Ethiopian Prime Minister was angry at the way the IMF officials were advising Ethiopian policy makers as to how they should handle the country's macro-economic issues.

From the bilateral relations point of view also, the then US Secretary of State Herman J. Cohen testified the following before the House of Foreign Affairs Committee African Sub-Committee on September 17, 1992:

US assistance to Ethiopia is dependent upon progress in democracy and human rights. We continue to closely monitor progress in these two areas and design our programs so as to promote democracy and privatization of the economy (as cited in Vestal, 1999:30).

It must be recalled however that the former guerrilla force that assumed state power (the EPRDF) by overthrowing the military rule had formulated plans while they were in the jungle to establish an Albanian style of communist rule (Vestal: 1999; Aregawi: 2008). Indeed, it had a Marxist-Leninist party within the ranks of the guerrilla fighters (Vestal, 1999:7). This ideological orientation was in favour of a highly visible presence of the state in the economy. Nevertheless, the 'advice' from bilateral and multilateral lending institutions towards privatisation<sup>86</sup> seemed to have pressed the Government to adopt a liberalised economic policy which was incompatible with its former officially declared political orientation of communist ideology of Albanian type within six months after assuming power. For instance, ADBG documented that loan disbursement to Ethiopia from multilateral lending institutions was delayed for 23 months than previously scheduled on account of delay in the implementation process in the area of privatisation (2000: II)

Conversely, Selvam contended that the major causes behind the privatisation of State-owned enterprises in Ethiopia were the declining trend of industrial output and capacity utilization of State-owned enterprises in the pre-privatisation period.<sup>87</sup> Whether this sudden shift of policy

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<sup>86</sup> Moreover, at a later stage in time, the then Prime Minister of Ethiopia, in 2003 explained to the media the pressure his government had from the International Monetary Fund stating that 'The International Monetary Fund (IMF) has been pressing the government to sell all these state firms, but we have resisted these measures which would have resulted in the collapse of our businesses'. (see generally: *Ethiopia hits out at IMF* BBC NEWS/Business(01 September 2003) available at: <http://news.bbc.co.uk/2/hi/business/3198767.stml> (accessed on 25 November 2009)

<sup>87</sup> See, generally; Jesiah Selvam (2007) 'Privatization Programme in Ethiopia: Is the cause justified?' *African Renaissance* Vol.4 No.1, available at: <http://ssrn.com/abstract=987606>

emanated from an internal motivation towards market economy or a pragmatist approach to comply with donor prescriptions appears to be open to further debate.

However, the balance of probabilities tends to outweigh towards the latter. Although the desire to embark upon privatisation policy was declared in 1991 in Ethiopia, its implementing agency was not established until 1994 and actual implementation was further delayed until 1995. This indicated that there appeared ‘feet dragging’ in actual implementation of the programme. Furthermore, given the fact that the new government initially had an Albanian style communist inclinations, it is hard to accept that it would endorse liberal economic policy within six months of power assumption by its own free will. Finally, the early 1990s was a period when the WB and the IMF prescribed privatisations were being exercised across sub-Saharan Africa where Ethiopia is situated and this period coincided with that of Ethiopia’s privatisation programme. In fact ADBG documented that ‘the Ethiopian Privatisation Agency was receiving technical assistance from the WB and the German Government’ (2000: 14).

## **5.4. The Policy and Legal Frameworks for Privatisation in Ethiopia**

### **5.4. 1. The Policy Framework**

Shortly after seizure of power, the EPRDF forces convened a ‘National Conference’ composed of citizens from various political and ethnic groupings and declared the formation of a ‘Transitional Government’. The responsibility of the ‘Transitional Government’, it was said, was to facilitate the smooth transition of state power to a democratically elected government. It was anticipated that the transition to a democratically elected government was to be completed within two years time (Transitional Period Charter, Art.12). In reality the transition to an elected government took more than four years.

In July 1991, the Transitional Government adopted a ‘Transitional Period Charter’ that incorporated fully the provisions of the Universal Declaration of Human Rights and served ‘as the supreme law of the land for the duration of the Transitional Period’ (ibid.: Art.18). In the economic sphere, the Government adopted ‘Ethiopia’s Economic Policy for the Transitional Period’ (Transitional Economic Policy/TEP) in November 1991. The TEP document assessed the status of the national economy inherited from the previous government. It evaluated the various economic sectors and spelt out a ‘roadmap’ as to how they would be operated during the

Transitional Period. In fact, the Economic Policy served as a guiding economic instrument even after the completion of the Transitional Period.<sup>88</sup>

Although the economic policy document covers a whole range of economic sectors from agriculture and mining to the service sector, since the focus of this study is mainly on an aspect of the manufacturing sector, the position of the TEP document in relation to the manufacturing sector will be considered here.

The TEP document evaluated the situation of the manufacturing industry under State ownership as follows:

The industrial sector was exposed to rapid decline due to mainly the civil war and shortage of foreign exchanges. Some factories were closed down altogether while others were operating at very low capacities. It did not show any growth in 1988/89 while in 1989/90 industrial production declined by 5%. This led to reductions in revenue and shortages of basic industrial goods which were already scarce (...) (1991:7)

The document further elaborated the causes for such a state of economic decline. Among the many reasons listed there, the fact that ‘state control of the economy was over-extended and this denied private investors the right of ownership and participation in economic activity’ was pinpointed as one of the major causes for the economic decline (TEP, 1991:13). It was in order to reverse this state of affairs, so it was claimed, that the Transitional Government introduced a new economic policy through which on the one hand the visibility of the State in operating economic activities would be significantly restricted, whilst on the other hand the private sector would be given wider vertical and horizontal space to operate in the national economy. With this object in view, the TEP document stated that ‘state ownership of industry will be limited to selected number of ‘key establishments’ that are essential for the development of the economy’ (TEP, 1991:27). Although there was no definition of ‘key establishments’, there was an illustrative list of industries which were planned to remain under state ownership.

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<sup>88</sup> The political organisation, the EPRDF, that had the majority seat in the ‘Transitional Period’ law making organ managed to win an election for state power during the post-transition period through ‘the democratically expressed will of the electorate’. Thus, there has not been a major policy shift from what has been implemented during the ‘Transitional Period’.

Therefore, unlike the situation during the military rule where economic activities open for the private sector were the exception, during the Transitional Period what was exhaustively listed was economic activities reserved for the government, which were believed to be the 'key establishments'. The remaining numerous economic activities which do not belong to that category will be in private hands with no limits as to persons for partnership or shareholding and amount of capital (TEP, 1991:27). This implied that State involvement in the economy was to be the exception rather than the rule. However, due to the open ended listing of the so called 'key establishments', the visibility of the State in the economy is still significant.

With respect to the enterprises already in State hands, so long as they remained under State ownership and management, it was declared that, they were to operate in an economically rational way. More specifically, the TEP expressly stated that 'state enterprises should operate in accordance with the criteria of profitability in a competitive environment and they should be treated like any private enterprise without favours and privileges whatsoever' (1991:28). In effect, the Policy introduced a 'hard budget constraint' over State-owned enterprises, in which they were to be evaluated in terms of economic profitability, with bankruptcy becoming a credible threat. This was drawn up as a mode of operation until such time they could be privatised. The very fact that economic profitability became a tool of assessment for success with declaration of bankruptcy an eminent threat indicated the introduction of market discipline.

It could be argued, however, that economic profitability as a sole criterion for determining success would be a single-minded approach, in that, at times, this could be at the expense of social objective of the enterprises an equally relevant governmental policy consideration. Consequently, for the benefit of holistic and sustainable reform programme, there appears a need to consider and strike a reasonable balance between these societal goals.

With a view to addressing any social problems associated with privatisation, the TEP document underlined that 'measures parallel with privatisation will be taken in order to minimise problems of unemployment resulting from privatisation and towards that end it was promised that privatisation would be carried out gradually' (TEP, 1991:28). Thus, it could be said that the policy envisaged that unemployment could ensue with the introduction of privatisation and the proposed remedy was to undertake the programme gradually. However, whether unemployment



was the sole possible adverse effect of privatisation is something that will be examined at a later stage in the study.

There was also another policy decision pertaining to the management of State-owned enterprises during the transition. In this regard, the Policy prescribed that, ‘in order to eliminate rampant bribery, theft and inefficiency as well as to promote smooth management and labour relations, labour should have one-third of the voting rights through representation in the enterprises’ ‘Managing Boards’ (ibid). The ‘Managing Board’ is the top management authority for every State-owned enterprise. Thus, the Policy was framed on the assumption that employee participation in the management of the enterprises is not only consistent with economic profitability issues but that it has a role to play in minimising corruption and in promoting smooth management and labour relations. Hence, the monitoring role of the labour force was anticipated during the transitional period in a manner similar to its *vigilante group* status during the military regime.

#### **5.4. 2. The Legal Framework**

The Transitional government promulgated laws pertinent to establish a legal framework suitable for the reduced role for the State in economic activities whilst granting autonomy to State-owned enterprises. These legal instruments included a proclamation on how State-owned enterprises would be autonomously and profitably operated whilst they remain in State hands, and a proclamation for the establishment of the Privatisation Agency (issued in 1992 and 1994 respectively). In a sense, these were among the legal instruments of the Transitional period that served as the basis for a smooth transition from a public enterprise regime to privatisation and private sector development.

##### *Public Enterprises’ Proclamation No. 25/1992*

The preamble of the proclamation stated the following as one of the reasons for its adoption; ‘(...), so long as public enterprises have to stay under government control, it is necessary to create an organizational structure whereby they can enjoy managerial autonomy and thus enable them to be efficient, productive, and profitable as well as to strengthen their capability to operate by competing with private enterprises’. Accordingly, unlike during the military rule when state enterprises had no legal personality, this law conferred every State-owned enterprise

with legal personality, enabling them to enter into juridical acts autonomously and independently.

Parallel with the empowerment of the State-owned enterprises at the enterprise level, corporations which were powerful bureaucratic chains of administration of the enterprises were dissolved pursuant to Council of Ministers Regulation No.5/1992 (IMF, 1999b:56). Unlike the position with corporations where the top management had been composed exclusively of State appointees, every enterprise is to be governed by a 'Managing Board' made up of government appointees and employees' representatives within the enterprise. Managing Boards consist of a minimum of three, and a maximum of twelve, members of which two thirds were to be appointed by the government while the remaining members were to be elected by the general assembly of the workers in the respective enterprises (Proc. No.25/1992, Art.12 (2)). By legislating for one-third representation of the labour force in the Managing Board, the law entitled the labour force to participate in co-decision making although the management would have a majority seat at the Board. With such a structural and functional reform, the government tried to rehabilitate the State-owned enterprises so that they could adjust themselves to the new competitive environment. Generally, it was believed that rehabilitating the enterprises while they were under State management would attract potential buyers. Hence, it is as good as 'fattening the calf before taking it to market' (Jackson and Price, 1994:11).

The other subject matter where the Public Enterprises' Proclamation tried to bring about reform was the 'commercialisation' of State-owned enterprises, whereby they were converted into commercial entities subject to Commercial Code and market discipline. For this purpose, their assets were converted into shares and temporarily held by the government until such time they could be divested. Accordingly, any State-owned enterprise for all practical purposes was 'treated like any private enterprise without favours and privileges whatsoever' (TEP, 1991:28). This provided State-owned enterprises with an opportunity to learn to compete in order to survive under the new competitive environment.

It was further provided that where a State-owned enterprise incurred a loss equivalent to seventy five percent or more of its paid up capital it would be subjected to liquidation through bankruptcy proceedings (Proc. No. 25/1992, Art.39 (4)). In consequence, bankruptcy associated with poor economic performance became an imminent threat. It marked a shift from the time of

the military rule where loss making State-enterprises were tolerated and subsidised. All these measures appeared to reflect the prevalence of market forces and market discipline. Thus, the Economic Policy of the Transitional Period introduced a reorganised structure for the State-owned enterprises which was accompanied by redefinition of goals towards more explicit commercial aims.

*Proclamation No. 87/1994 and its amendments*

Initially, a ‘Privatisation Committee’ was established under the Ministry of Finance and Economic Development to undertake the privatisation programme. However, given the magnitude of the task, the Committee proved to be inadequate to properly handle it (Hishe, 2005:30). The government was, thus, convinced that there was a need to establish an autonomous agency to oversee the smooth process of the privatisation programme.

Accordingly, the ‘Ethiopian Privatisation Agency’ was established by law as an administratively autonomous public organ accountable to the Prime Minister’s Office. The Agency was managed by a Board composed of five permanent members appointed by the Government<sup>89</sup> (Proc. No.87/1994, Art.7 (1)). Pursuant to Art.5 (2), the Agency was authorised to undertake detailed economic, technical, financial and price evaluation of the enterprises on which the government would base its privatisation decision. Besides, although the power to decide which enterprises should be privatised was vested in the Government, the Agency had recommendatory role in this regard.

Although ‘privatisation’ was declared as an economic policy instrument in 1991, an institutional set up to implement it had to wait for more than three years. Furthermore, whilst the establishment of an autonomous agency for the purpose may be considered as an appropriate policy response, the proclamation establishing the Agency had certain limitations which in due course necessitated rectification. Firstly, even though the Agency was named as the ‘Privatisation Agency’, the proclamation failed to define the notion of ‘privatisation’ in any of its sections. As previously noted (*see section 5.1. above*) the term ‘privatisation’ has been, susceptible to various meanings with varying scope. Consequently, it would have been much more appropriate expressly to spell out how the term should be employed and implemented in

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<sup>89</sup> ‘Government’ in this context is understood to mean the Prime Minister’s Office because of the fact that the members of the Board of Privatisation were appointed by the Prime Ministers’ Office.

the Ethiopian context. In fact, whether or not a direct consequence of this omission, during the initial periods of the Ethiopian privatisation process, total sale of assets was the sole modality of privatisation, thereby giving the term a narrower meaning (*see, p.125, Table 1*).

Another limitation was that the law did not spell out what was intended to be achieved through privatisation so that all stakeholders could have a clear and unified goal as a course of action. Certainly, the preamble of the Proclamation indicated that there was a need ‘to change the role and participation of the State in the economy in order to revitalise the economy (...)’ and the operative part of the law further provided for ‘the orderly and efficient manner of privatising’ (Proc. No.87/1994, Art.4) as an objective of the Agency. However, these statements were too broad to provide clear guidance for action. Furthermore, it was the objective of the Privatisation Agency (the Office), not the objective of the privatisation programme, which was specified in the proclamation.

Thirdly, the responsibilities of the Agency were limited to activities during the pre-privatisation stage until such time as a State-owned enterprise was delivered to the new buyer. Once the buyer took delivery of the enterprise, the Agency was not empowered to assess and monitor the post-privatisation performances of the privatised entities nor was any other administrative or judicial body entrusted with such a purpose. Thus, the post-privatisation process was left unregulated and it could be said that it was considered as though privatising the enterprises was taken as an end by itself. The fact that the post-privatisation situation was beyond the reach of any governmental monitoring activity created a gap in adequately assessing the success or failure of the privatisation programme in a comprehensive manner.

Finally, the literature, as indicated in 5.2, provided that privatisation has, at least in the short term, significantly affected the community of the workforce. Due to this, it was recommended that, ‘one way to reduce tensions [between labour and privatising authorities] is to engage in dialogue with employees early on and to jointly work out acceptable solutions’ (Kikeri and Nellis 2004:112). Article 43(2) of Federal Constitution of Ethiopia stipulates that ‘nationals have the right (...) to be consulted with respect to policies and projects affecting their community’. Given the adverse impact the privatisation programme has on labour it could be validly argued that it has been the labour force’s constitutional right to be consulted in the process from the beginning. In fact, Abebe and Admit concluded that one of the shortcomings of the privatisation

programme in Ethiopia and the reason why trade unions adopted a hostile attitude towards the privatisation programme was the fact that the trade union leadership was not consulted in the process (2001:62). However, the law did not provide the labour force or its representatives an opportunity to be represented in the Board of Privatisation.<sup>90</sup>

It is to be recalled that the trade union leadership during the military regime, as indicated above, was affiliated with the political party in power. Some members of the trade union leadership retained in their leadership positions as the new government claimed not to interfere in trade union activities and leadership. However, it was suspicious of the old trade union leadership. It was mentioned in Chapter 1 that during the early periods of the post-military rule ‘judges of the various benches who were considered to have affiliations with the military regime were removed and replaced by newly appointed judges’ (*see, p.1*). Similarly, the exclusion of trade unions from consultation in the privatisation process could be explained by this lack of trust. In fact, even when the TEP refers to employee participation in the management of the State-owned enterprises, the Public Enterprise Proclamation grants the participation to representatives of employees to be elected by the general assembly of the employees even if there exists a trade union. These policies and practices all tend to show the government’s suspicion towards trade union leadership of the former regime.

The government, without consulting the labour force, designed schemes with a view to mitigating the loss the privatisation process might inflict on the labour force. Nevertheless, as the government was solely concerned with job losses associated with privatisation, an early mandatory retirement scheme for those who had twenty years of service and who attained forty-five years of age was arranged with pension entitlement (Proc. No.424/2004; Art.2(1)). A study conducted by Ministry of Labour and Social Affairs (MOLSA) indicated that, as of 1998, out of

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<sup>90</sup> One workers’ representative of an enterprise that is tabled for privatisation is allowed to attend the discussion of the Board of Privatisation (Proc. No.87/1994; Art.7 (2)). However, not only that the workers’ representative is a non-voting member but also that it is the workers’ representative at enterprise level rather than the national workers’ organisation that was allowed to attend the meeting. These enterprise level representatives would not possess the requisite knowledge to comprehensively appreciate the issues and problems involved in the whole privatisation process.

One of the criticisms the Confederation of the Ethiopian Trade Union had on the privatisation process was that its non-inclusion in the Board of Privatisation. Trade union leaders were petitioning the government to consider their membership to the Board in order that their views be heard and considered in an issue that directly affects their members. Sometime in 2005, ten years after the commencement of the divestiture, CETU was invited by a letter from the then Deputy Prime Minister requesting it to send a representative to the Board. Since 2005, the President of CETU has been an *ex-officio* member of the Board of Privatisation.

the employees who were made redundant due to privatisation, 6,137 of them were subjected to early retirement (MOLSA, 2003:15).

The remaining part of the labour force working in enterprises prepared for privatisation were also offered the following options: (i) to participate in a Safety-Net scheme with other employees under government programmes; or (ii) to receive severance payment together with other exit benefits and terminate their employment (PPESA News, 2007:30). Accordingly, 4,552 had their employment terminated upon payment of severance payment and 6,822 were organised under Safety Net schemes to own and manage formerly State-owned enterprises (MOLSA, 2003:16).<sup>91</sup>

Those measures were not put into effect in consultation with the actual stakeholders (workers) or their representatives. They were rather merely handed down by the government for implementation (MOLSA, 2003: V). For instance, trade union leaders contend that it would have been more sensible and ‘labour friendly’ to apportion the meagre employment opportunities by reducing working hours of all employees but maintaining the size of the labour force intact.<sup>92</sup> But owing to absence of consultation with them, trade unions claimed that implementing agencies resorted to retrenchment instead of retaining employment by reducing working hours.

Possibly in recognition of perceived shortcomings of the original proclamation, four years later, an amendment was undertaken by Proc. No. 146/1998 and the following remedial measures were included in the amending legislation. First, the amendment introduced a legal definition for the key term ‘privatisation’<sup>93</sup> in a manner that adopted a relatively broader understanding of the term. This included not only total transfer of asset or shareholding from state to private but also joint venture, lease and management contract arrangements. It is important to note, however, that privatisation is not a mere change of ownership and management of state assets to private ownership and/or management. Policies, laws and institutions supportive and facilitative to private sector development need to be factored in the analysis. Thus, it is an over-simplification

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<sup>91</sup> The Safety Net scheme was arranged in order to benefit employees working in State-owned retail shops and hotels to buy them out. With due respect to the good intentions of the Government, however, it was not a success story as the former employees were not good and skilful at managing nor were they given training on entrepreneurship. Loan and other necessary facilities were not accorded to them in due time as well (MOLSA 2003:18)

<sup>92</sup> The member of the top leadership of CETU raised this alternative solution instead of retrenchment with a view to retain jobs to its members.

<sup>93</sup> ‘Privatisation’ means the transfer, through sale, of an enterprise or its unit or asset or government share holdings in a share company to private ownership *and includes*:

-the making of an enterprise a government contribution to a share company to be formed with the participation of private investors; and the privatisation of the management of an enterprise (Article 2 (1) of Proc. No.146/1998).

to understand privatisation solely from the angle of change of ownership ignoring the other enabling environments.

Second, the general objective of the privatisation process was spelt out. Accordingly, Article 3 of Proc. No.146/1998 stated the following;

The country's Privatisation Programme shall have the following objectives:

- to generate revenue required for financing development activities undertaken by the Government;
- to change the role and participation of the Government in the economy to enable it to exert more effort on activities requiring its attention;
- to promote the country's economic development through encouraging the expansion of the private sector.

The stated objectives are broadly similar to many of the objectives of privatisation programmes elsewhere (Roland, 2008:203; Musa, 1994:356) and they are predominantly economic objectives. Social objectives such as the creation of full and decent employment have been accorded less attention and denied direct reference in the stated objectives. The emphasis on economic goals seems to imply that once growth is secured, social objectives could be attained through the so-called the 'trickle down' effect in that members of society including employees will directly or indirectly benefit from the overall growth of the economy. However, Stiglitz argued that 'while it is true that sustained reductions in poverty cannot be attained without robust economic growth, the converse is not true: growth need not benefit all' (2002: 78). Similarly, the ILO Declaration of 1998 has also stated that 'economic growth is essential but not sufficient to ensure equity (...)'.

In practice, in the Ethiopian privatisation scheme, in order to 'generate revenue required for financing governmental programmes' from the proceeds of the divestiture, many of the State-owned enterprises were transferred to investors who were able and willing to pay the highest price through competitive bidding ( Nola and Rueda, 1998:5; IMF, 1999b:63; Abebe and Admit, 2001:64; Ericsson, 2009:14). However, placing emphasis on high revenue generation from the proceeds of the divestment focuses on short term income generation goal.

The risk with a short-term revenue generation goal can be that it carries the danger of surrendering public assets into the hands of those who have finance but not a feasible business

plan to ensure sustainability of the business (Bortolotti and Siniscalco, 2004:17). In fact, there were instances, in the Ethiopian privatisation scheme, where enterprises were closed down and the whole labour force dismissed soon after divestiture owing to the new buyers' managerial and financial limitations.<sup>94</sup> Without a well-considered business plan, it will be difficult to run a sustainable business from which revenues in the form of taxes to the government and employment opportunity to members of society would be permanently generated. Thus, revenue generation from the proceeds of sale of assets to the highest bidder as a prime objective, though beneficial from a short term perspective, may not necessarily be advantageous in the long term. Strategic benefits such as employment generation and tax revenues may not be achieved as a result of which successful bidder determination based on the highest price is subject to challenge.

Taking note of this problem and the limited investment capital available in the country, at a later stage in the privatisation process, not only the price offered but also the business plan of the bidder has been accorded due attention in determining the successful bidder (PPESA News: 2001). With a business plan becoming an important factor in determining the successful bidder, the need to monitor whether the anticipated plan is put into effect post-privatisation also became necessary. As a result, in 2004, the Agency's responsibilities were extended to include post-privatisation assessment<sup>95</sup> with a view to verifying compliance of investors' to their business plan (Proc. No.412/2004, Art.6 (1) (f)).

## **5.5. Modalities of Privatisation**

There is no 'ideal' method of privatisation, and choosing one modality of divestiture over another is mainly dictated by the objective of the programme itself (Bortolotti and Siniscalco, 2004:16). Hence, selection of an appropriate modality of privatisation is dependent upon many variables (Nola and Rueda, 1998:4). Some of the important variables in this respect have been the size and type of the enterprises and the governmental objective to be achieved from the process (Getachew, 2003:28).

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<sup>94</sup> Teramaj Edible Oil Factory and Dil Paint Factory were cases in point in this regard (Abebe and Admit: 2001).

<sup>95</sup> In 2009 an international consultant was hired, by a fund obtained from the African Development Bank, to undertake the post-privatisation assessment in which 22 companies in 7 industrial sectors were selected for the study. A draft of the report was obtained from the Office of the Privatisation and Public Enterprises' Supervisory Agency. The draft, as it now stands, does not address the issue on post-privatisation management and labour relations. It mainly focuses on financial and export performance of the enterprises together with the challenges the enterprises encounter in post-privatisation in this regard. The issue of labour is mentioned in the Report only incidentally and in connection with creation of employment and skill development in the post-privatisation period. The views of the trade unions were not included anywhere in the Report.



As indicated above, in the broader understanding of the term ‘privatisation’ ranges from a total sale of State-owned enterprises to surrendering the operating rights of the enterprises while retaining the bare ownership by the State. Although sale of assets and sale of shareholding imply full transfer of ownership to the new buyer, sale of assets differs from sale of a shareholding in that in the former case the State-owned enterprises will be transferred to the new buyer while collectables and liabilities of the enterprise will remain with the government and in the latter case the State-owned enterprises shall be transferred with all its assets and liabilities to the new owner.

**Table 1 Number and modalities of privatisation in Ethiopia (1995-2012)**

No	Mode	'95	'96	'97	98	'99	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	10	11	12
1	JV*					1													
2	Lease											1	2						
3	Asset sales	5	39	24	16	8	11	6	2	3	3	1	7	3	7	8	15	7	6
4	Share sales												5	6	4	3	3	7	7
5	Concession			1															
6	Management Contract					1													
7	Safety Net (employee buyout)		43	2															

*Source: Privatization and Public Enterprises Supervisory Agency (PPESA News, Vol.1, No.7 (2012)*

*\*Joint Venture*

In terms of pace, Selvam and Meenakshi documented that ‘rolling back’ of the state from the economy has been carried out gradually in Ethiopia contrary to those states of Latin America and Eastern Europe where withdrawal was fast and vast’ (2005:76). With regards to sequencing, the Ethiopian privatisation scheme moved from simple to complex arrangements in that small enterprises were the first to be privatised, followed by larger and more complex ones (IMF, 1999b:56; Ericsson, 2009:6).

Commencement of divestiture by handing over small enterprises has had benefits in the Ethiopian context. First, as small enterprises generally employ a smaller workforce, employee displacement associated with privatisation was of a lesser, if not wholly negligible, concern (IMF, 1999b:57). Second, the implementing agencies had an opportunity to learn from the experience of implementing a ‘small-scale privatisation’ exercise (PPESA News, 2011:41) as to how to go about divesting large enterprises which may have a more noticeable social impact. Third, since the domestic private sector was economically marginalised and weakened due to the restrictive policies of the military rule, domestic capital could not afford to purchase the larger enterprises. However, a gradual process of privatisation does not necessarily imply an effective strategy as it may, at times, indicate a lack of political will towards the process and reluctance to engage in it.

Aside from decisions about the sequence of privatisation, another issue to be considered was the identity of purchasers. This primarily relates to whether and to what extent a policy framework should be adopted enabling foreign buyers to acquire State-owned enterprises. If foreign buyers are to be allowed, governments are further expected to formulate a policy as to whether public assets should be divested to foreign and domestic purchasers on the basis of equal opportunity or whether the foreign purchasers should be treated as purchasers of last resort. Such a policy issue may be dictated and influenced by multiple considerations both economic and non-economic.

In particular, in the context of developing countries, such decisions could have serious economic and political implications. Given the colonial legacy of most of these countries, granting unlimited access to foreign investment might inject real or perceived fears of reintroducing colonialism in its revised version. Such concerns tend to exert mounting pressures on policy makers to embark upon adopting restrictive entry or total denial of entry for foreign investors. On the one hand, opening up economic sectors, especially the ‘commanding heights’ of the economy, to foreign investors might give rise to a political backlash and public disapproval, in addition to the disadvantages to the national economy (Ramanadham, 1993b:50).

On the other hand, the gaps witnessed in capital stock, technology, management and skill <sup>96</sup> from domestic sources and resources might lead governments of developing countries to offer a

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<sup>96</sup> For an extensive discussion on merits and demerits of foreign investment; see Azubuike, O. Lawrence (2009) *Privatization and Foreign Investments in Nigeria*. Florida: Brown Walker Press.

relaxed and favourable legal framework for foreign investors to operate in their domestic economic activities (Bager, 1993:101; Estrin, 1994:27). Furthermore foreign privatisation links to new international markets could also be established where the enterprise in view is export-oriented (McMillan, 1996:137). As these factors have been crucial for the competitiveness of economic entities in the globalised economy, access to foreign investment has been seen as important to developing countries in order to become economically meaningful trading partners, thereby ensuring their survival and sustainability in world trade.

Faced with such ambivalence, it is arguable that countries should adopt policies which address both sides of the concerns and considerations. Consequently, there are countries which provide equal opportunity of competition both to domestic and foreign investors in the privatisation process. For instance, Hungary had provided equal opportunity of participation to both domestic and foreign investors in its privatisation programme (McMillan, 1996:145; Filipovic, 2005:5). In fact, it was reported that about 90 per cent of divestiture incomes in Hungary came from abroad (Ramanadham, 1993b:8).

Conversely, considerations such as the need to develop a 'home-grown capitalist class' with a view to attaining 'self-reliance' presses nation-states to accord special and preferential treatment to their nationals in providing opportunities to acquire State assets (Egorov, 1993:93). Consequently, foreign investors would only be invited in to the sectors where high-tech and complex managerial skills are essential as the domestic investors would lack those resources.

In Ethiopia, the TEP expressly states that '(...) domestic capital should be given priority over foreign capital and domestic investors should always receive preferential treatment'<sup>97</sup> (1991:29). As a result, foreign investment had been a measure of last resort in the sense that foreign investors were to be invited or allowed to participate in large and complex enterprises only where the domestic private sector is incapable of operating due to financial and/ or technical capacity limitations (TEP, 1991:29; Admit, 2008:245).

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<sup>97</sup> As an expression of such a preferential treatment to domestic investors in the privatisation process, 'when a domestic investor is declared a winner in a bid, he pays 35% of the price upon signing of the contract, and the remaining 65% in arrears of a five-year period.' However, for a foreign investor, 50% of the purchase price will be paid upon signing of the contract while the remaining 50% shall be paid within three years time. (PPESA 2011, Vol 1, No.5, p.41).

It is important to stress however that Ethiopia was not the sole decision makers in investment destinations. Rather foreign investors have also their own preferred destinations. Given the ample investment opportunities foreign investors have in the current globalised economy, poor infrastructure facilities, the landlocked nature of the country and the fact that Ethiopia is not yet a member of the WTO are, among other things, believed to be some of the ‘push factors’ for foreign investment (UNCTAD, 2011:35). Thus, even where bids were open to foreign investors in limited sectors of the Ethiopian economy, foreign investment was less enthusiastic to invest in the country (Adejumobi, 2007:156). Consequently, as at 2008, many of the State-owned enterprises were divested to domestic investors (Ericsson, 2009:8). Overtime, however, the restriction on foreign investment has been eased by lifting entry barriers.<sup>98</sup>

With respect to the impact of foreign investment on employment-related issues, it appears to be inconclusive in establishing whether employees would be better-off in terms of their rights and welfare with a domestic or a foreign owner. On the one hand, there are views suggesting that foreign investors are insensitive to the rights of labour of the host country (Stiglitz, 2002:57). Based on this view, foreigners are rather inclined to take advantage at the expense of reduced benefit accorded to the workforce of the host country. As one of their main reasons for off-shore investment is in a quest for low labour standards, thereby maximising their profit, adopting high labour standards at foreign destinations would be inconsistent with their intents and purposes. Stiglitz documented that ‘many of the multinationals have done less than they might to improve the working conditions in the developing countries’ (2002:68).

Conversely, there are arguments which contend that as foreigners mostly originate from countries of high labour standards; they consider that they are at least morally obliged consistently to maintain higher labour standards whenever and wherever they locate and relocate (Banks, 2006:85), thereby setting an exemplary standard. Egorov argued that ‘foreign managers working in the countries of Central and Eastern Europe imported good human resources management practices widely exercised in developed market economies’ (1993: 98). Moreover, a study conducted in China on employment effects of domestic and foreign privatisations found

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<sup>98</sup> United Nations Conference for Trade and Development reported that in order for a foreigner to engage in ‘Greenfield investment’ in Ethiopia formerly the minimum capital requirement was USD 500,000 but this has been reduced to USD 100,000. Furthermore, where the investment was a joint venture arrangement, the requirement was USD 300,000 but this has also been reduced to USD 60,000. As a result, the report recorded that annual FDI inflows increased from an average of USD 214 million over the 1998-2002 period to USD 409 million in 2003-2007(see generally; UNCTAD: 2011 ).

that there was a greater increase in employment under foreign privatisation than with that of domestic and the study further concluded that foreign owned privatised enterprises are more reluctant to retrench employees than their domestic counterparts (Gong *et al*, 2006:7).

As regards the collective aspect of labour rights, in a study undertaken in Nigeria and Ghana, small local firms were found to be reluctant to recognise unions and engage in collective bargaining with them, whereas larger, expatriate firms were more willing to engage. In Ghana, the study further found that ‘although indigenous private employers were generally hostile to unions, preferring to deal with their own employees on a paternalist basis, most foreign private employees considered trade unionism to be an advantage since it was easier to deal with workers as an organised body than as individuals’ (Bean, 1994:227).

In the Ethiopian context, Selvam in his study on the *‘Impact of privatization on management issues in Ethiopia’* attempted to analyse the perception of employees in privatised enterprises as regards the ‘work freedom’ they gained after privatisation. Work freedom in this context was understood to mean the level of initiative employees have been accorded, by management to determine the manner of accomplishing job related tasks. The study reveals that 78.89 % of the respondents from foreign-owned enterprises enjoyed more or moderate work freedom after the privatisation of their enterprises while the result is 60% for employees in domestic privatisation (Selvam, 2008:116). The study summarised that ‘those foreign privatised enterprises were relatively better implementers of work freedom compared to the domestic privatised enterprises’ (op cit: 112). However, the study did not examine the level of freedom workers possessed in the exercise of labour rights and it further failed to examine the freedom workers have collectively as the study confined itself to the quite narrowly defined ‘work freedom’ of an individual employee.

Although Gong *et al* and Selvam examined the situation of labour in a post-privatisation setting; they respectively limit their studies to individual job security and an individual’s freedom to accomplish job-related tasks. Nevertheless, the collective labour rights issue as an expression of human freedom was equally important if not more important.

## **5.6. Summary**

The literature has demonstrated that since the early 1980s privatisation has become an important policy instrument, nationally and internationally. On the social front, the impact of privatisation has been assessed from the perspective of job losses and job creation ignoring or paying least attention to the more fundamental collective labour rights.

Privatisation's driving force has been either internal motivation of the respective governments or external pressure of donor agencies or a combination of both. In the context of developing countries privatisation has been predominantly a result of external prescription. In terms of geographical coverage, it has been implemented across the globe. From societal development perspective, developed, developing and least developing countries have been engaged in such an endeavour. As far as the system of governance is concerned, fully-fledged democracies, countries in transition and dictatorial regimes have embarked upon privatisation programmes. It thus appears that it is a policy which can adapt itself to various economic, social, political, and developmental variables.

It is an over-simplification to define and understand privatisation from the perspective of mere change of ownership from State to private. Legal and policy frameworks together with institutions facilitative and supportive to such transfer need to be undertaken either prior or in parallel with the actual implementation of the privatisation process. Although the privatisation policy was declared in 1991 in Ethiopia, its implementing agency was not established until 1994. This indicated that there was no sense of urgency to actually implement the programme as opposed to its urgent declaration on paper.

Given the fact that the government in power initially had an Albanian style communist inclinations, it is hard to accept that it would endorse liberal economic policy within six months of power assumption by its own free will. The country was in a command economy under the military regime and hence there were no market institutions in place at the time. It was without making any legal and institutional preparations suitable for the market economy that the privatisation policy was adopted. This indicated the ill-considered nature of the measure which

might have been externally prescribed or a measure undertaken to appease donor and lending institutions. Moreover, the early 1990s was a period when the WB and the IMF prescribed privatisations were being exercised across sub-Saharan Africa. This period coincided with that of Ethiopia. In fact ADBG documented that ‘the EPA was receiving technical assistance from the WB and the German Government’ (2000: 14). It thus appears that the privatisation programme was introduced mainly due to the pressure of the bilateral and multilateral lending institutions. The external prescription of the privatisation programme seems an aspect of the explanation why the programme is undertaken gradually with appreciable sector of the economy still statist twenty years after the commencement of the programme.<sup>99</sup> Particularly after witnessing the 2008 global financial crisis, Ethiopian policy makers appeared to be encouraged in maintaining State ownership of the financial sector.

A feature of the Ethiopian privatisation is that the divestment process moved gradually from the point of view pace; and from simple to complex enterprises in terms of sequence and accorded priority and preferential treatment to domestic investors over foreign ones. The experience of some jurisdictions documented that their privatisation programme involved rapid in terms of pace and moved from complex to simple enterprises in terms of sequence. There are also countries which provided equal opportunity to foreign investors in their privatisation programme with that of domestic investors a position different from what Ethiopia adopted.

Having these features of privatisation in Ethiopia in mind, the chapters that follow closely examine how and to what extent social issues, particularly collective labour issues, have been handled in post-privatisation setting in Ethiopia. Accordingly, in the following two chapters, enterprise level pre-and post-privatisation comparison and State-owned and privatised enterprises comparisons on union density and contents of collective agreements will be undertaken through the medium of case studies.

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<sup>99</sup> Indeed, in recent times the government has introduced the concept of ‘Developmental State’ where the government tends to adopt a more noticeable presence in the economy. Particularly, infrastructure projects such as construction of huge hydro-electric dams, railway projects, fertilizer factories and the likes have been owned and managed by the State. The apparent justification for such a measure offered by the government has been in countries like Ethiopia the private sector is too weak to engage in such an undertaking.

## **Part-II- Case Studies**

### **Chapter 6 Unionisation and Membership Density<sup>100</sup>**

#### **6.1. Introduction**

Chapter 3 elaborated the legal framework for trade unionism and the challenges and opportunities it faced overtime in Ethiopia. That framework in theory provides support for unionisation by lowering the minimum threshold for union formation, by providing protection from anti-union discrimination and granting immunity from governmental and employer interference in trade union activities. A question, though, is what impact the law has in practice. In order to examine the actual status of post-privatisation trade unionism in Ethiopia, this Chapter will assess the membership density in trade unions at the enterprise level. For this purpose, four privatised enterprises and two State-owned enterprises operating in similar lines of business have been identified for examination.<sup>101</sup>

Although there is no consolidated data on union membership figure at the national level, the President of CETU in his interview with a private news paper, in 2010, stated that there are around 350,000 trade union members at the national level while two million organisable employees are not yet unionised implying that the unionised labour force is only 14.9 %.<sup>102</sup> However, the figure on organisable employees mentioned by the President included employees of the civil service to whom the right to organise is not yet available in the current Ethiopian legal framework.<sup>103</sup>

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<sup>100</sup> Membership density in the present context denotes the number of unionised employees in an enterprise as a percentage of all the organisable labour force in that particular enterprise.

<sup>101</sup> For reasons of confidentiality, the true identity of the enterprises selected for the study has been deliberately withheld. Instead fictitious names have been attached to them. Accordingly; 'FT' denotes the foreign owned enterprise in the textile sector whereas 'DT' represents domestic owned enterprise in the textile sector. Similarly, 'DL' denotes domestic enterprise in leather sector while 'FL' stands for foreign owned enterprise in the leather sector. Finally, 'ST' denotes State-owned enterprise in textile sector while 'SL' represents State-owned enterprise in the leather sector.

<sup>102</sup> In an interview Ato Kassahun Fello, the President of CETU, gave to the private news paper (The Reporter), he indicated this figure. (*The Reporter, bi-weekly news paper (Amharic)*, Vol.16; No.11/1100. 14 November 2010).

<sup>103</sup> The Ethiopian Federal Constitution in 1995 promised that a law that will facilitate freedom of association for the Civil Servants will be issued. However, the law did not yet come into force. The ILO Committee on Freedom of Association reminded Ethiopian authorities that the long-awaited law should come into effect soon as restricting civil servants from unionisation would be in violation of Ethiopia's commitment under ILO Convention No.87. It is estimated that the number of civil servants is at 1,300,000.



### **6.1.1. Factors for selection of case studies**

The textile and leather industries were selected for the study due to the comparative advantage Ethiopia has in these sectors as indicated in Chapter 1. In selecting the specific enterprise from the sectors, the size of the workforce at each one, the enterprise's geographical location and its length of operation post-privatisation were taken into account. Accordingly, enterprises that employ at least one hundred employees have been the ones considered here, the premise being that the interest for unionisation increases with the size of the workforce as the numerical advantage may provide the confidence and leverage to exert pressure on the employer.

As regards geographical location, enterprises situated in and around Addis Ababa (the capital city) have been selected. In the Ethiopian context, employees working and residing within and in close proximity to the capital city have had better access to all forms of information because of the relatively high concentration of printed and electronic media of government or private ownership in such locations. It is through these outlets that exchange of ideas on rights of citizens has been voiced. With this access to information, it is believed that a willingness to assert one's rights, including an interest for unionisation, will be more noticeable in these locations than elsewhere in the country. In fact, as indicated in Chapter 2, it was in this economic corridor that the labour force was concentrated in early Ethiopian history of industrial relation.

Lastly, only privatised enterprises which have been in operation for at least three years post-privatisation have been selected for the study. The reason is that in order to evaluate post-privatisation collective labour relations the enterprise under study must have operated on a post-privatisation setting for a reasonable time otherwise it would be too premature to draw any conclusions from the evidence. Three years is considered a reasonable time because it is the legally prescribed life span of a collective agreement in Ethiopia in cases where the parties do not expressly provide an alternative duration of validity (Proc. No. 377/2003, Art. 133 (3)). Hence, at least one term of a collective agreement must elapse to compare the contents of the two collective agreements.

### **6.1.2. The approach to assessment**

The assessment will be conducted at two levels. At level one, based on the available data on the size of the labour force and union membership, each privatised enterprise will be examined as to

its union membership density by comparing its pre-and post-privatisation records. At level two, the union membership density of the four privatised enterprises will be compared and contrasted with the union density in the two State-owned enterprises in order to determine whether the nature of ownership has any correlation with the level of union membership density.

First, however, in order to gain a basis of comparison of the views at enterprise level it was considered desirable to have an overview of the general impression and perception on issues of trade unionism by the social partners at the national level. With this objective in mind, the views of the representatives <sup>104</sup> of the national association of the employees (CETU) on the one hand and the employers' organisation (EEF) on the other were received in order to take them into account when evaluating the findings of the case studies.

One of the leaders of CETU was therefore interviewed <sup>105</sup> to obtain his reflections on the current status of trade unionism in Ethiopia. His perception is that trade unionism, in Ethiopia, is currently at crossroads and exposed to very challenging condition. He classified the challenges into two types-legal and practical ones. <sup>106</sup> Incidentally, it should be noted that CETU has been the single confederation of an umbrella organisation of the employees and it comprises nine federations. <sup>107</sup>

He began to explain his concern on the subject from what he considered to be problems with the law. According to him, one of the problems in the labour law is the way 'managerial employees' have been classified and regulated under the law. He stated that he understands why those designated as 'managerial employees' should not be allowed to be members of those trade unions in which membership is open only to non-managerial employees. The management staff at the enterprises basically represents and protect the interests of the employers and hence a

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<sup>104</sup> Semi-structured interviews were conducted with the representatives of the national associations. However, these personalities may tend to view facts in light of the interest of their respective associations and hence partisanship would be expected, as a result, their views need to be considered critically.

<sup>105</sup> Interview with a member of the top leadership of CETU at the Head Office of the CETU, Addis Ababa, on 21 October 2009

<sup>106</sup> During the interview, it was known that this key informant had training in law at the level of LL.B. degree.

<sup>107</sup> The nine sectoral Federations are: Federation for Transport and Communication Workers; Federation for Food, Beverage and Tobacco and Allied Workers; Ethiopian Banking and Insurance Industrial Federation; Federation of Tourism, Hotels and Generic Services Workers; Federation of Commerce, Technical, Print and other Workers; Federation of Energy, Chemical and Petroleum Workers; Industrial Federation of Ethiopian Textiles, garment and Shoe Workers; Ethiopian Federation of Metal, Wood, Cement and other Workers; National Federation of Farm, Plantation, Fishery and Agro-industry. The nine federations are composed of around 768 first level trade unions with a total membership of more than 350,000 employees.

conflict of interest may arise if they were to join trade unions representing the workforce, as result of which their exclusion from union membership of the non-managerial employees is understandable. In fact, the ILO is not also against such exclusion as long as the managerial staff is allowed to establish an association of its own. However, the way labour law defines ‘management staff’ and thereby excludes them is very broad in that even employees who genuinely are not engaged in managerial functions will be categorised as members of the management staff (Proc. No.377/2003, Art.3 (2) (c)).

This broad definition of the management staff has, in his opinion, the effect of dispossessing trade unions of their potential members from amongst the better educated employees because employers tend to assign such employees to team or group leadership and other supervisory tasks. Due to this, he is of the view that trade unions at enterprise level are becoming associations of the ‘blue collars’ who cannot convincingly articulate the interest of the labour force during consultations and negotiations. Consequently, trade unions are less skilled and weak in bargaining, more of confrontational than a cooperative engagement, thereby gaining no or minimal concession from their respective employers. In his view, failure of trade unions to obtain better concession paves the way for reduced interest in unionisation and confidence in union activities by the labour force.

This may be taken as a valid concern from the interest of labour point of view. However, from the employers’ point of view, the management team need to be strong in order to maintain workplace discipline and productivity, thereby competitiveness. One way of enabling the management team to strengthen its position is to give it an opportunity to have a wider pool eligible for managerial recruitment. This could be taken as one of the areas where the law became investment-friendly. Furthermore, even if the law allows the managerial employees to join trade unions, literature indicated (Slomp, 1996:48) that ‘white collar’ employees, where most managerial employees are categorised, have been less enthusiastic to join unions as many of them aspire to be promoted to managerial position. The CETU representative seemed to have failed to take note of these issues in his assessment of the law.

The other significant legal problem identified by the CETU representative is the provision of labour law that permits the formation of multiple unions in an enterprise (Proc. No.377/2003, Art.115). Earlier labour laws had adopted ‘unitary union’ policy. He admitted that allowing the

formation of diverse unions may be considered an aspect of freedom of association. Nevertheless, he was of the view that in countries like Ethiopia which do not possess a well-established democratic culture and where employee levels of literacy are low there can be problems. Unrestricted freedom may have undesirable consequences in that solidarity and unity of the workforce can be put at risk through proliferation of unions by over-emphasising on differences thereby igniting inter-union rivalry. He cited incidents where the law that allowed the establishment of diverse unions in the workplace has led to fragmentation of the labour force.<sup>108</sup> Similarly, Fashoyin (2008:8) documented the inter-union friction that the ‘plurality paradox’ brought into the Zambian labour movement. Whether ‘diverse unions’ policy is a well-founded fear in bringing about adverse effect on unionisation will be empirically examined later in the case studies.

At the practical level, he stated that he had received numerous reports from the various federations of trade unions complaining that trade union leaders and organisers at the privatised enterprises were put at risk. He said that trade union leaders and union organisers were put under close surveillance by the management and at times had been dismissed from employment by the mere fact that they happened to be union members or organisers.<sup>109</sup> According to his observation, labour inspection services, though empowered by law to monitor labour law compliance, have not been helpful in this regard due to alleged resource and manpower constraints. Therefore, he concluded that the existing law and its implementation and enforcement appeared to be unfavourable for trade unionism. Those concerns of the labour community, he stated, were being raised repeatedly with the employers’ associations and government officials at tripartite consultation levels and with top government officials including the Prime Minister.

In order to obtain a balancing view from the employers’ side, an executive official at the Ethiopian Employers’ Federation<sup>110</sup> (EEF) was interviewed. According to his observation, the

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<sup>108</sup> Trade unions at Adey Ababa Yarn Factory, at Bole Printing Press and Dashen Brewery were considered by him to be victims of the policy of diversity of unions in that multiple unions put the unity and solidarity of the labour force at risk.

<sup>109</sup> At the level of the formal legal framework, trade union leaders have been protected from any unfavourable treatment by the employer in connection with their union membership or leadership (Proc. No 377/2003; Art. 14 and 26). The protection against anti-union discrimination has been reinforced by sanctions to the extent of reinstatement even against the objection of the employer (ibid; Art. 43(1)).

<sup>110</sup> Interview with a former senior expert at the Ministry of Labour and Social Affairs, a ministry that handles labour and social issues. He is currently a member of the executive team of the Ethiopian Employers’ Federation (EEF). (*Interview conducted on 08 November, 2010 at his office in Addis Ababa*).

general tendency was that although employers cannot openly declare a ‘no union policy’ at workplaces due to legal prohibition,<sup>111</sup> many private employers do not want to see unions established in their work premises for a number of reasons.

As a principal reason he stated that employers constantly fear and have the perception that when a trade union is established in an enterprise, employees cultivate a sense of disobedience to managerial instructions the result being a watering-down of a superior–subordinate relationship with loose discipline at workplaces prevailing instead. Employers are of the view that trade union leaders speak about their members’ rights without pin-pointing the duties of the employees simultaneously. Moreover, he recalled that during the military regime, trade unions were closely associated and affiliated with the then government which was basically against private sector development. Due to such an unpleasant memory of the past, private employers are generally sceptical towards trade unions.

In his view, employers strongly believe that they should have full and absolute prerogative over the management of labour, a derivation from their ownership of the enterprise and their managerial prerogative over employees emanating from the very nature of the employment relationship. He stated that many employers are suspicious that when trade unions are established and operate at their enterprises, unions will attempt to limit the exercise of their prerogatives. On the other hand, he did not dismiss the likelihood that, though not large in number, some employers still have the tendency to treat employees with a master and servant mentality, thereby inclined to have unfettered power over their employees. It is interesting to recall that although the status of slavery was abolished by law in 1942 in Ethiopia, Seyoum and Teferra (*see, p.29*) recorded their observation that the labour relation was mainly a master and servant relationship in the 1960s and this informant again suggested a similar attitude to exist in the 21<sup>st</sup> century. It seems that the change in the law did not bring about a change in social behaviour even in a prolonged period.

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The Federation was re-established in 1997 having previously been dissolved by the military government in 1975. Currently the association has 132 employer members.

<sup>111</sup> The Ethiopian Penal Code of 2004 under Art 601(1) (a) provides that ‘whoever by intimidation, violence, fraud or any other unlawful means prevents a person from exercising his civil rights granted by the Constitution or other laws is punishable with simple imprisonment not exceeding three years, or fine.

Another reason advanced by him was that, at times, employers consider trade union leaders to be exclusively interested in the short term benefit of their members even to the detriment of the very existence of the enterprise. In this connection he recalled his own experience as a former expert at the Ministry of Labour and Social Affairs whereby a particular trade union, the morning immediately following its formation, submitted a request to the employer for collective bargaining with a proposal requesting for substantial additional benefit to the members of the union without bothering to inquire as to the soundness of the financial standing of the enterprise. Owing to this type of experience, many employers have the impression that trade unions have been self-centred and focused on short term benefits. In a sense, from his observation, many employers have the view that trade unions are there not for the strategic benefit of the union members but rather for the short term interests of personal or group gain.

Finally, he raised an economic reason as to why employers dislike trade unions. Industries in Ethiopia suffer from comparative disadvantage in relation to their competitors due to, amongst other things, their outdated machinery, low labour productivity and poor managerial organisation and hence producing goods of low quality but high in price. In connection with comparative disadvantage of Ethiopian products, a World Bank study recorded the following observation:

A typical worker in Ethiopia is (...) about more than 1.5 times less productive than the average Chinese worker. A total of 34 per cent of total productivity gap between Chinese and Ethiopian workers can be explained by the fact that Ethiopian factory workers are less equipped and less educated, while the bulk of the total labour productivity shortfall is accounted for by technology (Determinants of Private Sector Growth in Ethiopia, 2004:21)

Being in such a disadvantageous position, unionisation may aggravate the deficiency in competitiveness by enabling the labour force to collectively demand additional benefits, thereby increasing the cost of labour. As a result, employers would like to avoid extra labour cost that might arise from unionisation. However, the contention that low labour cost bring about competitiveness is itself contentious. The alternative view is that low labour cost may lead to demotivation and low morale of the employees that then result in low productivity as a result of which competitiveness will be lost.

With the perspectives outlined above in mind, the balance of the chapter will focus on comparison of the status of unionisation and union density both within and among the enterprises

under study. We will return in Chapter 8 to consider the implications of some of the more general perspectives referred to above - some cultural, others historic-for the specific legal and employment issues examined in this thesis.

## **Section I. Pre-and Post-Privatisation Comparison of Union Presence and Density**

### **6.2. Company FT: General**

The company was established in 1965 by three Italians with the purpose of producing shirts from imported fabrics for the domestic market. After ten years of operation under private ownership it was transferred to State ownership in 1975 as part of the nation-wide ‘nationalisation’ process of the privately-owned means of productions by the military regime. While under State ownership, its main production objective was reformulated to be the preparation of military uniforms for the national army. Hence, production of shirts for civilian consumption became a subsidiary activity. Unlike the pre-nationalisation period when raw materials for shirts were imported, domestically produced fabrics were used for the military uniforms. Managerially, it was a plant under the ‘National Textile Corporation’ in which legal personality resided.

With the introduction of the market-oriented policy in the early 1990s in Ethiopia, FT was reorganised as an autonomous enterprise with legal personality when State-owned enterprises were established pursuant to Public Enterprises’ Proc. No. 25/1992. Since then it has been commercialised and has been expected to comply with efficiency and economic profitability goals through which it attempted to learn to compete.

Later in 2006, due to the privatisation programme, the company was transferred through divestiture (PPESA News, 2007:29) to an establishment owned by three Italian investors (Ericsson, 2009:61). Under the new foreign owners, it diversified both its products and market destinations. It began to produce shirts and working clothes. As regards market destinations, whilst maintaining its domestic market share, it has also been exporting to Europe and the United States.<sup>112</sup>

#### *Union presence and density at FT pre- and post-privatisation*

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<sup>112</sup> Interview with the General Manager of the Company in her office at Addis Ababa on 24 March 2012.

Although it proved difficult to obtain written records on the history of unionisation at the enterprise, senior employees<sup>113</sup> have recalled that the company has had a trade union presence since the time of its initial establishment in 1965 and that presence has been maintained since then.

As indicated above, trade union leadership at the level of national Confederation was fearful that the law allowing for the establishment of multiple unions may pave the way for the proliferation of diverse unions in a workplace, thereby undermining the unity and solidarity of the labour force. However, no such move towards multiple unions has occurred at the company. There exists a single trade union.

**Table 2 Size of the labour force and union membership at FT pre- and post-privatisation periods**

	Number of labour force			Union membership			Union density	Non-unionised		
Gender mix	Male	Female	Total	Male	Female	Total	%	M	F	Total
Pre-privatisation period (Year-2005)	66	294	360	52	286	338	93.8	14	8	22
Post-privatisation period (Year-2009)	27	260	287 <sup>114</sup>	16	181	197	68.6	11	79	90
Post-privatisation (Year-2012)	31	379	410 <sup>115</sup>	25	233	258	62.9	6	146	152

*Source: Records of the first level trade union at the Company*

Data on labour force size and union membership density at the pre-privatisation period and two sets of data in an interval of three years in post-privatisation period has been considered this being the only data available for the period of the study. As can be seen from Table-2 above,

<sup>113</sup> Interview with trade union leaders of the Company was held on 12 October, 2010, in Addis Ababa, at the Head Office of the Confederation of Ethiopian Trade Unions. The interviewees were trade union leaders of the enterprise who have been employed between 24-31 years in the company. The information about the situation of the trade union and its membership in this company was obtained from the trade union leaders.

<sup>114</sup> From this total labour force 138 (20 male and 118 female) of them were fixed term employees.

<sup>115</sup> 157 employees (11 male and 146 female) of them have been fixed term employees.



even during the pre-privatisation period, there were employees who decided not to join the union for whatever reason and hence union density then was at 93.8%. It should be noted here that a ‘closed shop’<sup>116</sup> policy has not been part of Ethiopia’s trade union history.

It is evident that the level of union density decreased in the post-privatisation period of the enterprise. However, disassociation from union membership has been a more noticeable trend with passage of time in post-privatisation setting of the enterprise. As the figures above indicate, union density three years after privatisation in 2009 was at 68.6% from 93.8% at the time of privatisation. The percentage of membership density has further declined to 62.9% in 2012, six years of after privatisation. It can be noted from the Table that although size of labour force reduced immediately after privatisation, this trend has been reversed in recent times. Indeed the labour force size increased some six years after privatisation to an extent higher even than the pre-privatisation level. This fact tended to support the literature that labour force reduction post-privatisation appears to be a short-term concern while the membership density showed consistent reduction overtime making it a long-term challenge.

Trade union leaders at the enterprise stated that it was not only the membership density which showed a reduction after privatisation but that the employment profile has also changed. They recalled that during the pre-privatisation period all employees of the enterprise who satisfactorily passed the probationary employment became permanent employees with indefinite contract lengths. In the post-privatisation period, fixed-term employment became an important modality of employment. The data showed consistent increase in fixed-term employment arrangement and the proportion of female employees is substantially higher in the fixed-term arrangement.

The union leaders suspect that the change in employment profile is a deliberate move by the employer to weaken unions. In this regard, trade union leaders contended that positions formerly occupied by permanent employees were replaced by fixed-term employees after a generous exit package was offered by the new employer to the previous incumbents.<sup>117</sup> Generous exit packages

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<sup>116</sup> ‘Closed shop’ in the present context denotes a system of union formation in which employees shall be required to join a union as a condition for admission to employment or to remain employed.

<sup>117</sup> Trade union leaders affirmed that some of the former employees who possessed the relevant skill and who were enticed by the generous exit benefit package managed to obtain employment elsewhere after collecting the generous ‘exit package’ from the company. Thus, the ‘Golden Handshake’ approach dispossessed the company some of its skilful employees. There is a literature consistent with this that generous exit package with a view to initiate

were believed to have been devised with a view to initiate voluntary departure of the employees, thereby minimising the prospects of collective opposition to redundancies and facilitating a safe and non-confrontational labour shedding strategy.

However, in order to get an idea as to whether the fixed-term employment arrangement has contributed to weaken the trade union organisation, union leaders at the enterprise were asked whether their union admits temporary employees into its membership. It was explained by them that fixed-term employees are entitled to join the trade union although they are prohibited from assuming leadership positions in the union. Nevertheless, union leaders noted that there was a high turnover of fixed-term employees who have little job stability. Therefore, fixed-term employees tend to be less interested and at times reluctant to join unions for fear of retaliatory dismissal or unwillingness on the part of the employer to renew their contracts on expiry. They also do not want to incur union dues for a union to which they are not sure whether they will continue in membership.<sup>118</sup> Fashoyin documented similar trend in the Zambian labour force where ‘casual employees are themselves conscious of the temporariness of their employment and thus not motivated to join the unions’ (2008: 8).

Another concern raised by the trade union leaders relates to the private owner’s view towards the union. Although the employer did not derecognise the trade union since this would have infringed Ethiopian law (Proc. No. 377/2003, Art. 130 (2)), it did try to discourage union membership through various mechanisms. This included providing incentives and encouragement to non-unionised employees, placing trade union activists under strict surveillance over their contact with other employees even at tea and lunch break, agitating the labour force against trade unionism during formal and informal employees’ meetings arranged by the employer. Consequently, a negative attitude towards unionisation was being injected through the ‘carrot and stick’ approach in that offering incentive to non-unionised employees on the one hand whilst intimidating union members and organisers on the other.

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voluntary departure can result in adverse selection in that the best, most mobile, may be initiated to leave (*Kikeri and Nellis 2004:112*)

<sup>118</sup> Union dues in Ethiopian trade union membership have been 1% of the monthly wage of the member. The first level trade union retains 60% of the collected amount and the remaining amount will be delivered to the Federation to which the first level trade union belongs. Similarly, the Federation retains 60% of the delivered amount and further submits the remaining amount to the Confederation of Ethiopian Trade Unions (CETU), the umbrella labour organisation.

This hostile approach towards trade unionism has, however, been reappraised, according to the trade union leaders, because of external pressure associated with the plan of the company to expand its export markets. In order to acquire a wider access to export markets, the employer realised that obtaining accreditation from a reputable and independent audit firm on the enterprise's production processes was helpful. It thus applied for accreditation to the Worldwide Responsible Accredited Production (WRAP),<sup>119</sup> one of the world's largest organisations in certifying labour intensive plants of which the textile sub-sector is one.

As a condition for obtaining accreditation, any applicant plant must respect, among other things, the right to freedom of association (WRAP, 2010:5). Thus, independent auditors who were assigned to assess and report on the socially responsible production process of the company had to check whether trade union exists at the plant and whether the union freely and independently operate. Aware of this consideration, the employer approached the trade union leaders prior to the latter's meeting with the WRAP auditors with a view to convincing the trade union leaders to provide a favourable feedback to the auditors as regards unionisation at the enterprise so that the accreditation process could succeed.

According to the trade union leaders, they realised the mutual and potential benefit to the social partners in obtaining the WRAP certification as it would be helpful in widening market access for the products. Trade union leaders, therefore, decided to withhold their discontent with the claimed mistreatment of the trade union by the employer. Instead, they provided a positive feedback to the auditors and the enterprise was issued with the WRAP certificate in 2009. Incidentally, it is important to note that the trade union leaders' approach towards WRAP seemed to challenge the earlier contention of the employers' representative alleging that trade union leaders were interested only in short term benefits for their members. On the contrary the trade union leaders managed to anticipate the strategic mutual benefit in certification.

To ensure compliance with the WRAP Policy, the company has declared its commitment to respect the provisions of Ethiopian labour law and the terms of the collective agreement. Although the actual implementation of such commitments needs to be examined in due course,

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<sup>119</sup> WRAP is an independent, non-governmental, non-industrial, organisation incorporated in 2000. As of May, 2010, WRAP had three certified facilities from Ethiopia; namely: Addis Garment, MAA Garment, and Nova Star garment factories. (For details in the procedure of WRAP accreditation; visit, <http://www.wrapcompliance.org>).

and it is premature to assess its impact, this measure tended to show the potential benefit of accreditation schemes in bringing about compliance with aspects of labour standards.

As regards the management point of view towards the labour force and the trade union at the company, the General Manager of the company,<sup>120</sup> for her part, complained that the work discipline of the employees at the enterprise prior to privatisation was very weak and such behaviour has been carried over to the post-privatisation period. She contended that labour law does not accord full hiring and firing power to the management and she has rather the perception that Ethiopian labour law is excessively pro-labour. There are times where the labour tribunals order the reinstatement of a terminated employee even against the objection of the employer. In such a rigid labour market arrangement, she argued, it was difficult to compete internationally with other textile products processed in a more flexible labour market regime.

However, she stated that so long as she is working in Ethiopia, compliance with the dictates of the Ethiopian labour law is mandatory although she has the impression that the law and its implementation have problems from the perspective of employers. Consequently, she contended that employees at her company have been granted with at least the minimum entitlements provided by law including the right to unionisation and collective bargaining. She claimed to have encouraged the employees to join the trade union. In fact, at the time of the interview, she expressed the view that if trade union leaders handle matters in a responsible way, formation of a trade union is not only to the benefit of employees but also to the company.

### **6.3. Company DT: General**

The company is situated at about 100 km away from the capital. The initial plan for its establishment was to operate an integrated textile mill in which the garment facility was to be one. However, the Government decided to defer the construction of the integrated textile mill and instead established the garment enterprise. Although the project for its construction began during the military government, the factory only commenced operation in 1991 after the down fall of the military regime. During the Transitional period, DT was one of the State-owned enterprises established as an autonomous entity pursuant to Public Enterprises' Proc. No. 25/1992.

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<sup>120</sup> Interview with the General Manager of the Company in her office at Addis Ababa on 24 March 2012

In the early days of its establishment it produced shirts, uniforms and working clothes from locally produced fabrics for the domestic market. The company was privatised in 2006, to a domestic entrepreneur. Currently, it is mainly producing export oriented uniforms and working clothes manufactured from imported fabrics. According to the General Manager<sup>121</sup> of the company, the principal market destination for its products has been Germany.

*Union presence and density at DT pre- and post-privatisation*

The company began operation in 1991 with 80 employees. Soon after, the employees voluntarily decided to form a trade union and all employees who successfully passed their probation period took up trade union membership. According to the information obtained from trade union leaders<sup>122</sup> as the company's market share increased, there was also a significant increase in the labour force of the company. Sometime in 2001, which is five years prior to its privatisation, the company had a labour force of around 550 employees almost all of whom were unionised.

Overtime, however, trade union leaders at the enterprise gathered the impression that the newly recruited employees showed less enthusiasm in unionisation. As the senior employees left the company through natural attrition and with the junior employees being less interested in joining the trade union, the result was that even prior to its privatisation union density was not impressive at the enterprise. In fact, at the time of privatisation in 2006 although the enterprise had a total labour force of more than 700, marginally just over half of them were unionised (see Table 3).

**Table 3 Size of the labour force and union membership at DT pre- and post- privatisation periods**

	Number of labour force			Union membership			Union density	Non unionised		
<b>Gender mix</b>	<b>Male</b>	<b>Female</b>	<b>Total</b>	<b>M</b>	<b>F</b>	<b>Total</b>	<b>%</b>	<b>M</b>	<b>F</b>	<b>Total</b>
Pre- privatisation period (Year-2005)	125	662	787	36	364	400	50.6	89	298	387
Post- privatisation period (Year-2009)	98	404	502 <sup>123</sup>	24	176	200	39.8	74	228	302
Post-privatisation (Year-2012)	80	418	498 <sup>124</sup>	24	162	188	37.7	56	254	310

*Source: Records of the first level trade union at the Company*

<sup>121</sup> Interview with the General Manager of the Company in his office at Addis Ababa (27 August 2012)

<sup>122</sup> Interview with members of the trade union leadership of the Company was conducted in Addis Ababa, on July 13, 2011 at the Head Office of CETU.

<sup>123</sup> 32 of the employees (i.e. 28 female and 4 male) were fixed-term employees.

<sup>124</sup> 95 of the employees (i.e. 65 female and 30 male) were fixed-term employees.

From the table above, one can infer that there has been significant labour force reduction post-privatisation compared to the pre-privatisation period. The total labour force at the enterprise during the pre-privatisation period was 787 while this number had decreased to 502 three years after privatisation. Six years after privatisation the position appeared to have stabilised. This trend seems to support the proposition that labour shedding during privatisation is a short-term concern.

Although membership has been open to all employees except those in their probationary period, during the pre-privatisation period, union density was marginally in excess of 50 % (50.6%). Post-privatisation membership density had seen a reduction to 39.8% in 2009 whilst six years post-privatisation, in 2012, there has been a further decline to 37.7 %. It is interesting to note that this trend is consistent with the situation at company FT (*see; Table-2 above*). Another similar feature with that of the previous table is that fixed-term employment increased through time and the proportion of female employees in fixed-term arrangement substantially increased overtime. However, the number of female employees in permanent job positions is significantly higher in DT than at FT but still lower union density has been registered in the former.

Trade union leaders suggested that part of the explanation for the decline in union density was to be found in the employer's attitude towards the union and its leaders. According to them, regular anti-union campaign has been conducted by the management team in formal and informal employees' meetings organised by the employer. Trade union leaders recalled that there were times when the employer threatened to close-down the enterprise if the union began to interfere in the activities of the enterprise. Interference in the present context was understood by the union leaders to refer to request for collective bargaining which they believe is a legitimate union demand.

Conversely, the General Manager<sup>125</sup> of the company contends that the trade union at the enterprise is not backed by the majority of the labour force at the company as can be inferred from the membership density. The union merely represents the minority of the labour force. The reason for such a low union membership, according to the General Manager, is that most employees do not approve the confrontational approach of the trade union leaders in their relation with the management team. Nevertheless, the General Manager stated that although they

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<sup>125</sup> Interview with the General Manager of DT in his office at Addis Ababa on 27 August 2012

represent the minority of the labour force, the management has no option except to deal with them since Ethiopian laws entitle them to unionisation and recognition for collective bargaining purposes.

#### **6.4. Company DL: General**

The company was one of the oldest leather factories in Ethiopia. It was established, in 1925, by two Armenians although, in 1935, the company was taken over by one of the two owners and became a one-man enterprise until it was nationalised in 1975. It had 150 employees at the time of establishment (1925) and it was mainly an export-oriented enterprise with the aim of exporting tanned hides and skins. At the time of the military regime, however, its production process mainly targeted on the provision of upper shoe covers for enterprises that produced shoes for the national army. As a result, its products had a huge domestic demand due to the large size of the national army at the time.<sup>126</sup>

During the Transitional period, the company was one of those State-owned enterprises established as autonomous business entities under Public Enterprises' Proc. No. 25/1992. Following the introduction of the privatisation programme in Ethiopia, it was divested in 2006 to Geo-Traco plc, an Ethiopian Private Limited Company (Ericsson, 2009:49).

In the hands of the Private Limited Company, the company used to produce raw hides and skins both for export and local market an activity similar to its pre-nationalisation period. Nevertheless, in 2008, a high tariff on export of hides was introduced by the government so as to discourage the export of raw hides with the aim of exporting value added products. With this purpose in view, the Government introduced a 150% of its value in the form of export tax on raw hides and skin (Proc. No. 567/2008; Art. 4(1)). In fact, a total ban on export of raw hides and skins was introduced in September 2011 and has taken effect since December 2011 (Addis Fortune: 2011).

In compliance with the government's prescription, the company decided to redesign its business strategy towards supplying its tanned hides to the local market. In fact, the company plans to establish a shoe factory of its own within the next five years (Ericsson, 2009:49), thereby

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<sup>126</sup> It was believed that the Ethiopian military then had around half a million army and this made it one of the huge, most equipped army in sub-Saharan Africa (Henze, 1989: V).

engaging in a more value added venture and producing shoes both for domestic and export markets.

*Union presence and density at DL pre- and post-privatisation*

Oral information obtained from a long serving employee of the enterprise recorded that there had been an employees' association in the form of mutual help association at the time when the enterprise was under the Armenians. One of the current trade union leaders<sup>127</sup> at the company recalled that a trade union was officially formed immediately after the promulgation of the 1963 labour law. The union maintained its activities uninterrupted even after the private limited company took possession of the enterprise. As with the position at both FT and DT, there has been a single union in the enterprise. Thus fear of the national trade union leaders towards proliferation of unions has not been borne out here either.

**Table 4 Size of the labour force and union membership at DL pre- and post- privatisation periods**

Gender mix	Number of labour force			Union membership			Union density	Non-unionised		
	Male	Female	Total	Male	Female	Total	%	M	F	Total
Pre-privatisation period (Year-2005)	249	69	318	245	69	314	98.4	4	-	4
Post-privatisation period (Year-2009)	145	29	174 <sup>128</sup>	123	21	144	82.7	22	8	30
Post-privatisation (Year-2012)	143	28	171 <sup>129</sup>	92	11	103	60.2	51	17	68

*Source: Records of the first level trade union at the Company*

<sup>127</sup> Interview with a member of the trade union leadership at the Company, at the Head Office of CETU on 05 October 2010

<sup>128</sup> 65 of the employees (i.e. 53 male and 12 female) were fixed term employees.

<sup>129</sup> 83 of the employees (i.e. 67 male and 16 female) are fixed term employees.



The total labour force during pre-privatisation was 318 while post-privatisation records show that there is now just slightly more than half of the pre-privatisation labour force. In 2009, three years after privatisation, the record showed 174 employees but the position seems to have stabilised in 2012 as the difference in size from 2009 is statistically insignificant. This tendency again suggested that job losses associated with privatisation is only temporary. During preparations for privatisation, the Government retrenched 115 employees on a mandatory early retirement scheme. The employment of those who had at least twenty years of service and who had attained forty five years of age was terminated<sup>130</sup> with an immediate pension entitlement (Ericsson, 2009:49). It was after this government induced down-sizing measure that the new private owner took delivery of the enterprise. Restructuring and slimming down of the labour force was undertaken prior to privatisation with a view to attracting potential buyers.

The trade union leaders stated that after the private limited company acquired the enterprise, it outsourced the security service of the premises of the enterprise to another company, thereby making the former security personnel redundant further shrinking the size of the labour force. The private owner introduced an outsourcing scheme on its non-core business activity with cost reduction and efficiency purpose in view.<sup>131</sup> Furthermore, similar to that of the above two enterprises, fixed-term employment has been on the increase since privatisation in the present company. In the total labour profile at DL, though unlike the above two enterprises, the number of male employees is higher than the female, the ratio of fixed-term employment is still higher for female employees.

With respect to unionisation, as is evidenced from Table 4, although employees of DL were not fully unionised even under state ownership, they had a membership density of 98.4 % and this was a figure very close to full unionisation. In 2009, three years after privatisation, union density declined to around 82.7 %. It is also interesting to note that six years after privatisation, in 2012, the membership density is further reduced to 60.2%. As far as the policy of admission to the trade union is concerned, union membership has been open to all employees working in the enterprise regardless of their employment status with the exception of probationary employees.

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<sup>130</sup> Although the normal retirement age is 60 years of age, the government issued an amendment to this which entitles an employee who has completed 20 years of service and who has attained 45 years of age would receive retirement pension for life upon approval by the Council of Ministers. This applies only to an employee who had been working in government office that ceased to exist or the employee is retrenched due to privatisation from State-owned enterprises (*Proclamation No.424/2004, Negarit Gazette, 11<sup>th</sup> year, No 9, Addis Ababa*)

<sup>131</sup> An interview with the General Manager of the Company (28 July 2012 in his office at Addis Ababa)

In a pattern similar to that of FT and DT, union membership density has consistently decreased at DL during the post-privatisation period compared to its pre-privatisation situation. It is noticeable that, unlike the other two enterprises which have been with high proportion of female labour force, this reduction in membership density at DL has occurred even with a predominantly male workforce.

As to the unity and strength of the trade union, the union leaders in the enterprise complained<sup>132</sup> in the course of the data gathering for this study that there were instances where the private employer interfered into the internal affairs of the union. For instance, trade union leaders recalled that, the employer sought to put pressure on the union to the extent of ‘recommending’ who the chairperson of the trade union should be.

In addition, trade union leaders at the enterprise perceived that, the employer has the tendency of frustrating the union’s activities. As a manifestation of such a strategy, they indicated the following incident. Although under the collective agreement in force the employer is obligated to deduct union dues from the payroll of the union members and deliver the same to the union within five working days (Art.29 (5)), there was an incident when six months elapsed without any check-off payment being transferred to the union’s bank account. The reason submitted to them by the employer for the delay was ‘unforeseen financial problem’ of the enterprise.

Trade union leaders suspected that withholding of finance could be one way of paralysing the union’s activities as the sole source for the running cost of the union has been union dues. During the pre-privatisation period, trade union leaders recalled that union dues were always transferred to the union’s bank account, within five working days from the pay day, as stipulated under Art.29 (5) of the collective agreement. They did not encounter any instances of delayed delivery. On the contrary, they rather recalled that during the pre-privatisation period, the employer had been setting aside an additional amount of Birr 5000 (in cash or in kind) from its own account annually for purposes of sporting activities of the trade union as per Art.40 (2) (1) of the collective agreement then in force.

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<sup>132</sup> Interview with members of the trade union leadership at the enterprise (6 October, 2010, in Addis Ababa)

The General Manager<sup>133</sup> of the company, for his part, stated that trade union leaders at the enterprise have been confrontational in their approach rather than cooperatively working with the management team. Even then, according to him, the company is extending its cooperation with the union by deducting the membership fee of union members from the payroll and depositing the same in the bank account of union. His view was that trade union leaders have been much more interested on the immediate benefit of their members at any cost instead of supporting the management on how to make the company competitive and profitable so that long-term benefit of the workforce could be ensured. Although it proved difficult to verify the accuracy of the respective claims of the parties, the accusation and counter-accusations of the trade union leaders and the management of the company seems to manifest the unhealthy relationship the social partners have in their day to day dealings.

### **6.5. Company FL: General**

The company was established, in 1927, two years after the establishment of DL in the suburb of the capital city. As with DL, FL was also operated by foreign nationals from Armenia and was initially also an export-oriented enterprise whose main business was the export of sheepskin and hides. At a later stage the company underwent substantial transformation both in terms of production process and volume of production.

In 1975, due to the nationalisation scheme of the military rule, FL, together with other privately owned enterprises operating in the country was transferred to state ownership. The military government was fully aware of the comparative economic advantage of the leather industry to the country's national economy and undertook substantial renovation through the introduction of new technologies. During the Transitional period, FL was one of the State-owned enterprises established as an autonomous entity pursuant to Public Enterprises' Proc. No. 25/1992.

In 1998 FL was privatised to a foreign investor (PPESA News, 2007:29). It produces gloves and other leather products mainly meant for export market. It has been certified by the International Standard Organisation (ISO) for 'quality management systems' and 'environment-friendly' production process. The Ministry of Trade and Industry had commended the company for successive years<sup>134</sup> for its outstanding export trade performance as well.

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<sup>133</sup> *Supra note at 131.*

<sup>134</sup> See generally; [http://www.midroc-ethiopia.com.et/md\\_02elico.html](http://www.midroc-ethiopia.com.et/md_02elico.html) (accessed on 20 July 2010)

### *Union presence and membership density at FL pre- and post-privatisation*

The existence of an association for the employees has had a long history<sup>135</sup> at FL. However, while the enterprise was under the ownership of the Armenians, employees had to form a mutual help association as there was no law regulating trade unionism at the time. Senior employees at the company recalled that employer and employee relationships were no better than master and servant relationship and hence the employer did not want employees' combinations in its enterprise. Nevertheless, soon after the promulgation of the labour law of 1963, a trade union was lawfully formed at the enterprise.

With the down-fall of the Imperial rule, the trade union at FL became visible, vocal and an agent of change to the newly emerging political system of the time. The long-time chairperson of the trade union during the time of the military rule was at the same time a senior member of the only lawful ruling party, 'Ethiopian Workers' Party.'<sup>136</sup> This indicated the close affiliation and an overlapping of responsibilities between the political party in power and the trade union leadership during the military rule. There has no such an express fusion of power between trade union and politics since the change of Government in 1991.

**Table 5 Size of the labour force and union membership at FL pre- and post-privatisation periods**

	Number of labour force			Union membership			union density	Non-unionised		
	Male	Female	Total	Male	Female	Total	%	M	F	Total
Gender mix										
Pre-privatisation period (Year-1998)	562	162	724	554	158	712	98.2	8	4	12
Post-privatisation period (Year-2009)	506	155	661 <sup>137</sup>	414	136	550	83.2	92	19	111
Post-privatisation (Year-2012)	504	148	652 <sup>138</sup>	365	82	447	68.5	139	66	205

*Source: Records of the first level trade union at the Company.*

<sup>135</sup> Interview with trade union leaders at the Company on 11 October 2010 at the Head Office of CETU

<sup>136</sup> Information obtained from the current leaders of the trade union operating at the enterprise recalled that a long serving chairman of the trade union was one among the senior leadership of the ruling party at the same time.

<sup>137</sup> Out of this 105 (67 female and 38 male employees) were fixed-term employees.

<sup>138</sup> Out of this 132 (79 female and 53 male) employees have been fixed-term employees.

As shown in Table 5 above, union membership density during the pre-privatisation period, stood at 98.2%. With the privatisation of the enterprise, union density had declined to 83.2%, in 2009, eleven years after privatisation, while the figure further declined to 68.5%, in 2012, fourteen years after privatisation. This outcome is consistent with the three previously discussed cases in that in all instances the membership density has consistently declined during post-privatisation although the labour force size in one of them increased in the same period. The fact that there has also been a single trade union in the enterprise makes it similar with the other three above. Moreover, an increase in the number in fixed-term employment has been in line with the other three and the ratio of female fixed-term employees is higher than their male counterparts. The number of female employees at this company showed a declining trend. Generally, the proportion of female employees in the leather enterprises in this study showed lower figure than that of the textile enterprises.

An attempt was made to include the management's view in connection with trade union and management relations in the post-privatisation period at the enterprise. Although the General Manager expressed willingness to participate in the interview, he claimed to have no information on the matter as he was a new position holder at the time.

The limited scope of the study meant that it is difficult to draw any meaningful comparisons between enterprises divested to domestic investors on the one hand and foreign investors on the other in terms of variations in union density. The following Table does, however, suggest that there is very limited statistical variation in this regard.

**Table 6 the labour force and union membership figures for the foreign and domestically owned enterprises**

		Year ( 2009)				Year (2012)			
Enter prise	Nationality of the new owner	Size of labour force	Unionised	Union Density	Non unionised labour force	Size of labour force	Unionised Labour force	Union Density	Non-union ised
FT	Foreign	287	197	68.6%	90	410	258	62.9%	152
FL	Foreign	661	550	83.2%	111	652	447	68.5%	205
DT	Domestic	502	200	39.8%	302	498	188	37.7%	310
DL	Domestic	174	144	82.7 %	30	171	103	60.2%	68

From the table above, the union membership density in the two foreign-owned enterprises is 83.2% at FL and 68.6% at FT in 2009, while their 2012 data shows 68.5% and 62.9% union membership levels respectively. As regards the domestically-owned enterprises, they recorded a membership density of 82.7 % at DL and 39.8% at DT in 2009 and in 2012 membership levels of 60.2% and 37.7% respectively. This shows a declining trend in union membership density over time in all sets of ownership. Moreover, the employment profile, as can be recalled from the tables above showed a consistent increase in the number of fixed-term employees in all enterprises in the study making casualisation of employment more visible in the post-privatisation period. It is also interesting to note that those with higher concentration of female labour force proved to be correlated with lower union density.

With this common feature, when foreign and domestic ownership within leather to leather and textile to textile comparison is considered, union density at the foreign-owned enterprises is higher than that of the domestically-owned ones. This is indicated by the fact that for 2009, FL, a foreign-owned leather enterprise, secured a union density of 83.2% while DL, which is owned by a domestic investor, had 82.7 % union density. Moreover, their 2012 record showed 68.5% and 60.2% respectively. Even though it could be said that the variation is statistically insignificant, it must be admitted that the pattern exists.

Some similarity in trend can also be observed in the textile sector. Based on the 2009 figures, FT, which is owned by a foreign investor, had a union density of 68.6% as opposed to 39.8% union density for DT which is under domestic ownership. The 2012 figure has brought a similar trend in that they registered 62.9% and 37.7% respectively. This finding, though from a very limited size, tentatively suggests that the foreign privatisation is correlated with higher union density than the domestic ones. Therefore the available evidence can be seen to offer some support to a proposition that the nationality of the private owner has a correlation in union membership density in the sense that foreign owned enterprises possess higher membership density than their domestic counterparts.

This finding is consistent with the aspect of the literature indicated under Chapter 5 of this study (*see, p.129*) which contends that foreign private employers considered trade unionism to be a benefit even to the enterprises thereby becoming more open in paving the way for a favourable environment towards unionisation at workplaces. Conversely, the domestic owners might still be

sceptical to union formation due to the past ‘superiority’ mentality of the traditional Ethiopian society towards labour and labourers and the recent memory on the perception of employers as to negative role of trade unions had during the military regime. In fact, even from the interviews made with the managers of the privatised enterprises, the managers in the domestic enterprises had a more negative attitude towards unions compared with the more optimistic view towards trade unions expressed by the managers in the foreign owned enterprises.

One finding that does stand out is that the data suggests generally that on average the leather sector is more strongly unionised than the textile sector. In fact, this trend has its roots even during the pre-privatisation period where DL and FL had 98.4% and 98.2% of union density respectively while FT and DT had 93.8% and 50.6% respectively. In terms of the labour profile, the leather sector possesses higher proportion of male labour force while the textile has been dominated by female labour force. Therefore, this feature should also be factored into the equation which may require further research and broader set of data for analysis.

## **Section II- State-owned and Privatised Enterprises: A comparison of Union Presence and Density**

### **6.6. Introduction**

The previous Section examined the available data and stakeholders’ perspectives from the four privatised enterprises pertaining to the issues of union density before and after privatisation. That was basically an inward looking approach in the sense that each enterprise was assessed just in terms of its own position in pre-and post-privatisation periods. In this Section, a comparison of union membership density is made between two State-owned enterprises each in a similar line of business to the privatised enterprises and the four privatised enterprises mentioned above.

The two State-owned enterprises identified for this purpose are company SL from the leather industry and company ST from the textile sector. These two enterprises were nominated on the following grounds. SL<sup>139</sup> is the only State-owned enterprise in the leather sector which is still in government hands and hence there is no other candidate enterprise for comparison in this regard.

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<sup>139</sup> In 26 June 2011, it was reported by the media that a bid floated by the Privatization and Public Enterprises Supervising Agency to divest SL which attracted four offers (see, generally: [http://www.addisfortune.com/Vol\\_10\\_No\\_582Archive/Anbessa](http://www.addisfortune.com/Vol_10_No_582Archive/Anbessa) .htm (accessed 07 July 2011). The outcome of the bid was not yet made public until December, 2012.

ST was selected for the study on two counts. First, it is the nearest location to the capital city than the other State-owned textile enterprises. Proximity to the capital, for reasons mentioned under Chapter 6, was taken into account in nominating enterprises for the study. Second, the other State-owned textile enterprises lacked continuity of management either in state or private hands as they were briefly transferred to private entrepreneurs on lease or management contract but their transfer was revoked after sometime. ST has been consistently under State ownership since establishment making it a suitable candidate for comparison.

In terms of approach, as brief background information for each of the privatised enterprises has already been spelt out in Section I, it is considered appropriate to provide here similar general information as regards the two State-owned enterprises. However, the pre-and post-privatisation distinction does not apply to them, as the two State-owned enterprises are still under State ownership and management. But in order to minimise the effects of the variables, the same year (2005) has been selected for comparison for these enterprises, too.

### **6.7. Company SL: General**

Records at SL indicate that it commenced shoe production, in 1938, in Addis Ababa, under the ownership of an Italian entrepreneur who operated it for four years. The company was a pioneer in terms of introducing modern shoe making technology into the country. Its establishment, whether by design or default, coincided with the period of the Italian occupation over Ethiopia and hence there are records that the company equipped the occupying Italian force with shoes and other leather products of military relevance (Wendesen, 2008:31).

Shortly after the withdrawal of the occupying Italian force, in 1941, ownership of the company was transferred in 1942 to the Armenians who had previously established FL in 1927 as described in 6.5 above. Consequently, both the then tannery and the shoe factory were brought under a single ownership and a united management. The fact that the tannery and the shoe factory were brought under the same management enabled the latter to obtain the input for its products without serious supply problems.

With the coming to power of the military in mid 1970s, the amalgamated company was nationalised by the government, a fate encountered by all other privately owned enterprises of



the time. Subsequent to nationalisation, the company was re-organised into two separate State-owned enterprises namely SL and FL both of which were put under the managerial control of the then 'National Leather and Shoe Corporation'. The experience of SL is different in that with the regime change in Ethiopia in 1991 and the introduction of a market-oriented economic policy, it remained under State ownership, although it was autonomously organised in similar manner with other State-owned enterprises. Since 1992, it has been managed by a 'Managing Board' consisting of seven government appointees and two representatives of the employees elected by the general assembly of the non-managerial employees.

In terms of production, under the military rule, unlike the Imperial era when it used to employ few skilled employees and produced quality oriented items, its employment policy and production process shifted towards, mass employment and mass production, focusing on the army and the working class as its main customers (op cit :32). With the introduction of market economy, it began to make its products available to the international market by establishing a business relation with foreign companies. With a shift in the production plan and the establishment of international ties, the mass production strategy described above gave way to a quality oriented and demand driven production system with a focus on both a civilian and export market. As a result, it received a Certificate of Recognition from the then Prime Minister of Ethiopia for its impressive export performance for the 2006/2007 budget year (op cit: 33).

#### *Union presence and membership density at SL*

In terms of labour profile<sup>140</sup> the workforce of the factory at the time of establishment was not that large, fluctuating between 50 and 200. But it apparently contained a high level of expertise in that 170 out of the 200 employees were highly skilled and, it was said, industrious Italians. Soon after the assumption of power by the military and the take-over of the enterprise by the State, however, the skilled employees of Italian origin suddenly left the country. In the meantime there was no adequate transfer of their know-how to the Ethiopian employees as a result of which an unexpected skill gap was created in the enterprise's operational activities.

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<sup>140</sup> The information for this part of the discussion was collected from interviews conducted with trade union leaders at the enterprise, in Addis Ababa, at the Head Office of the Confederation of Ethiopian Trade Unions ( 27 September, 2010).

As regards unionisation, with the substantial majority of the original employees being Europeans, they were relatively speaking, much more familiar with the benefit of formation of association and showed keen interest in organisation. However, as the legal framework prevailing at the time did not permit the formation of trade unions, the employees' association was initially established in the form of a '*meredaja* (self-help association)'. When the law for trade union formation was adopted in 1963, the association promptly transformed itself into one of the most vibrant trade unions in the country (CETU, 1991:56).

However, trade union leaders in the enterprise recalled that only employees on contracts of indefinite length were eligible for union membership while temporary and fixed-term employees were excluded from union membership. Asked why union membership was not extended to non-permanent employees, they indicated that it has been put in the bylaws of the trade union since the time of the Imperial era that employees other than the permanent ones should not be admitted into its membership. One of the trade union leaders, in fact, remarked that 'it is inconsistent to admit employees of definite period into an association formed for an indefinite duration.'<sup>141</sup> The trade union leaders further noted that fixed-term employees tend to show reluctance to join unions in the belief that they were not eligible for union membership. Nevertheless, the trade union leaders at the enterprise were convinced that there is no legal restriction in allowing fixed-term employees into union membership under Ethiopian labour law. However, as the bylaws of the trade union limit eligibility for membership to permanent employees, there is a need to revise such instruments of the trade union in order to grant them admission.<sup>142</sup>

Perhaps, the labour profile at the time of the military rule was quite inclusive as regards trade unionism. All the employees of the enterprise were treated as permanent employees once they satisfactorily completed the legally stipulated probation period. Hence the permanent and temporary employee distinction was largely irrelevant or at least less relevant at the time. Consequently, almost all employees, except those in probation period were unionised. With the introduction of economic liberalisation since 1991 and re-organisation of State-owned enterprises, however, a two-tiered labour force began to emerge in which permanent and temporary employees have been working side by side. Fixed-term and temporary employment

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<sup>141</sup> Ibid.

<sup>142</sup> The chairperson of the trade union explained that the way the by-laws of the trade union are drafted grants eligibility for membership only to permanent employees.

arrangements have been introduced in the working methods of the enterprise that are not eligible for union membership based on the bylaws of the trade union.

**Table 7 Size of the labour force and the level of unionisation at SL past and present.**

	Number of labour force			Union Membership			Union density	Non-unionised		
Gender mix	Male	Female	Total	M	F	Total	%	M	F	Total
In Year-2005	409	513	922	379	501	880	95.4	30	12	42
In Year-2009	306	468	774 <sup>143</sup>	273	376	649	83.8	33	92	125
In year-2012	367	438	805 <sup>144</sup>	260	315	575	71.4	107	123	230

*Source: Records of the first level trade union at the Company.*

Table-7 shows that in 2005, union density was put at 95.4% indicating a substantial figure in union membership. However, its 2009 record showed 83.8% union density in the enterprise which manifested a slight reduction in union density although the reduction was relatively less significant. The most recent data is from 2012 when membership density stood at 71.4%.

With regards to the size of labour force although reduction has been observed from that of the 2005 figure, it could be said that it is statistically insignificant. However, the labour force profile has manifested changes. The number of fixed-term employees increased overtime in that the size of labour force was 922 permanent employees in 2005. 2009 recorded 774 (664 permanent and 100 fixed-term) employees, while the 2012 recorded was 805 (668 permanent and 137 fixed-term) employees. Trade union leaders reported good and smooth relationship with the management team except problems of profitability of the enterprise.

## **6.8. Company ST<sup>145</sup>: General**

<sup>143</sup> Out of this figure employees amounting to 100 (i.e. 77 female and 23 male) were fixed-term employees.

<sup>144</sup> Out of this figure 137 employees (i.e. 89 female and 48 male) are fixed-term employees.

<sup>145</sup> Most of the information for this part of the discussion was obtained from; (<http://www.ethiomarket.com/ktsc/>) (accessed on 22 Dec 2010).

The company is located some 380 kilometres away from the capital. It is situated in a location which is more accessible to the major cotton plantations of the country. The company was established in 1986 as a State-owned enterprise with a capital of Birr 180,000,000, two-thirds of which being allocated by the Ethiopian government with the balance being supplied from the then Czechoslovakia and East Germany<sup>146</sup> (Clapham, 1987:160). The initial governmental plan was to establish an integrated textile mill for the production of cotton fabric in order to fill the supply gap of the product in the domestic market. However, its products have been made available to the international market as well. The company has been certified with ISO 14001 for its ‘environmental friendly’ production process since 2004 and Quality Management System ISO 9001 in 2000 as part of its bid to penetrate the export market as its international trading partners required such a certification.

Unlike SL which was a private enterprise at the time of establishment and nationalised afterwards, ST has remained a State-owned enterprise throughout its history. Following the regime change in 1991 and the adoption of a liberal economic policy, although ST remained under State ownership, it was converted into a business organisation owned by the government as per the ‘Public Enterprises’ Proc. No.25/1992. As a consequence, it has gained managerial autonomy following the dissolution of the Corporation (National Textile Corporation). In a manner similar to SL there is now a Managing Board composed of government appointees and representatives of the employees elected by the general assembly of the non-managerial employees entrusted to managing the overall activities of the company.

In terms of labour force size, sometime in 2005, the company had 2008 permanent employees, and in 2009 the size of labour force slightly increased to 2190. The latter figure comprised of 1921 permanent and 269 fixed-term employees. The most recent employment figures of 2012 show that the number of persons employed has fallen to 1103.<sup>147</sup> Hence, size of labour force at the company tended to show fluctuations from time to time.

#### *Union presence and membership density at ST*

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<sup>146</sup> The 1980s was a time when the Ethiopian military regime had strong and intimate ideological and economic ties with former communist East and Central European countries.

<sup>147</sup> Since 2010, the company introduced a modern technology that resulted in substantial reduction in the size of the labour force. The company is under preparation towards privatisation. Due to this in order to attract potential buyers slimming down of size of labour force was undertaken. Employees who served at least 20 years and who attained 45 years of age were subjected to mandatory pension scheme as per the relevant law (Proclamation No.424/2004, *Negarit Gazetta*, 11th year, No.9, Addis Ababa).

According to the trade union leaders<sup>148</sup> at the company, the enterprise has had a trade union presence ever since its establishment. During the military rule, it was a common practice, as with SL, for all employees to be transferred to permanent employment status once the probation period was completed. Hence, almost all employees except those on probation had been union members. Currently, however, under the market-oriented economic system, the company has gradually established different categories of employment regime in which permanent and temporary employees operate side by side. Nevertheless, unlike SL where temporary employees have been restricted from union membership, union membership at ST has been open to all employees who satisfactorily completed their probation period.

Table 8 Size of the labour force and the level of unionisation at ST past and present

	Number of labour force			Union membership			Union density	Non-unionised		
Gender mix	Male	Female	Total	Male	Female	Total	%	M	F	Total
In Year 2005	1103	905	2008	1090	889	1979	98	13	16	29
In Year-2009	1098	1092	2190 <sup>149</sup>	1035	909	1944	88.7	63	183	246
In Year 2012	633	470	1103	591	427	1018	92.2	42	43	85

*Source: Records of the first level trade union at the Company.*

From the table above, union density for the enterprise in 2005 stood at 98% while the union density diminished to 88.7% in 2009. However, the membership density again increased to 92.2% in 2012 manifesting minor fluctuations although the number of unionised employees decreased in absolute terms.

## **6.9. Comparison between State-owned and Privatised Enterprises in terms of Union Presence and Union Density**

### **6.9.1. Union presence**

As discussed in Section I of this chapter, all the privatised enterprises have had trade unions in their respective enterprises during their pre-and post-privatisation periods. It was also noted here

<sup>148</sup> Interview with trade union leaders at the company on 25 January 2011 at the Head Office of CETU

<sup>149</sup> Out of this figure 269 were temporary employees (i.e. 169 female and 100 male employees).

that the two State-owned enterprises (SL and ST) too have had trade unions in their respective enterprises. Therefore, all the enterprises under study, regardless of ownership, have had trade unions in their respective workplaces. Moreover, although the Labour Proclamation of 2003 permits the establishment of multiple unions in an enterprise, none of the enterprises under consideration has more than one union and hence a unitary union is the prevailing mode of association in all the enterprises.

One of the top leaders of CETU, as indicated in 6.1 above, had serious reservations on the appropriateness of the law that allows for the formation of diverse trade unions in an enterprise. Moreover, trade union representatives were very critical over the labour law that allows for establishment of multiple unions.<sup>150</sup> They were sceptical that it could be misused to undermine labour solidarity by creating inter-union rivalry. However, as far as the enterprises in the study are concerned, fragmentation of membership has not to date seemed to be borne out by the evidence from the case studies. On the contrary, the reality tends to suggest that even if the law permits multiple unions in workplaces, the employees do not seem to see any benefit in fragmenting their collective and organised voice. It could thus be argued that employees are better knowledgeable about their own welfare and what is in their own interests.

Another feature common to all enterprises here is the introduction of temporary and fixed-term employments. The tables in this chapter show that this flexible labour arrangement is not a feature peculiar to the privatised enterprises. It has been observed in the State-owned enterprises, too. Thus, on the basis of the evidence here, some flexibility of labour market in Ethiopia is not a peculiar feature of the privatised enterprises although the level of casualisation is higher and more visible in the privatised enterprises. Rather it might be argued that it can be more attributable to the influence of the current cost sensitive economic order rather than to the privatisation policy of the country. Nevertheless, whether and to what extent such a flexible employment regime is a significant problem impacting union density will be examined in Chapter 8.

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<sup>150</sup> At the time when the law which introduced multiple unions was being drafted and deliberated upon during the tripartite consultations, trade union representatives were bitterly against it and their main reason was that such a practice will pave the way for the formation of multiple but weak unions. It was raised as a concern that employers will have the opportunity to capitalise on the weak and fragmented status of the labour force.

### **6.9.2. Union Membership Density**

Differences between State-owned and privatised enterprises become more visible when considering union membership density. Although the State-owned enterprises witnessed some reductions in levels of union membership, such decline in membership density has been more visible in the privatised enterprises. For instance, as spelt out in the tables in this chapter, the current ( 2012) union density in the two State-owned enterprise ( SL and ST) respectively stands at 71.4 % and 92.2% while the union density in the privatised enterprises for 2012, as recorded in the previous section is 68.5% at FL, 62.9% at FT, 60.2% at DL, and 37.7 % DT.

The fact that membership density has shown a tendency of diminishing even in the State-owned enterprises tends to indicate that such a declining trend is not solely associated with privatisation. A point to note, however, is this does not mean that privatisation is immaterial in this regard. The level of reduction has been more noticeable and therefore of greater concern in the privatised enterprises than in the State-owned ones. For instance, from the records at hand, the highest membership density in the privatised entities (68.5%) is lower than the lowest union density in the State-owned sector (71.4%). Moreover, one of the State-owned enterprises, ST, registered an increased union membership density in 2012 after a lower record in 2009. Thus, the union density recorded in the State-owned enterprises is still significantly higher than that of the privatised entities.

It is important to underline that low union density raises doubts as to the effective representativeness of the trade union. It is said that high union density would compel the employer to take the union seriously for collective bargaining purposes which in turn facilitates the retention or even an increase in levels of union membership (Beaumont and Harris, 1995:4). Conversely, diminishing union density would bring about at least feet dragging from the side of the employer to negotiate with the union as the low union density may indicate shaky support to the union from the side of the workforce.

Thus, low union density can adversely affect the outcome of the collective bargaining process in the sense that the bargaining power of the narrowly based union, other things remaining the same, would be weakened. This, for its part, can further erode union density as members could lose confidence and interest in being union members owing to the fact that it does not generate the expected concession to them. In effect, the issue revolves around a vicious circle in that low

union density paves the way for lower benefits in collective bargaining and lower benefits from collective bargaining would further erode membership density.

#### **6.10. Summary**

From the above account, it has been shown that regardless of the type of ownership there is no enterprise without a trade union nor is there an enterprise with more than one union. Hence, no matter how challenging the situation is employees have shown interest in unionisation and in having a single and organised voice. Compa's report indicated that 'despite the alarming trends (...) trade unions and their allies in many countries have a capacity to resist these pressures and to defend their labour rights (...) (2006: 4). The Ethiopian situation seems to be consistent with this assessment in the sense that irrespective of, at times, employers' intimidation and harassment against trade union leaders and organisers, trade unions still operate.

However, it seems fairly clear that the comparison between the pre-and post-privatisation union membership density in the enterprises under examination have brought changes. In relative terms, union density has shown the tendency of decreasing during the post-privatisation period. Decline in membership density has been observed in all the privatised enterprises and the percentage of the decline progressively increases the longer the enterprise stays in the post-privatisation setting. Furthermore in State-owned and privatised enterprises comparison, higher union density has been registered in the State-owned enterprises than in the privatised ones. Thus, it is not whether unions exist or not that is becoming the dividing issue, it is rather the level of union density that differentiates the State-owned from the privatised entities.

A question for this study is to what extent the legal framework has any effect on this outcome. In this regard, it has been shown in Chapter 3 that the current legal framework is relatively more favourable to unionisation in many respects. Moreover, the law on unionisation is even-handedly applicable to the private and the State-owned enterprises. Furthermore, under the current market-oriented economic system of the country both the State-owned and the privatised enterprises are required to comply with market discipline. It is with these similar legal and economic environments that differing outcome in levels of union density has been registered between them. Therefore, the findings of the bi-level comparison which is pre-and post-privatisation union density assessment on the one hand and the State-owned and privatised enterprises comparison on the other on the same subject tended to suggest that declining union density is positively



correlated with privatisation. The outcome thus suggests that the labour law on unionisation has minimal effect. Nevertheless, it must be admitted that the cases under our consideration are too small in number to make a robust and generalised conclusions.

Another observation from the discussions in this Chapter is that, labour force reduction associated with privatisation appears to be a short term concern. The figures in the tables above show significant labour force reduction at the time of privatisation. Nevertheless, overtime, in three out of the four case studies very negligible labour shedding was undertaken thereafter. Indeed, in one of the four privatised enterprises, FT, new employment opportunities at a level even higher than the pre-privatisation period have been recorded. This finding is consistent with the literature indicated in 5.2 above, which contended that job losses associated with privatisation, if any, are only temporary and more employment may be generated once the economy regains competitiveness. Therefore there are more fundamental and long-term concerns of the labour force other than job-losses associated with privatisation which require more attention and focus at the time of implementing the privatisation programme. However, as indicated in Chapter 5 above, the Ethiopian government was trying to address merely the issue of privatisation associated with job losses.

The current labour force organisation involves two-tiered system in that permanent and temporary employment regimes have been operating side by side. In the pre-privatisation employment regime, once an employee successfully completed the probationary period, he was for all practical purposes treated as a permanent employee. Nevertheless, the post-privatisation period is characterised by a significant size of temporary or fixed-term employment. It is also worth noting, however, that such a temporary employment arrangement does not seem a peculiar feature of the privatised enterprises. On the contrary, even the State-owned enterprises, as indicated in the tables in this Chapter, have recently been making use of such an employment arrangement. Therefore, privatisation is not solely responsible for the introduction of the flexible labour market arrangement. In fact, literature has already confirmed that in the current economic order, various modalities of employment arrangements such as fixed-term employment, temporary employment outsourcing, sub-contracting, and the like have been widely practiced with a view to attaining efficiency and competitiveness (Randriamaro, 2006:17). Therefore the perception subscribed to and shared by some trade union leaders that the privatised enterprises introduced fixed-term employment in order to weaken unions is not fully borne out by evidence

from the case studies. In fact, in DT where the number of permanent female employees is the highest, the union membership density recorded the lowest figure of all in the present study. As a result it seems that permanent employment is not an assurance to higher union density.

In a related issue, the data showed that in the textile enterprises, there has been higher concentration of female employees (FT and DT). Their number has even increased during the post-privatisation period. This trend seems beneficial to them in the sense that it enables women obtain gainful employment and can be viewed as a move towards greater economic empowerment of women. This is again consistent with the literature in that in the global economic order although the employment profile has been criticised to be casual, low paid and mainly unskilled and semiskilled, there have been increased employment opportunities for female workers (op cit : 16).

A point to note, however, is the ratio for temporary and permanent employment is higher for female employees in almost all the privatised enterprises. Conversely, the privatised leather enterprises possessed higher concentration of male employees and they managed to attain higher union membership density. The State-owned enterprises rather have a more or less comparable male and female labour composition and they are also better unionised. Generally, enterprises with higher concentration of female employees regardless of whether in permanent or temporary employment status registered lower membership density.

In terms of comparison of foreign and domestic ownership of the privatised enterprises, union membership density has shown consistent decline overtime in all types of ownership. However, the foreign privatised enterprises registered higher membership density than their domestic counterparts. This outcome tends to support the contention that foreign investors are more tolerant and receptive to unionisation than the domestic ones. The explanation for this outcome may partly rest up on the fact that foreign investors might have been exposed to modern working systems of the developed world. This seems in line with the literature which holds that as foreigners mostly originate from countries of high labour standards, they consider that they are at least morally obliged consistently to maintain higher labour standards whenever and wherever they locate or relocate (Banks, 2006:85), thereby setting an exemplary standard. Conversely, , the domestic investors, as was suggested in p.155 above, may still be influenced by the master

and servant mentality of the traditional attitude of the Ethiopian society, thereby looking down at labourers together with directly and indirectly restricting their freedom of association.

Finally, on a separate note, almost all the enterprises under study have shown interest in introducing their products into export markets. Consequently, all the enterprises seem to have been convinced that in order meaningfully to secure access to foreign market, obtaining accreditation from reputed firms is helpful. In this line of thinking, FT has already secured certification from WRAP. ST and FL have also been accredited for having ‘environmentally friendly’ production process and ‘Quality Management System’. The enterprises’ keen interest to be certified may be to some extent helpful in bringing about compliance with certain labour standards. Hence, although it may not be advisable to rely fully on this kind of private enforcement mechanism, such a certification system could have a positive impact and complement governmental efforts in bringing about union friendly atmosphere at workplaces. In this regard, it is interesting to note that FT with higher concentration of female labour force and which has been certified by WRAP has relatively appreciable membership density from among the privatised enterprises.

## **Chapter 7 Collective Bargaining and Collective Agreements: A comparison from selected enterprises**

### **7.1. Introduction**

In Chapter 4 the legal framework for collective bargaining in Ethiopia and the international experience together with the challenges towards collective bargaining in the global economic order were outlined. In this Chapter we focus on the actual collective bargaining process and contents of the collective agreements signed pre- and post-privatisation in each of the privatised enterprises. The purpose is to determine whether there is evidence that the change of ownership has been accompanied by a change in the content of the collective agreements in terms of the benefits accorded to the employees. Comparison will also be made between collective agreements signed in the enterprises still owned by the State on the one hand and the privatised enterprises on the other to determine whether there is a meaningful variation in the entitlements they accord to their respective employees.

Consistent with the investigation made on union membership density in the preceding chapter, the four privatised enterprises (FT, DT, DL and FL) and the two State-owned enterprises (ST and SL) will be subjected to examination on two levels.

At level one, the contents of the collective agreements operative at the time of the privatisation of the enterprise will be compared with those concluded after privatisation in each enterprise. Whether the collective agreements brought more or less beneficial terms to the employees individually and collectively will be assessed. Consideration will also be given to whether and to what extent such changes in agreements can be associated with the change of ownership or whether there are other factors that have exerted influence.

It must be underlined here that, from the available records, with the exception of one privatised enterprise (FL) where a second collective agreement is signed post-privatisation, the remaining three privatised enterprises have only negotiated one collective agreement each in their post-privatisation period. As a result, there is no adequate longitudinal data to fully appreciate the trend. This is one of the limitations of this part of the analysis.

At level two, the contents of the current collective agreements signed in the privatised enterprises will be compared and contrasted with the contents of the collective agreements signed in the State-owned enterprises. Here also the purpose is to identify whether there exist differences in contents between the different forms of ownership and to what extent any such differences can be explained along the lines of differences in ownership. The fact that the privatised and the State-owned enterprises are in similar lines of business and have a comparable size of labour force provides a suitable basis for comparison because they are generally exposed to similar challenges and endowed with similar opportunities in their day to day business operation.

Although the collective agreements under consideration cover a broad range of issues, the subject matter to be considered here are: profit sharing arrangements, training benefits<sup>151</sup> and

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<sup>151</sup> Data on how many employees have been beneficiaries of training and for how long, has not been made available as all the enterprises under study and the trade unions have no practice of maintaining systematic records in this regard. Except for FL where the trade union recorded the number of beneficiaries from employer sponsored training for 2011/2012 budget year, none of the enterprises has any record in this respect. This again is one of the limitations of the study.

employees' participation in management.<sup>152</sup> This is not an arbitrary selection of issues. First, they were selected on the basis of their importance, in the Ethiopian context, to the welfare and well-being of the labour force. Second, the absence in Ethiopia of any law stipulating a 'floor of rights' on these subjects made collective agreements the sole regulatory instruments for establishing the presence and extent of these benefits at the workplaces.

With respect to the importance of the subject matter to the Ethiopian situation, the following points should be borne in mind. Ethiopia is not a signatory to the 'Minimum Wage Convention' (ILO Convention No 26) nor is there a minimum wage stipulated by law for the profit-making sector employment (Sommer, 2003). Furthermore, there is no practice of adjusting and readjusting of wage so as to conform it to inflation in Ethiopia. There is a legally fixed minimum wage for employees in the civil service but it does not have a mandatory application on the private and State-owned enterprises. Thus, Ethiopian job-seekers in the profit-making sector are left to bargain individually with their employer (s) in fixing their respective wages.

Given the high unemployment,<sup>153</sup> and non-availability of unemployment benefit scheme in the country (De Gobbi, 2006:33), employees' bargaining power has been extremely weak as a result of which they would be compelled to accept the terms of the employer. In order to mitigate the impact of this imbalance in bargaining power it is the practice in Ethiopian industrial relations to include 'productivity agreements' in collective bargaining through which the fruits of such productivity, if and when generated, can be shared between the actors in the form of bonuses and/or wage increments to the employees and profit to the employer. Hence, a claim for profit sharing arrangement is basically a demand for a mutually agreed benefit sharing.

In Ethiopia, the initial understanding was that as profit belonged to the employer, bonuses and wage increments were considered voluntary grants by the employer that can be unilaterally

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<sup>152</sup> Literature indicated that there is no consensus at the international level as to the meaning and content of 'workers' participation'. As a result, the subject matter, the form and the role through which participation has been accomplished vary considerably from country to country. (For a relatively detailed discussion on this issue; see generally; Johannes Schregle (1993) 'Collective Bargaining and Workers' Participation: the Position of the ILO *Comparative Labour Law Journal* Vol.14, Issue-4. pp.431-444).

Although term 'employee participation' may be more appropriate to signify direct forms of workers' involvement in the managerial enterprise, the utilisation of the term under the present context denotes both direct or indirect (through representation) involvement of the workforce in the enterprise's management.

<sup>153</sup> In Ethiopia, the 1999, 2005, 2009 and 2010 Labour Force Survey showed that the average unemployment rate in urban areas amounts to 26.4%, 21.2 %, 20.6 and 19.4% respectively. The female unemployment rate fluctuates within 12.7; 8.4; 30.1 and 28.1 per cent respectively. (Source: *Central Statistical Authority (CSA):2011*)

granted or withheld.<sup>154</sup> Overtime, however, these payments were incorporated in collective agreements in order to make them bilateral and binding, which cannot be unilaterally withdrawn. It is important to note that a bonus is a one-off payment while a wage increment once paid will remain part of the basic wage even when business performance of the enterprise changes subsequently.

With regards to training benefits, generally, it is argued that ‘through education, learning and skill formation, people can become much more productive overtime’ (Sen, 1999:293). By realising the contribution of education and training in raising productivity and competitiveness, employers tend to invest in upgrading the skills of their labour force through an arrangement of tailored training. Equally, employees are also interested in their own career development through which their employment stability might be strengthened by enhancing their employability and mobility (De Gobbi, 2006:43). As a result, both trade unions and employers have shown a keen interest in the provision of training for the labour force. This issue is thus an important item in collective bargaining processes where a provision or more has been included for this issue in all the collective agreements in the case studies.

The third issue that will be considered is that of employee participation in management. Conventionally, the power and responsibility of managing enterprises was within the sole prerogative of employers and seen as derived from the right of ownership of the enterprise. It can be contended, however, that employees who ‘invest their lives’ in an enterprise should have a right to influence at least some decisions just as do shareholders who invest their capital. Aside from the property rights type of argument there is also a practical reason that can be advanced for employee participation based on the proposition that workers can have ideas which may be useful to the success of the enterprise. It has been said these two rationales amongst others have influenced the movement for the introduction of employee participation in management in Ethiopia (Daniel, 1986:123). In terms of duration, the concept of ‘workers’ participation in management’ as an item eligible for collective bargaining<sup>155</sup> has had its roots in the labour

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<sup>154</sup> Trade union leaders from FL recalled and traced the origin of bonuses and wage increments in Ethiopia to the period of the Emperor when many employers (mostly foreigners) were granting such benefits voluntarily on occasions such as the birth-day of the Company owner, New Year or other joyful events.

<sup>155</sup> In jurisdictions such as India, the issue of workers’ participation has not been left to collective bargaining, it is rather provided by law as to the subject matters and the level participation. (For a more detailed presentation of the issue; See, Ratna Sen (2012) *Employee Participation in India, Working Paper No.40 (Geneva: ILO)*).

proclamation of the military government (Proc. No.64/1975; Art. 66 (11)) and since that time it has remained intact within the Ethiopian collective bargaining system.

As regards the absence of a legal framework for these issues, whilst the labour law identifies the three issues as subject matters about which collective bargaining can take place, it does not specify any minimum standard applicable to them.<sup>156</sup> A collective agreement therefore remains the sole regulatory instrument of a collective nature for these issues. As a result, how much to concede and how much to gain from the bargain may be highly dictated, among other things, by the economic power and bargaining skills of the negotiating parties.

## **Section I. Enterprise Level Comparison: Pre-and Post-privatisation Collective Agreements**

### **7.2.1. Company FT**

At FT, two collective agreements, one signed in 2005 and operative at the time of privatisation and another signed after privatisation, in 2008, will be compared and contrasted. The 2008 collective agreement was signed in June 2008 and it was anticipated to remain in force for two years until June, 2010. However, trade union leaders informed us in December 2012 that it is not yet replaced by another instrument although the parties have begun preparations<sup>157</sup> towards collective bargaining with a view to replacing it.

The method of assessment is to examine separately each of the three subjects of collective bargaining and in the process comparisons will be made simultaneously of the provisions of the

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<sup>156</sup> It is in cases of redundancy issues that the labour law obligated the employer to consult with the trade union concerned, if any, or employees' representatives prior to group dismissal (Proclamation No.377/2003; Article 29).

<sup>157</sup> In early 2011, the Company sent a letter to the trade union with a view to initiating collective bargaining. It must be noted at this juncture that under the existing law, parties to a collective agreement are required to begin negotiations at least three months prior to the expiry of the operative collective agreement. If the negotiating parties failed to reach an agreement until three months after the expiry of the collective agreement, the part of the collective agreement pertaining to 'wages and other benefits' loses its binding effect (Proc. No.494/2006; Art.3(6)). In this company, legally, the parties should have begun negotiations in March, 2010 but we were told that they were still preparing for negotiations in October, 2011. Thus, in the eyes of the law the collective agreement has already lost its binding effect as regards 'wages and other benefits'.

However, the trade union leaders have the perception that the collective agreement is still valid until it is replaced by another collective agreement. Although the position of the trade unions was valid on the basis of the previous labour law (Proc. No.42/ 1993), it is no longer the case with the coming in to force of Proc. No.494/2006. This indicates that the trade union leaders are not well advised as to the position of the new labour law and its operations. Thus, the position of the law is that when the collective agreement loses its force, the individual contract of employment of each employee and the minimum labour condition of the law shall be given effect (Proc. No.377/2003, Art. 4(5)).

two collective agreements. This approach produces a more effective basis of comparison than studying each collective agreement individually and only afterwards drawing out the comparisons of the subject matter of the agreements.

### *Profit sharing arrangements*

Both the pre-and post-privatisation collective agreements at FT included provisions on how and when wage increments and bonuses would be granted to the employees. In both collective agreements, employees were entitled to a wage increment related to the net profit in the previous financial year but there the similarity ended. Under Article 32 of the pre-privatisation collective agreement, employees were entitled to a wage increment provided that the enterprise generated a net profit of more than Birr 150,000 in a production year. Conversely, Article 32 of the post-privatisation collective agreement stipulated that a wage increment to every employee is to be accorded if the enterprise records a net profit of Birr 1, 000,000. This means during the post-privatisation period the level of profit required to activate the wage increment provision had increased by slightly in excess of 600% in nominal terms in order to obtain a benefit of equivalent effect. Given the fact that there occurred no change in technology and work methods at the company post-privatisation, this imposes a more onerous obligation on the employees to obtain a benefit of similar effect.

Similarly, the entitlement to bonus has also shown variations between the pre-and post-privatisation situations. During the pre-privatisation period, where the enterprise registered a net profit of more than Birr 150,000, one month's wage in the form of bonus was to be paid to each employee who served for at least one year and who obtained a satisfactory result (2.5 out of 5.0) in job performance evaluation (Art.33 ). In effect, an employee was entitled to both a wage increment and bonus simultaneously once a net profit threshold of more than Birr 150,000 was met. Moreover, the bonus was increased to one and one half of a month's basic wage if the net profit exceeded Birr 200,000. For a net profit below or equal to Birr 150,000, 10% of the profit was to be set aside for bonus purposes to be allocated by the management team among the eligible labour force.

In the post-privatisation period, a bonus is due only if the enterprise registers a net profit of Birr 500,000 or more. Even in that case, it is only 10% of the net profit which will be distributed to the employees proportionate to their individual wages in the form of bonuses (Art. 33).



Moreover, on the basis of the post-privatisation collective agreement, unlike the pre-privatisation period, bonus and wage increments have become mutually exclusive in that employees would receive either bonus or wage increment. Thus, on the face of it, the profit sharing arrangement applicable during the post-privatisation has tended to be less attractive to the employees when compared with the pre-privatisation bonus scheme at the enterprise.

An additional concern from the standpoint of the trade union reflected during the interview with the trade union leaders was that they have no means of knowing the exact amount of profit earned in a budget year as the private employer has been reluctant to provide a copy of the financial statement of the enterprise to the union alleging that it is a 'business secret'. For instance, in the financial year of 2008/2009, it was only a letter issued by the General Manager of the Company addressed to the trade union which stated that 'the company has incurred a loss amounting to Birr 1,939,294.05' that represented the official declaration of the company's financial standing. Nevertheless, trade union leaders alleged that their informal correspondence with employees of the Finance Unit of the company revealed that the company registered a net profit rather than loss in that financial year.

However, an international consultant who undertook post-privatisation performance evaluation of the company documented that the company has been registering losses since privatisation although the amount of losses has been decreasing overtime (Ericsson, 2009:62).<sup>158</sup> The General Manager of the company also confirmed that although the company is approaching to a break-even level, it is still (in 2012) operating at a loss since privatisation.<sup>159</sup> Thus, the allegation of the trade union leaders that the company made a profit was difficult to substantiate in this regard. Nevertheless, the information gap and the resultant mistrust between the parties persisted.

### *Training benefits*

Both the pre-and post-privatisation collective agreements at FT have provisions pertaining to employees' training. The wording of the post-privatisation collective agreement, in this respect, is a verbatim reproduction of the pre-privatisation collective agreement (*see, Art.14 of both instruments*).

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<sup>158</sup> Ericsson found that 'although the Company is still sustaining losses since privatisation, the losses have decreased from Birr 4.1 million during the first year of privatisation [2006] to a loss of Birr 2.3 million in 2008'.

<sup>159</sup> Interview with the General Manager of the Company on 24 March 2012 at her office in Addis Ababa

In both collective agreements it has been stipulated that training opportunities may be initiated by the employer, by the government, by a trade union or the employee concerned. Where the training is organised by the employer, both collective agreements provide that the full cost of the training including payment of wage while the employee is attending such training shall be borne by the employer. In return, the employee will be obliged to serve the enterprise after the completion of the training for a period to be determined by the 'work rule' of the company. Although there is not yet a company 'work rule' pertaining to this, in practice, the company follows the practice applicable in the civil service system, which requires two years of post-training service for one year training.<sup>160</sup> Trade union leaders have confirmed that short-term training for duration of between five to fifteen days has been offered to employees after privatisation.

In connection with training, the General Manager of the company voiced her frustration that although the company strongly believes on the need of trained labour forces to withstand competition; many employees have the tendency to fail in their commitments to serve the company after completion of their trainings. She stated that, theoretically, it is possible to take the employee to court in order to enforce his contractual obligation of the duty to serve or to compensate the employer. However, in practice, the overall cost of enforcement is higher than the refund that could be obtained from the employees. According to the General Manager, the management of the company is therefore more inclined to hire skilled employees even at higher wages instead of incurring cost for employee training.

Both collective agreements are silent about all other training initiatives by the employee, the trade union or the government implying that employees shall attend such training at their own time and expense. It was verified by the trade union leaders that in practice the company does not cover training expenses, which are not initiated by the employer no matter how related the training to the job may be. Thus, the pre-and post-privatisation collective agreements do not show any variation in this respect.

#### *Employee participation in management*

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<sup>160</sup> Ibid.

Trade union participation in personnel affairs of the enterprise has been included in the collective agreements. The pre-privatisation collective agreement stated that employees' promotion shall be given effect only after a recommendation was obtained from a 'Promotion Committee' in which a representative of the trade union shall be a member (Art. 12). It further specified the number and composition of members of the 'Promotion Committee'. Accordingly, it was a four person committee out of which one would be a trade union representative (Art. 12 (8)). Furthermore, the factors to be considered in determining the suitable candidate and the weight to be allocated for each factor were expressly stated in the collective agreement. This practice, it was said, helped in ensuring a transparent and participatory working method at the time.

Nevertheless, transparency and participation are much less evident in the collective agreement signed subsequent to privatisation. Although Art.12(1) of the post-privatisation collective agreement stipulates that the trade union shall participate in determining promotion of employees, it does not, unlike the previous collective agreement, specify how and in what capacity the union is to be involved. However, in practice, trade union leaders confirmed that although promotion cases are rare, the management, upon its free will, invites a trade union representative whenever promotion cases are entertained. As regards disciplinary<sup>161</sup> matters, both the pre-and post-privatisation collective agreements placed the power of disciplining employees within the exclusive authority of the employer with no room for participation of the trade union at any level of the process.

### **7.2.2. Company DT**

Applying a methodology similar to that of the above case, comparison will be made on the contents incorporated in the two collective agreements that were concluded pre-and post-privatisation at the company. The collective agreements to be compared are the one which was

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<sup>161</sup> In some foreign jurisdictions trade unions tended to be reluctant to participate in investigations on disciplinary proceedings against alleged wrongdoers member employees since 'they feel that in doing so they would be betraying their mission to defend workers'. (For a more elaborated comparative discussion on this issue; see generally: M.E. Banderet (1986) 'Discipline at the workplace: A comparative study of law and practice (Procedure)' *International Labour Review* Vol.125, No.4, pp.383-399). In Ethiopia the situation appears to be different as trade unions have shown keen interest not only to participate in drawing up disciplinary rules but also in investigating alleged wrongdoings at workplaces. In fact, under the 1975 Ethiopian labour law, acts of misconduct that entail disciplinary dismissal were to be determined by collective agreement implying that the employer cannot unilaterally determine misconduct that warrant disciplinary dismissal. The country's subsequent labour laws however listed serious misconduct which may subject the wrongdoer for summary dismissal even without involvement of the trade union.

signed in 2004 (two years before privatisation) and the other which was signed in 2008 (two years after privatisation) to remain in force until 2011. No other collective agreement has been signed after that in the company.

### *Profit sharing arrangements*

The pre-privatisation collective agreement provided for bonuses and wage increments to the employees upon the generation of a threshold of net profit during a budget year. Article 43 of the collective agreement stipulated that ‘a net profit of more than Birr 500,000 entitled the employees to a month’s wage in the form of bonus’. Where the net profit generated in a year falls within a range of Birr 1,000,000 to 1,500,000, one month’s wage in the form of bonus and a wage increment were due simultaneously. Where the net profit generated amounted to more than Birr 1,500,000, employees were entitled to a bonus equivalent to one and one half month’s wage and a wage increment. For these all benefits employees were required to score at least 3.0 out of 5.0 grade points in their job performance evaluation and they must have served at least six months to the enterprise during the budget year.

Similarly, the post-privatisation collective agreement included provisions on bonuses and wage increments. However, it differs in form and content from the pre-privatisation arrangement. Article 42 of the collective agreement spells out in detail the threshold of net profit to be generated in order for a bonus to be payable to the employees. It provides that where a minimum of Birr 1,000,000 net profit is generated, 13% of such an amount shall be set aside for bonus purposes to be distributed to the employees. For every additional Birr of 1,000,000 net profits, 1% of such an amount will be added to the bonus scheme until the earmarked amount for the bonus reaches 20% of the net profit. A wage increment is due when a net profit of Birr 4,500,000 is generated. In all other cases, it provides only for a bonus. Thus, the post-privatisation collective agreement stipulated a higher threshold of net profit for activating the bonus payment and wage increment compared to the pre-privatisation period.

Moreover, the provisions of the pre-privatisation collective agreement had clarity for implementation in that once the net profit was determined, every employee would know the amount of bonus due to him. The post-privatisation collective agreement on the other hand merely sets aside a lump-sum figure to be allocated for bonus. How and in what proportions it should be allocated to each employee is not determined in advance by the collective agreement.

Thus, it will be the management of the company that will handle the actual implementation process, thereby making the role of the trade union marginal in this regard.

As was the position with the case of FT, the opportunity to obtain financial statements of the enterprise has been a serious problem to the trade union in the post-privatisation setting. Admittedly, the post-privatisation collective agreement provides that the enterprise shall notify the trade union as regards profit and loss of the enterprise (Art.7(9)). Nevertheless, in practice, it is not a copy of the audited financial statement that is or has ever been delivered to the trade union. According to the trade union leaders' the General Manager of the enterprise issues simply a letter to the trade union about the financial performance of the enterprise in the budget year.

In fact, the letters from the General Manager have been consistent in declaring that the company has been registering losses every year. However, trade union leaders claim that they have their own doubts as to the credibility of such letters. Despite the perception of the trade union leaders, a study conducted by an international consultant on the post-privatisation performance of the company stated that 'although revenue of the company substantially increased since privatisation, it has not yet been profitable. At 2008, its financial performance was almost at break-even level showing a negligible net loss of Birr 54,000' (Ericsson, 2009:59).

The General Manager of the company verified that in the budget year 2010/2011 profit was registered for the first time in the company's history<sup>162</sup> and employees who were eligible for bonus on the basis of the terms of the collective agreement were granted the benefit. The trade union<sup>163</sup> leaders also affirmed that the company granted one month's wage in the form of bonus to eligible employees in 2010/2011 budget year although the exact amount of the net profit was not made known to them.

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<sup>162</sup> He declined to state the exact figure of the net profit generated by the company.

<sup>163</sup> Interview with a member of the trade union leadership at the company on 28 August 2012

### *Training benefits*

Both the pre-and post-privatisation collective agreements of the company put provisions dealing with the training benefits to be arranged for the employees. Under the terms of the pre-privatisation collective agreement, in situations where the employee decided to attend formal education and the anticipated education was related to the job he was performing, the employer was committed to cover 70% of the training fee. It was also envisaged under Article 11 (6) that employer-initiated training arrangements could be offered in-house, locally or abroad. In order to offer in-house training, the employer was obligated to establish a training centre at the premises of the enterprise.

Employees, for their part, were required to sign prior to the commencement of the training a commitment to serve the company after the completion of the training or to refund the cost of training incurred by the employer in cases where they were not ready to render service to the employer after completion of training (Art.11(5)). Trade union leaders recalled two years of service for the employer post-training was fixed for a training that lasted a year.

The post-privatisation collective agreement also has provisions on the manner and conditions under which training will be offered to the employees. The establishment of an in-house training centre has also been anticipated (Art.11 (6)) and the enterprise has established an in-house training centre that offers pre-employment and on the job training related to specific jobs (Ericsson, 2009:59). The obligation of the employee to serve the company for a fixed amount of years after completion of the employer-sponsored training is also retained.

However, unlike the pre-privatisation period where the employer was covering 70% of the training expense of the employees in cases where the employee decided to attend formal education in a field related to the job he was performing, the post-privatisation collective agreement withdrew such a benefit. Thus, it is only for the training arranged by the employer that the employer will incur costs while employee initiated training no matter how closely related to the job it may be is a private affair of the employee.

In fact, the General Manager of the company stated that the company had a practice of offering training ranging from five to fifteen days to the labour force. The company has also a training programme of longer duration with the cooperation of the Ethiopian Textile Industry

Development Institute which is a government entity that trains manpower for the textile industry. However, he complained that many of those employees who were offered training at the company's expense do not report for duty to discharge their obligation to serve the company post-training. It is even impossible to institute court action against them to obtain reimbursement as their whereabouts are difficult to trace. This problem, according to him, is negatively affecting the company's desire to train its employees as training cost becomes a cost without any return to the company.

#### *Employee participation in management*

The pre-and post-privatisation collective agreements of the company under discussion have included provisions on issues of employees' participation in management. Accordingly, Article 7 (8) of the pre-privatisation collective agreement stipulated also that the enterprise shall involve a representative of the trade union in committees handling recruitment and promotion issues. Article 21 (9) also prescribed that when candidates for promotion were being evaluated a representative of the trade union shall be involved. Moreover, the trade union's involvement in investigation of disciplinary matters was also included in the collective agreement (Art. 5(20)).

Turning to the post-privatisation setting, a somewhat different picture is found. A trade union's participation has been limited to issues of employee promotion and reduction of workforce (Art. 5 (18)). As regards the right of trade unions during reduction of the labour force, even if it were not provided in the collective agreement, the right to consultation has already been secured by virtue of Article 29 of the Labour Proclamation since 1993 and hence the collective agreement did not bring any additional entitlement to the trade union. It is therefore only on issues of promotion that the trade union's participation has been secured by the post-privatisation collective agreement. Even in promotion cases, the collective agreement fails to spell out the level and nature of the trade union's participation. In recruitment of employees and taking disciplinary measures against employees, unlike the pre-privatisation arrangement where trade union participation was anticipated, these decisions now fall within the exclusive authority of the employer as the collective agreement is silent about them and there is no practice of involving the trade union.

### 7.2.3 Company DL

As with the two previous case studies, comparison of the contents of the collective agreements at the enterprise will be made between the one that was in force at the time of privatisation and the one concluded subsequent to privatisation. The collective agreements to be considered here are a collective agreement signed, in 2004, two years before the privatisation of the enterprise and the other signed in 2007, one year after privatisation and to remain in force for three years until 2010 (Art.49). Here also no replacement of collective agreement has been signed thereafter.

#### *Profit sharing arrangements*

The pre-and post-privatisation collective agreements in the company under consideration have provisions on when and how profits are to be shared. According to Article 31 (1) of the pre-privatisation collective agreement, it was agreed that, where the company registered a *gross*<sup>164</sup> profit of Birr 1,000,000 or more, a wage increment shall be due to employees who earned a job performance evaluation score of at least 2.5 out of 5.0. The wage increment was to be effected based on the agreement of the trade union and the management (Art.31 (5)).

The post-privatisation collective agreement, for its part, provides a wage increment on the same basis of calculation as the pre-privatisation agreement. Apparently, there is no difference between the two collective agreements in terms of the profit threshold required to activate a wage increment. It is therefore payable to those employees who earned at least 2.5 out of 5.0 on the same job evaluation scale and where the profit is Birr 1,000,000 or more (Art. 31(1)). However, the close reading of the two collective agreements reveal variations in that the pre-privatisation instrument assessed the profitability in terms of *gross profit* implying profit assessed before tax while the post-privatisation instrument simply speaks about profit without indicating whether it is before or after tax. Thus, the logical inference would be the latter collective agreement is intended to mean profit after tax because had the parties of the collective agreement intended to give the meaning of gross profit, they would have directly reproduced the wording of the previous agreement as they did for purposes of bonus payments. As will be seen below, for bonus purposes it is drafted in terms of gross profit instead of profit.

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<sup>164</sup> It is interesting to note that while the above two companies formulated the award of bonuses and wage increments in the light of net profit, this company employs gross profit as a basis for awarding wage increments and bonuses. In the Ethiopian financial accounting system, a net profit of a business entity is assessed after deductible costs and tax obligations have been set aside. Ethiopian law of Income Tax prescribes that corporate tax is assessed at 30% of gross profit (Proc. No.282/2002, Art. 19 (1)).



Other than this, the implementation mechanisms of the two collective agreements also vary. The pre-privatisation arrangement provided for the agreement of the trade union and the management of the enterprise on how to implement the wage increment. The post-privatisation collective agreement on the other hand places the power of implementation within the exclusive authority of the management by stipulating that the manner of its implementation is left to the company's 'Work Rules' <sup>165</sup>(Art. 31(1)).

Entitlement to a bonus is another area where a change in terms and conditions of implementation has been observed between the pre-and post-privatisation period of the company. In both periods, the basis for assessment of profit in order to activate bonus payment is the *gross profit*. However, the pre-privatisation collective agreement had a detailed schedule shown below on the criteria for granting bonuses (Art. 33).

**Table 9 Bonus Payment Scheme**

Expected amount of gross profit in Birr	Job performance Evaluation point out of 5.0 (4.5. and above)	Job performance Evaluation point out of 5.0 (3.5 to 4.4)	Job performance Evaluation point out of 5.0 (2.5 to 3.4)	Job performance Evaluation point out of 5.0 (below 2.5)
500,000-1,000,000	One month's wage	75% of one month's wage	50% of one month's wage	Non-eligible
1,000,000-2,000,000	150% of one month's wage	One month's wage	75% of one month's wage	Non-eligible
Above 2,000,000	200% of one month's wage	150% of one month's wage	One month's wage	Non-eligible

*Source: 2004 Collective Agreement of the company*

As can be seen from the table above, the detailed implementation mechanism for bonuses was spelt out in advance so that all parties would have little doubt as to when, how much and to what level of performance bonus would be granted. Generally, the approach was that the amount of reward increased proportionate to the amount of profit and the level of job performance of the employee. Presumably, this carefully delineated approach would have the impact of encouraging impressive performance by providing a strong incentive to do so.

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<sup>165</sup> 'Work Rules' as defined in the labour law are internal rules which govern working hours, rest period, payment of wages and the methods of measuring work done, maintenance of safety and the prevention of accidents disciplinary measures and its implementation as well as other conditions of work (Proc. No.377/2003; Art.2(5)). It is within the managerial power to issue 'Work Rules'.

The post-privatisation bonus mechanism is neither as detailed nor as transparent as the pre-privatisation arrangements. Although the post-privatisation collective agreement stipulated that a bonus could be payable whenever the company generated a *gross profit* of Birr 500,000 or more, the amount of money to be earmarked for bonuses and the manner of disbursement to the employees and its amount is to be determined by the ‘Managing Board’ of the company (Art. 33).

In the private sector, unlike in the Managing Board in the State-owned enterprises, employees or their trade unions are not represented in the ‘Managing Board’. The same holds true at this enterprise in that no single employee serves in the Managing Board. Therefore, the post-privatisation bonus rewarding scheme not only fails to lay down, in advance, the manner and the amount of bonus available to each employee but also does not provide an opportunity for the trade union to be involved even at the stage of implementation. Thus, the amount of profit to be set aside for bonus and how it is to be disbursed among the employees is left to the exclusive discretion of the management staff of the company.

In like manner with the above two privatised enterprises, lack of information on the financial performance of the company occurs here, too. Trade union leaders at the enterprise alleged that the employer has been consistently reporting losses every budget year a proposition about to which they have their own doubts. However, the General Manager<sup>166</sup> of the company asserted that the leather industry had many challenges both internal and external. As a result, his company was operating at loss with the anticipation that profitability could only be attained through time. According to him, it was only in 2011/2012 that the company generated a profit and preparations are under way to grant bonuses to the labour force as per the terms of the collective agreement.

Nevertheless, an international consultant who examined the post-privatisation financial performance of the company found that the company generated a net profit of Birr 2.5 million for the first five months ending December 2008 (Ericsson, 2009:50). The Consultant’s report tends to support the concern of the trade union leaders. The core of the matter, however, is that suspicion and mistrust between the social partners prevails due to information gaps.

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<sup>166</sup> Interview with the General Manager of the company at his office in Addis Ababa (28 August 2012). In fact, he claimed that the company was granting bonuses to the employees even in situations where the company was operating at loss with a view to encouraging future productivity.

### *Training benefits*

Consistent with the approach seen in our previous case studies, the pre-and post-privatisation collective agreements of DL have incorporated provisions on training of employees. Both collective agreements stipulated that costs associated with employer-initiated training would be covered by the employer (Art. 15) which includes expenses in connection with the cost of training and wages payable while employees are attending training. However, in cases where the training is organised by the government or the trade union the obligation of the employer is limited to ‘cooperate in such an endeavour’. In practice, as an expression of cooperation, the General Manager<sup>167</sup> stated that for trainings shorter than five working days the company grants leave with pay whilst training which lasts more than five working days the company grants leave without pay.

One additional and significant aspect of support for training was that for employees who attended college and university education, the pre-privatisation collective agreement stipulated that 75% of the educational expenses would be covered by the employer provided (i) that the education was related to the job that the employee performs and (ii) that the employer was notified in advance about the educational plans of the employee and the employee earned a pass grade in such education (Art. 14 (2)). This sharply contrasts with the terms of the post-privatisation collective agreement under which the provision about employees’ initiated training, even if closely related to their jobs was removed. Any employee initiative in this area is now a private affair of the employee.

In practice, although the General Manager did not provide the exact figure, he claimed that the company regularly arranges training opportunities for employees in cooperation with the Ethiopian Leather and Leather Products Technology Institute a government entity which trains and supports in upgrading the skills of personnel in the leather industry.

### *Employee participation in management*

As with our previous discussions, the company has included provisions relating to employee participation in management in its collective agreements. The pre-privatisation collective agreement had provisions on criteria and procedures for promotion of employees and also on

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<sup>167</sup>ibid.

how the trade union representative(s) would be engaged in the investigation of disciplinary measures. Article 12 (4) of the collective agreement stipulated that a committee of five persons in which two representatives of the trade union were included constituted the 'Promotion Committee'. It was this Committee that was empowered to examine the file of every candidate and finally recommend the suitable candidate for the anticipated job position to the General Manager for approval. Similarly, a Disciplinary Committee composed of five persons was also set up to investigate alleged misconduct of employees in the workplace and submit its recommendation to the General Manager. Article 48(1) of the pre-privatisation collective agreement provided that among the five members of the Disciplinary Committee two were to be drawn from the trade union representatives.

The collective agreement signed post-privatisation differs from the pre-privatisation arrangements in several aspects. Although both Promotion and Disciplinary Committees have been retained in the post-privatisation collective agreement as functional organs, the manner in which they have been constituted shows variations. The post-privatisation collective agreement did not formulate these committees; instead they are to be established at the discretion of the General Manager (Art. 12(4)). In practice, trade union leaders informed us that it was only the chairperson of the trade union who was being invited by the General Manager to serve as a representative of the trade union in the two committees.

Presently, trade union representatives are not involved in any of the committees. The General Manager of the company was asked why the management decided to exclude trade union representatives from disciplinary and promotion committee membership. He responded that trade union representatives lacked the objectivity to examine employee related cases before them. According to him, trade union leaders try to defend their members even if they are fully aware that the latter are utterly at fault. Thus, in his view, it is a futile exercise to involve trade union representatives in serious personnel management issues. However, so long as the management team represents the majority vote in the committees and since the power of the committees has been limited to offering recommendation rather than handing down binding decisions engaging trade unions would have been a mechanism of engaging the labour force in matters that affect it.

#### 7.2. 4. Company FL

As with our other case studies, an examination will be made as to the nature and extent of changes that have been introduced, at FL, in the post-privatisation collective agreements<sup>168</sup> as compared to the pre-privatisation period. FL was privatised (in 1998) much earlier than the other three. As a result, unlike the other three privatised enterprises that possesses only one post-privatisation collective agreement for each of them, this company managed to negotiate and sign two collective agreements post-privatisation. These are the ones concluded in 2007 and 2011. However, the contents of the two post-privatisation collective agreements are substantially similar except for few variations that will be elaborated in the course of the discussion below.

##### *Profit sharing arrangements*

In the pre-and post-privatisation collective agreements concluded at FL, provisions on wage increments and bonuses together with the conditions attached thereto are spelt out. As regards wage increments, the pre-privatisation agreement did not have a qualifying threshold of net profit for making the increments. However, it was put as a condition that the net profit should be double to the amount of money that would be expended in the form of wage increment (Art. 19(1)). It was stated that half of the net profit was to be distributed in the form of wage increments, based on the salary scale of the company, to the employees who earned a performance evaluation of 2.5 out of 5.0 while the remaining amount was to be retained by the employer in the form of ‘business profit’.

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<sup>168</sup> The trade union leaders recalled that the first post-privatisation collective agreement was put into effect by a court order as the employer was unwilling to sign it after duly bargaining on the items incorporated therein. According to the trade union leaders the bargaining process took more than three years due to all sorts of dilatory tactics and non flexible bargaining positions. Every level of bargaining was recorded into Minutes of the proceedings which were being signed by the negotiating parties at the conclusion of every negotiation. At a later stage, the items of the Minutes were formulated into a draft collective agreement but the employer’s representatives were not willing to put their signature on the draft collective agreement, thereby resulting in stalemate. Consequently, the dispute was then referred, by the trade union, to the Labour Relations Board and the Board decided that ‘so long as it has been admitted that the draft collective agreement emanated from the Minutes of the collective bargaining which was signed by the duly authorised representatives of the parties, the employer is bound to respect the terms of the draft collective agreement’. Although the employer lodged an appeal against the decision of the Labour Relations’ Board to the Federal High Court, the Court affirmed the decision of the Board (*see; Ethio-Leather Industry Plc. V. Ethio- Leather Industry Trade Union; Federal High Court; File No. 48054; Decided on 04 Jan 2007*).

There were also provisions that provided for the payment of bonuses. Under Article 38 of the pre-privatisation collective agreement, employees who provided at least one year of service to the enterprise were entitled each to a flat rate bonus of Birr 150 provided that the company generated a *gross profit* of Birr 1,500,000-3,000,000. The amount of bonus was to be doubled where the gross profit was between Birr 3,000,001 and 5,000,000. It had also provisions under which the amount of bonus would be further increased where the gross profit exceeded Birr 5,000,000.

The approach to the qualifying criteria differed under the post-privatisation arrangement in that the collective agreements provided an explicit financial basis for wage increments. They have fixed a threshold of profit for the payment of any wage increment to the employees. Under the terms of the collective agreement of 2007, a net profit of Birr 3,000,000 was set as a threshold for making wage increment payable (Art. 27). A minimum of nine months service during the budget year and an average of (2.5 out of 5.0) performance evaluation report were required for an employee to be eligible for the wage increment. Under the collective agreement that came into effect in September 2011, with a three year period of validity, the threshold of profit required to be attained in order for wage increments to be payable has been increased to a net profit of Birr 8,000,000 (Art.27).

Trade union leaders stated that<sup>169</sup> the company was regularly reporting losses for the last ten years since privatisation. According to them, it was only during the 2009/2010 budget year that the company for the first time officially declared that profit had been earned. Consequently, in 2010, wage increments were paid as per the stipulation of the collective agreement. The Human Resource Director of the Company affirmed<sup>170</sup> that the company registered a net profit above the threshold for the budget year 2010/2011, as a result of which the employees were granted wage increments and bonuses as per the terms of the collective agreement. However, an international consultant who examined the post-privatisation financial performance of the company reported that even though the company registered losses in fiscal years 2005/2006 and 2006/ 2007, amounting to Birr 12 million and 15 million respectively; in 2007/2008 it generated a net profit of Birr 1.8 million (Ericsson 2009:47).

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<sup>169</sup> Interview was conducted with the trade union leaders operating in the enterprise at the Head Office of the Confederation of Ethiopian Trade Unions (12 October, 2010).

<sup>170</sup> Interview with the Human Resource Director of the company in his office at Addis Ababa; 24 September 2011

As regards the post-privatisation bonus arrangement, the minimum profit to be generated in order for a bonus to be payable has been a *net profit* of Birr 3,000,000 (Art. 25 (1)). As indicated above, in Ethiopian financial accounting system, a net profit of a business entity is assessed after deductible costs and tax obligations have been set aside and the tax obligation is currently 30% of the gross profit. Hence a higher threshold of gross profit is required in order to arrive at a net profit of Birr 3,000,000. Indeed, this amount has also been revised by the collective agreement signed in 2011 in that the minimum profit required for bonus payment purposes is increased to a net profit of Birr 8,000,000. Furthermore, whatever the amount of profit, a bonus is to be granted in a fixed form in which every employee with at least one year of service shall be awarded one month's wage irrespective of the amount of the net profit once the Birr 8,000,000 threshold has been attained.

### *Training benefits*

Under the pre-privatisation collective agreement, it was envisaged that there would be possibilities for employer-initiated training in-house, locally or abroad. When an employee was granted training abroad, the enterprise was obliged to pay full wages of the trainee-employee for the first six months of the training period and 50% of such an amount for the next six months (Art. 13 (3)). If the training period exceeded one year, payment of wages would be terminated at the end of the first year. In cases where the training was organised by other organs such as the government, trade unions or other training agencies, the enterprise was duty bound 'to cooperate in such an endeavour' (Art. 13 (4)). What constituted co-operation was not defined but in practice trade union leaders indicated that the trainee-employee had been granted leave without pay in such cases. Moreover, for formal education pursued by employees at their own initiative, the employer was committed to cover 50% of the cost provided that it had been determined in advance that the education was closely related to the job an employee was performing (Art. 13(8)).

Under the two post-privatisation collective agreements issue of training have been retained. In cases where training abroad is organised by the company, the trainee-employee shall be entitled to seven months leave with full pay, and if the training lasts more than seven months, half of the employee's wage shall be paid for the next five months (Art. 12(5) (3)). The post-privatisation arrangement is therefore marginally more generous than the pre-privatisation one in that the

wage payable to the trainee is higher under the former.<sup>171</sup> However, unlike the pre-privatisation arrangement where commitment to serve after completion of training was not included, under the post-privatisation arrangement, the collective agreement inserted a provision through which the employee should serve the enterprise after completion of training or refund the employer the cost of training.

Accordingly, an employee, before commencement of training abroad, is required to provide a personal guarantor to serve the company for at least three years for a training that lasted between six to nine months, and to render five years of post-training service for a period of training that lasts more than nine months. In cases where the employees do not want to render the said service, they will be obligated to refund the employer the cost incurred in connection with their training including transport and associated other costs (Art.12 (5) (4)). Hence, the employee has two options, in this respect, either to serve or to pay back the costs associated with the training to the employer. Although records for the preceding years, pertaining the actual training benefit accorded to the employees are not available, the trade union<sup>172</sup> registered 26 employees (25 male and one female employee) who were offered short-term trainings (five to twenty one days) at the Ethiopian Leather and Leather products Technology Institute for the 2011/2012 budget year with the cost covered by the employer. From this figure, it appears that the gender mix of those who obtained training opportunities tend to very much tilted towards the male labour force.

The post-privatisation collective agreements also contain provisions to encourage employees to enhance their skill through formal education. For employees who attend formal education at 10+1<sup>173</sup> and 10+2 levels, the employer will cover 75% of their educational expenses provided that they score pass grades. Furthermore, for those employees who attend higher (university) education, the employer will cover up to 75% of the expense, depending on the academic performance of the employee, and if the education being pursued by the employee has been determined by the management group to be closely related to the employee's job tasks (Art.12(6)).

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<sup>171</sup> Even though both the pre and post-privatisation collective agreements provide for one year training leave with pay, the pre- privatisation arrangement was the first six months with full pay and the other six months with half pay whereas the post-privatisation arrangements is seven months with full pay and five months of half payment.

<sup>172</sup> Information obtained from the office of the trade union at the company (27April 2012).

<sup>173</sup> These are educational levels in the Ethiopian National Curricula where students are enrolled to one year or two years Technical and Vocational Education and Training (TVET) after completing 10<sup>th</sup> grade which is the final class for the General Education. Recently a curriculum revision has been undertaken by the Ministry of Education and post 10<sup>th</sup> grade levels have changed to Level- 1 to 5 though the collective agreements is not revised accordingly.



The second post-privatisation collective agreement fully maintained the training scheme benefits of the preceding collective agreement. In fact, it has increased the employer's commitment so as to cover 100% of the educational fee of the employee at a university, if the education is closely related to the employee's job and it is pursued in *a public college*. If the employee decides to study at *a private college*<sup>174</sup> the employer will only cover an amount equivalent to the public college rate of payment and the difference shall be covered by the employee (Article 12 (6) (2). For the academic year of 2011/2012, nine employees<sup>175</sup> (six males and three females) benefited from this scheme. In general terms, it could be said that the post-privatisation collective agreements provided for more generous terms than the pre-privatisation collective agreement.

#### *Employee participation in management*

The pre-privatisation collective agreement and the two post-privatisation collective agreements at the company have provisions relating to employee participation in management. Article 33 of the pre-privatisation collective agreement provided for the involvement of not more than five trade union representatives in discussions on work rules and work methods affecting the labour force. Moreover, Article 15(4) of the same instrument stipulated that the trade union was to be notified whenever employees were promoted to a higher post within the enterprise's internal structure. A grievance procedure relating to promotion decisions was also incorporated under Article 15 (10) of the collective agreement to the effect that if grievances arose about the promotion decisions, they were to be resolved through consultation between the management and the trade union. Thus, although the participation of the trade union in promotion cases was confined to receiving information, the trade union was to be involved at the level of handling grievances arising from the process and the outcomes of promotion. The General Manager was empowered to establish a disciplinary committee that would consist in representatives of the management group and the trade union (Art. 34(2)). The trade union leaders<sup>176</sup> recalled that two trade union representatives were included on the five persons Disciplinary Committee at the time.

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<sup>174</sup> This arrangement assumes that the cost of training at public colleges is cheaper than that of the private colleges. Indeed, the assumption is valid in real terms too, where in Ethiopia cost of education is far higher in private colleges regardless of quality than the public ones.

<sup>175</sup> Information obtained from the office of the trade union at the company (27 April 2012).

<sup>176</sup> Interview with trade union leaders of the company at the Head Office of CETU (12 October, 2010)

Both post-privatisation collective agreements have brought significant changes over a range of managerial decisions. Article 6 (1) of both the post-privatisation collective agreements expressly stated that the issues of ‘recruitment, assignment, transfer, promotion and disciplining of employees are within the sole prerogative of the employer’. On the basis of the first post-privatisation collective agreement, it was a three person committee in which the Head of the Personnel Division, a representative of the General Manager and the Head of the Unit where the vacancy arose were to be the members of the Promotion Committee (Art. 12(4)(5)). There was therefore no provision for the involvement of any trade union representative in these decisions.<sup>177</sup> Nevertheless, the second post-privatisation collective agreement that has entered into force since September 2011 entitled the trade union to assign a representative for a ‘Promotion Committee’ in which files of applicants for promotion in the company’s internal structure are to be considered (Art. 12(4)(5)).

Where disciplinary measures are concerned, both the post-privatisation collective agreements have adopted a different approach. They prescribe a long list of acts that constitute disciplinary misconduct and attached the possible sanctions to them. The actual implementation of a disciplinary measure rests within the prerogative of the management and the collective agreements have no provisions for the establishment of a discipline committee. The post-privatisation arrangement therefore excludes the participation of the trade union in disciplinary issues of its members.

Trade union leaders stated that they pressed for involvement in the investigation of alleged misconduct of employees but the requests were turned down by the employer on the contention that ‘this is a purely managerial prerogative and hence reserved to the management group’.<sup>178</sup> The Human Resource Director at the company was also of the view that ‘once employees are notified in advance or agreed through their representatives as to what type of misdeed is

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<sup>177</sup> Trade union leaders verified that even though the first post-privatisation collective agreement did not provide for the inclusion of a union representative in the Promotion Committee, the employer had allowed one representative of the trade union to be a member of such a Committee. The problem with such kind of arrangement was that the employer can at anytime unilaterally withdraw the participation of the union representative from such a Committee. Hence, it was not something that can be claimed as of right by the union; the participation was rather at the mercy of the employer’s good will.

<sup>178</sup> Interview with trade union leaders of the company at the Head Office of the Confederation of Ethiopian Trade Unions in Addis Ababa, 12 October 2010

prohibited and the disciplinary sanction attached to it, actual implementation and ensuring strict discipline at workplace is within the exclusive authority of the management team'.<sup>179</sup>

Having compared the pre-and post-privatisation contents of collective agreements in the privatised enterprises, the basis of comparison is extended below to include comparisons of the actual bargaining processes and with the contents of the collective agreements of the State-owned enterprises.

## **Section II. State-owned and Private Enterprises Comparison**

To maintain the consistency of the analysis, the subject matters for comparison will be as previously stated: profit sharing arrangements; training benefits; and employee participation in management. Unlike previously, however, in this Section the evidence drawn from all the case studies will be integrated into the discussion under each of the three subject matters. But before evaluating the contents of the collective agreements on the issues, a prior consideration is made whether there is a variation between the bargaining process at the State-owned and the privatised enterprises because the process is as important as substantive outcomes for our comparative purposes.

One element of the bargaining process to be considered here is that of the time spent in negotiating and concluding the collective agreements. Although recognition of trade unions for bargaining purposes is mandatory under Ethiopian law, the use of dilatory tactics in the bargaining process could have an effect equivalent to de-recognition with the consequence of frustrating both the process and the outcome. Thus, prolonging the bargaining process could still be employed as a tactic by the negotiating parties.

To shed light on this issue, the trade union leaders of the respective enterprises under the present study were asked about the length of time that collective bargaining towards agreement normally takes. Trade union leaders<sup>180</sup> from the two State-owned enterprises indicated that although they have no records as to the exact time spent on collective bargaining, they stated that reaching at collective agreement took approximately two to three months. They further recalled that it was

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<sup>179</sup> *Supra note at 170.*

<sup>180</sup> Interview with trade union leaders at ST on 24 January 2011 and with trade union leaders at SL on 20 December 2010 at the Head Office of CETU

prior to the dissolution of State Corporations<sup>181</sup> that collective bargaining was taking a longer duration due to the fact that the draft collective agreement which was negotiated at the enterprise level had to be submitted to the State Corporations for final verification. Under the existing arrangement, they stated that since each State-owned enterprise is autonomous, the Managing Board or the General Manager of the respective enterprises decides on these issues and hence it takes shorter time to conclude collective agreements.

Conversely, trade union leaders from the privatised enterprises complained that bargaining with private employers took significantly longer time. Trade union leaders from FT recalled that in order to comply with the letters of the law, bargaining commenced within ten days from the time of submission of a request for bargaining. Once the process was set in motion, however, negotiators representing the company have been frequently replaced for unexplained reasons. On almost every occasion the ‘new face’ would want to begin the negotiation afresh with the consequence that the bargaining process becomes time consuming and frustrating. Similarly, one of the trade union leaders from DL remarked that ‘in the post-privatisation setting, collective bargaining has been transformed into collective begging’.<sup>182</sup> He stated that, at times, due to controversies between the negotiating parties on wordings in minutes, bargaining would have to begin anew from the scratch. It is claimed that negotiations are frequently adjourned as enterprise negotiators are not given full decision-making authority and hence they wish to consult with the senior management on the issues at the negotiating table. In fact, trade union leaders from FL stated that collective bargaining over one collective agreement took more than three years.<sup>183</sup>

The General Managers from the private enterprises admitted that collective bargaining takes a long time. However, the cause for delay, according to them, is mainly due to rigid proposals offered by trade union representatives at the bargaining table. They claimed that not only were unacceptable proposals being submitted but also, at times, trade unions were inflexible in their positions during the negotiation process. Even when they are convinced that backing down from some of their proposals is warranted, they request an adjournment of the bargaining process in

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<sup>181</sup> State corporations, as indicated in Chapter 5, were state trading enterprises which supervised the state-owned enterprises at sectoral level and to whom State-owned enterprises were accountable.

<sup>182</sup> Interview with trade union leaders of DL on 27 April 2009 in the Head Office of the Confederation of Ethiopian Trade Unions

<sup>183</sup> *Supra* 168

order to obtain the approval of the labour force at every step. At times, the need to bring in third parties (conciliators) in order to bring about amicable settlement between the negotiating parties becomes necessary and such a practice contributes for further delay in the bargaining process. Regardless of which party is responsible for the delay, the fact is that the collective bargaining process takes longer duration.

To judge, from the collective agreements made available during the research, delay in renegotiation and replacement of collective agreement appears a valid concern in the privatised enterprises. For instance, the post-privatisation collective agreement at FT was due to expire in June 2010. Nevertheless, it had still not been replaced by another one as at December 2012. Similarly, the post-privatisation collective agreement at DL was anticipated to expire in November 2010 but no replacement of collective agreement had been concluded by July 2012. The post-privatisation collective agreement at DT was also due to expire in January 2011 but here again it was not replaced by another collective agreement until August 2012. A more expedited process emerges from the experiences of the State-owned enterprises. The most recent collective agreements at SL and ST expired in March 2012 and April 2012 respectively but in both cases trade union leaders stated that negotiations were already under way to replace them in July 2012.<sup>184</sup> Therefore, the negotiation process of collective bargaining in the privatised enterprises appears to be lengthy and time consuming.

In fact, the Federal Supreme Court Cassation Division<sup>185</sup> recently handed down a decision that could have an effect of encouraging even further delay in the bargaining process. The Court ruled that even if the employer appointed its representatives for the negotiation and finalised the bargaining process through them, it can still denounce the negotiation process if it is convinced that its representatives exceeded their powers.<sup>186</sup>

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<sup>184</sup> However, as at December 2012 it was made known that there was no any new registered collective agreement from any of the above enterprises.

<sup>185</sup> Under the current Ethiopian judicial structure, the Federal Supreme Court Cassation Division is the highest decision making body within the court structure. Ordinarily the regular Federal Supreme Court bench sits in a panel of three judges. For Cassation purposes, the Federal Supreme Court Cassation Division examine cases by five supreme court judges sitting at a time to determine whether ‘fundamental error of law’ was committed by the lower tribunal after which it affirms, reverses, amends or remands back the case before it. The ruling of the Cassation Division also serves as a judicial precedent for similar future cases before any judicial tribunal in the country.

<sup>186</sup> In a Federal Supreme Court Cassation Division case *Fincha Sugar Factory v. Fincha Sugar Factory Trade Union*; File No.54451; decided on 7 September 2010).

The facts of the case were that trade union representatives at the enterprise and the duly authorised representatives of the management at the enterprise conducted negotiations and reached at an agreement on many issues pertaining to labour conditions. All proceedings of their bargaining were reduced into minutes and signed by the negotiating parties. The negotiating parties reformulated the minutes into draft collective agreement and the trade union representatives put their signatures on the draft collective agreement but the management of the company failed to do the same. As per the labour law, in order to give legal effect to terms of the collective agreement, the minutes need to be reformulated in the form of collective agreement, signed by the parties and registered by a labour relations office thereafter.

Subsequent to refusal to sign by the management of the company, the trade union took the case to the Labour Relations Board requesting the Board to instruct the enterprise to sign the draft collective agreement in order to pave the way for its registration and implementation thereafter. The Board requested the company to submit its reply for this. The company in its statement of reply stated that its representatives negotiated and agreed on subject matter which was not eligible for collective bargaining and unless these points are stricken out from the draft they would not sign the draft collective agreement. The Board after seeking an opinion from the experts at the Ministry of Labour and Social Affairs on the matter rejected the company's contention and ruled that it was assumed that the enterprise assigned representatives with full powers to negotiate and that the issue of excess of power could not be invoked at a later stage and therefore ordered the company to affix its signature on the draft.

Although, the company took the case on appeal to the Federal High Court, the Court affirmed the decision of the Board. The company then finally took the case to the Federal Supreme Court Cassation Division where the Cassation Division reversed the decisions of the lower tribunals by holding that the principal is at liberty to denounce the commitments entered into by its agent where the latter exceeded its authorisation. The Court did not bother to inquire as to whether the agent exceeded its authorisation and what measure the company took against whom it alleged that they exceeded their powers.

Prior to this ruling, the negotiating parties were assumed to have assigned delegates with full powers to the bargaining table unless an express limitation on their powers has been placed

which was communicated to the other negotiating party. Procedurally, the labour law requires the party initiating bargaining should request the other party in writing to make itself available for the bargaining and a copy of the draft proposal for bargaining needs to be attached with the request (Proc. No.377/2003; Art.130). More often than not, request for collective bargaining is initiated by trade unions as they are the ones who would like to obtain better concessions from the new collective agreements than what has been provided in individual contracts, expiring collective agreements or law. It is in response to such a request that the employer assigns its delegates for the negotiation. Hence, since the proposal of the trade union was already under its possession, the employer was expected to assign delegates with full authority on the subject matter planned for negotiation.

Thus, as long as the negotiation and the agreement limited itself to the subject matter in the proposal, the employer was not allowed to disapprove what its duly authorised representatives have agreed upon. This position was reflected on the decision of the Federal High Court in the case of *Ethio-Leather Plc v Ethio-Leather Trade Union* (see foot note 168 above) and this was one of the reasons why collective bargaining has been taken seriously by the negotiating parties as it was difficult to revoke it.

However, by virtue of the Federal Supreme Court Cassation Division ruling, now that employers are allowed to denounce what their delegates agreed upon, they will not have the incentive to assign delegates with full authority. The concern is that they will not take collective bargaining seriously as they are granted almost a de facto ‘veto’ power to withhold implementation at a later stage on the allegation of excess of power of the delegates. Consequently, the ruling rendered by the Cassation Division on the issue seems to have the effect of undermining the conduct of effective collective bargaining. Given the fact that ‘feet dragging’ in the bargaining process from private employers has been noted, the ruling of the Cassation Division would further aggravate the problem. The implication of this recent ruling of the Cassation Division in terms of predictability of the collective bargaining process will be discussed further in Chapter 8.

With this remark on the procedural aspect of the bargaining process, we will now proceed to comparing the specific subject matters between the privatised and State-owned enterprise indicated above.

### *Profit sharing arrangements*

When a comparison of profit sharing arrangements is made between the content of the collective agreements signed in the State-owned enterprises on the one hand and the privatised enterprises on the other, there are some variations to be noted. As a general tendency, the collective agreements in all the privatised enterprises, except at FL, revealed that a lower threshold of profit has been fixed for bonus payments whilst a wage increment requires a higher profit threshold. This differentiated amount of profit threshold for bonuses and wage increments is explicable by the fact that while a bonus is a one-off payment, a wage increment once granted will be an integral part of the wage to be periodically paid and hence becomes a constant financial cost to the company.

The question then arises as to how the arrangements at the State-owned enterprises compared to the general tendency described above. The operative collective agreement at SL prescribes that a net profit of Birr 600,000 up to 750,000 would entitle each employee to 75% of his month's wage in the form of bonus (Art. 28(3)). Where the generated net profit reaches more than Birr 750,000 up to 1,000,000, the amount payable to the employee in the form of bonus would be one month's wage of the employee. Moreover, a net profit beyond and above Birr 1,000,000 would entitle the employee to both bonus and wage increments simultaneously amounting to one month's wage in the form of bonus and a wage increment (Art. 28 (4)).

The collective agreement at ST adopts a different modality of computation of profit allocation in that where the company generates a net profit equal in amount to the gross monthly wage bill of the company, 40% of each employee's wage shall be due in the form of bonus (Art.18 (1) (1)). Where the profit generated amounts to more than the equivalent of two months' wage bill, 60% of the wage of each employee shall be payable in the form of bonus (Art.18 (1) (2)). Furthermore, where the profit is increased to a level equivalent to more than five month's wage bill, 40% of each employee's wage shall be accorded in the form of bonus and simultaneously a wage increment shall be granted (Art. 18(1) (3)). Through this arrangement, the amount of profit to be earmarked for bonuses and wage increments increases parallel with the amount of profit as measured against the gross monthly wage bill. Although ST adopted a unique way of computing profitability, the point is that it has put in place mechanisms for rewarding bonuses and wage increments if and when profit is generated. In terms of eligibility, employees who served less



than nine months<sup>187</sup> in the budget year and whose job performance evaluations are below satisfactory (less than 2.5 out of 5.0) are not eligible for these entitlements (Art.18 (2)).

When a comparison of bonus payments is made between the privatised and the State-owned enterprises, the following variations were noted. In the leather sector the profit threshold required for bonus payment at DL ( privatised enterprise), is lower than that of SL (State-owned enterprise) because the former requires a *gross profit* of Birr 500,000 while the latter requires a net profit threshold of Birr 600,000 in order to award bonuses for the employees. However, FL, another privatised enterprises requires a net profit threshold of Birr 8,000,000 for the same purpose. Hence the data is inconclusive to hold whether the State-owned enterprises or the privatised ones provide better benefit to the employees. The situation in the textile enterprises is also that as ST employs a different method of computation of profitability, it is difficult to undertake comparison between State and privatised enterprises pertaining to payment of bonuses.

A wage increment scheme is available in all the enterprises regardless of the type of ownership although the profit threshold required varies. A net profit threshold of Birr 1,000, 000 is required in order to implement wage increment at SL, FT and DL. A higher threshold is required at DT and FL where Birr 4,500,000 and 8,000,000 are respectively required. Here again the data do not provide conclusive evidence in terms of benefit along the lines of type of ownership.

As regards disclosure of financial information relevant for the bargaining process, although the current labour law does not expressly impose the duty on the social partners to disclose information, the collective agreement at ST provides that ‘the management shall deliver a copy of the quarterly bi-annual and annual plan financial reports and profit and loss statements of the enterprise to the trade union’ (Art. 7 (20)). Similarly, the collective agreement at SL has imposed a duty to submit a report to the labour force on the general performance of the company (Art. 8(15)). These provisions enable the trade unions in the State-owned enterprises to obtain the necessary information for well-informed negotiations. Trade union representatives at SL indicated<sup>188</sup> that a trade union representative has been regularly invited to attend the management meeting where annual performance of the enterprise is to be discussed. This kind of opportunity,

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<sup>187</sup> The denial of the entitlement does not apply to employees on annual leave, maternity leave and leave associated with employment injury (Art. 18 (2) (b)).

<sup>188</sup> Interview with trade union leaders in the Company at the Head Office of the Confederation of Ethiopian Trade Unions, in Addis Ababa (20 December 2010)

as indicated under Section I of this Chapter, is not available in the privatised enterprises. The collective agreements at the privatised enterprises do not oblige the employers to furnish the trade unions with such information. Due to information gap in the privatised entities, mistrust and suspicion have been created as to whether profit has been generated and the amount thereof.

However, for these various profit sharing arrangements to bring about measurable gains, profits need to be generated because they all presuppose the generation of profit. Nevertheless, irrespective of the variations on paper and in the different approaches towards profit sharing between the social partners in the enterprises under study, there was a reality to be faced. Until 2010 budget year all the enterprises, regardless of the type of ownership, claimed that they were consistently operating at losses.<sup>189</sup> Consequently since there was no reported profit, the provisions of the collective agreements were merely optimistic aspirations rather than enforceable commitments at the time. The optimism, however, lies in that the loss being incurred every year by each enterprise has been gradually but steadily declining whilst at least a break-even point had already been attained (Ericsson 2009:27). Indeed, since 2011, except for FT in which the General Manager claimed that it is still at break-even in terms of profitability, the other enterprises affirmed that they have already entered into profitability and began to grant the benefits stipulated in their respective collective agreements to eligible employees.

However, although the economic challenge was overcome by attaining profitability of the companies, recently (since 2010), a new legal challenge came to the scene in executing bonus and wage increments as per the stipulation of the collective agreements. Ordinarily, collective agreement once signed and registered with the relevant authority was enforceable before labour tribunals as good as a contract (Proc. No.377/2003; Art.133 (2)). It was not left to private action for enforcement. This possibility of enforceability through state machinery has therefore been one of the reasons why collective bargaining has been taken seriously by the negotiating parties.

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<sup>189</sup> As regards the two State-owned enterprises (SL and ST) we were provided with a financial report, by the Privatization and Public Enterprises Supervising Agency (PPESA), that showed consistent loss registered for some years now except that the amount of the loss is gradually and consistently going down. With respect to the privatised enterprises, however, although our efforts to trace their financial records failed to obtain a positive response, the declaration of their management is that until recently (2010) they were operating at loss. An international consultant, Ericsson, who undertook a study on the post-privatisation financial performance of the privatised enterprises found that DL and FL managed to generate profit since 2009. The Manager for DT affirmed that profit has been generated since 2011 while the Manager of FT claimed that the company is approaching to breakeven level in 2012.

However, the Federal Supreme Court Cassation Division<sup>190</sup> handed down a decision that fundamentally deviates from the established position of the Ethiopian legal system which was entertaining labour disputes based on collective agreements and awarding decisions based on the stipulations of the provisions of the collective agreements.

In the particular case the parties (the company and the trade union) had a valid collective agreement in which the enterprise committed itself to grant half month's wage in the form of bonus and a wage increment based on the wage structure of the company provided that a certain threshold of profit was generated. For the 2008 budget year the company generated a net profit above the threshold and the trade union consequently claimed for bonuses and wage increments by citing the relevant provision of the collective agreement. The company did not comply with the request and the trade union took the case to the labour division of the regular court seeking enforcement of the terms of the collective agreement. The Court declined jurisdiction reasoning that the issue is a collective labour dispute while the court's jurisdiction is limited, by law, to individual labour disputes (Proc. No. 377/2003; Art.138 (1).

The trade union then took the case to the Labour Relations Board which is empowered to hear and decide collective labour disputes but the Board, for its part, held that it has no power to decide on 'wages and other benefits' pursuant to Article 147<sup>191</sup> of Labour Proclamation No.377/2003. Although the trade union took the case to the Federal High Court on appeal from the Labour Relations Board, the High Court affirmed the ruling of the Board. Finally the trade union petitioned the Federal Supreme Court Cassation Division with a view to rectifying the 'fundamental error of law' which the trade union believed to have been committed by the lower Court and the Board. However, the Cassation Division affirmed the ruling of the lower tribunals stating that the Board has no authority to determine on wages and other benefits. According to the Cassation Division, it is for the party claiming relief [the trade union in the present case] to

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<sup>190</sup> *Construction Works and Coffee Technology Development Enterprise Trade Union v. Construction Works and Coffee Technology Development Enterprises*- File No. 49152 (Decided on 14 July 2010). The same day the Cassation Division handed down a similar decision although the facts of the two cases were different from each other. (See, *Ethiopian Commercial Bank Trade Union v. Ethiopian Commercial Bank*- File No. 50679 (Decided on 14 July 2010). In this later case (the Bank Case), unlike in the former, the collective agreement did not clearly specify the wage increments and bonuses due to the employees. It simply stated that 'the employer shall grant wage increment and bonuses where the company generates profit' without specifying the amount in which case the collective agreement as it stood was not self-executing. Thus the ruling of the Cassation Division in that case appears to be in line with the spirit of the law.

<sup>191</sup> Article 147(1) provides that the permanent Board shall have the following power: (a), to conciliate the parties and to give orders and decisions' on matters specified in sub-article (1) of Article 142, except for Article 142 (1) (a). Article 142(1) (a), provides 'on determination of wages and other benefits'.

take industrial action in order to compel the other party to accept its demands if the claim is related to wages and other benefits.

However, it is submitted that, the Court misunderstood and misconstrued the provisions of the labour law. It should be noted that the labour law made a distinction between issues of ‘wages and other benefits’ at the level of bargaining and wage and other benefit included in a collective agreement. At the level of bargaining, labour tribunals are prohibited from interfering in determining what should be offered from one party to the other. This was a matter left to the parties to influence each other through private collective action. However, once the parties negotiated and agreed on terms including ‘wages and other benefits’, it was no longer a private affair that should be implemented solely through industrial action. On the contrary, it was a matter of enforcement of promises in which government organs (in this case labour tribunals) may be called upon to enforce it.

Moreover, when looking at the legislative history of the current labour law on wages and other benefits, the reason why the legislature prohibited labour tribunals from determining wage and other benefits was the following: the practice prior to the amendment of the law in 2003 was that when the parties to collective bargaining failed to agree on issues of wage and other benefits such as bonuses and wage increments, one of the parties would take the case to the Labour Relations Board. The Board after entertaining the argument of the parties was handing down binding decision on how much wages to be increased and the amount bonuses to be paid. In some cases, since Labour Relations Boards did not have adequate information and knowledge as to the economic position and implication to the enterprise, their decisions were detrimental to the very existence of the enterprise. It was in order to do away with this undue interference of tribunals in managerial affairs that the legislature withdrew the power of the Board in determining wage and benefit issues. This has been clearly documented in the explanatory note prepared by MOLSA to justify an amendment on the earlier provisions.<sup>192</sup>

Therefore what has been prohibited is the decision making power of the judicial organ on issues of ‘wages and other benefits’ at the level of bargaining. However, issues of wage and other benefits after they have been agreed and incorporated in the collective agreement in writing,

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<sup>192</sup> The Ministry of Labour and Social Affairs prepared an explanatory note explaining the rational for the amendment of the law in that manner. The document was prepared in Amharic and it is available at the archives of the Ministry’s library.

signed and registered is an entirely different thing. It becomes an issue of failure to keep promise and became breach of terms of a collective agreement. Had it been intended to be enforced through extra-judicial and private measure, there would have been no need to require the parties, by law, to make collective agreement in writing, to be signed by them and to be registered by a labour office. Nevertheless, it is our view that the Cassation Division failed to appreciate the distinction between the two levels.

### *Training benefits*

In connection with training, the collective agreements in all the enterprises regulate training at two levels. There are cases where the training is being organised by the employer (in-house, local or abroad) on the one hand and there are also other programmes at the initiation of the employee, trade union organisations or the government on the other. As has been seen these have been regulated differently. In all employer-initiated training the costs of training and the wage payable to the employee while attending the training are fully covered by the employer.

As regards employee initiated formal college or university training, except for the two State-owned enterprises and one privatized enterprise (FL), the rest do not cover the training expenses of their respective employees. Even for those enterprises that do cover such expenses their collective agreements require certain conditions to be cumulatively met in order for expenses connected with such studies to be covered by the employer. These include: (i) the training which is being pursued by the employee should be related to the job to which the employee is being assigned, (ii) the management must have been notified in advance about the fact that the employee is planning to pursue college studies and has consented to the same, (iii) the employee must enter into a commitment to render service to the employer post-training and (iv) the employee should have successfully completed his academic studies.

Even where these requirements are met, there are minor variations in the amount to be covered by the employer. Both State-owned enterprises cover at least a portion of the costs. The collective agreement at SL stipulates for covering 75% of the cost of education (Art. 23(1) (5)), while the collective agreement at ST provides to refund 50% of such an expense by the employer (Art. 13 (5) (5)). Conversely, the collective agreement at FL, the privatised enterprise, covers 100% of such a cost if the formal training is offered in a public college although the difference in cost has to be covered by the employee if he decides to undertake the study at a private college.

The collective agreements at the remaining enterprises in the study are silent on employee initiated formal education and training. The fact that it is not regulated by the collective agreement means that the employer has no obligation in this regard because there is no legally stipulated minimum labour condition for training and education. There is no also a practice of covering such an expense or part of it by the employers. Therefore, in these enterprises formal training initiated by the employees is a private arrangement of the employees concerned even if the education is closely related to the job. Generally, although the collective agreements in the two State-owned enterprises provide better terms than the three privatised enterprises in respect of formal training initiated by the employee, it is difficult to hold that the State-owned enterprises necessarily provide better terms since one of the privatised enterprises, FL, offers terms better than even the State-owned companies in this regard.

#### *Employees' participation in management*

It has been mentioned earlier that ever since the promulgation of Labour Proclamation No.64/1975, Ethiopian labour law has incorporated the notion of employee participation in the management of the enterprises. However, the level and nature of participation have been left to be determined by collective agreements.

Both the State-owned and the privatised enterprises are therefore compared here in terms of their separate negotiated outcomes in the subject matter open to employee participation. In this connection, Article 5(3) of the collective agreement at ST stipulates that a trade union representative will be included in the committee that handles recruitment and promotion issues. Nevertheless, the collective agreement further provides that if the trade union is not willing to take part, the employer may proceed with its plans for recruitment or promotion. Thus, the trade union cannot stop the process by non-participation.

In cases of alleged misconduct by an employee, although the trade union at ST is not included in the membership of a discipline committee, the collective agreement requires that prior to the management taking a disciplinary measure, the representative of the trade union needs to be notified of this fact and its view on the matter be recorded (Art. 39(1)). The collective agreement provides that where the trade union feels aggrieved by the disciplinary measure against its

member, the grievance is to be investigated through a consultative process between the trade union and the management of the company (Art. 39(4)).

There is also subject matter about which the management group is required to provide advance notice to the trade union. For example, the management is duty bound to notify the trade union when it plans to implement new work methods that may affect the working condition of the employees (Art. 5(2)). The trade union is also entitled to participate in formulating new work methods and the modification of existing working systems (Art. 9(5)). Moreover, according to Article 5 (6) of the collective agreement, the trade union is entitled to receive a copy of the annual operation plan of the enterprise at the commencement of the budget year and a copy of the annual performance report at the end of the budget year. Thus, whether at the level of information sharing or consultation, the collective agreement at ST provides for the involvement of the trade union in some of the managerial activities of the enterprise.

The collective agreement at SL, the other State-owned enterprise, has endorsed a similar participatory approach to the trade union. There are a number of issues where the trade union participates through obtaining advance information on the managerial activities, in consultative process or in co-decision making. Pursuant to Article 15(2) (2) of the collective agreement, ‘advance notice should be given to the trade union before a new employee is recruited’. It has been explicitly stated that no promotion shall be given effect unless it has been examined by a promotion committee (Art. 16 (4) (3)) and the trade union has been entitled to representation in a promotion committee (Art. 16(2)). Finally, the collective agreement at SL has provided that the trade union shall be represented where disciplinary allegations against employees are being investigated before a Disciplinary Committee (Art.32 (5) (1)). Generally, the collective agreements of the two State-owned enterprises provide opportunities to the trade unions representatives to participate in the operational activities of the enterprises and in personnel issues.

As the level and nature of employees’ participation in the privatised enterprises has already been examined in the preceding Section of this Chapter, there is no purpose to be served in repeating the evaluations here. Therefore, from the examination of the collective agreements under the two sets of ownership, although the basis for comparison is too limited to offer over-generalised conclusion in this respect, there is some evidence that the collective agreements concluded at the

State-owned enterprises provide for a more participatory approach in some of the managerial activities while the collective agreements in the privatised companies have significantly limited the participation of the employees' representatives.

### **7.3. Summary**

The evidence in this Chapter suggests that all the enterprises under consideration regardless of the type of ownership have collective agreements. The more significant issues arising, therefore, is not whether collective agreements exist but rather the manner of negotiating them and their content which tend to show variations along the lines of the type of ownership.

Unlike in some foreign jurisdictions where recognition of trade unions for purposes of collective bargaining is voluntary, recognition is mandatory under Ethiopian law, and hence employers cannot de-recognise trade unions and cannot lawfully reject a request for bargaining. The case studies for the four privatised enterprises suggest that renegotiations to replace expiring collective agreements have been more protracted in the privatised enterprises than in the State-owned ones. Whether this is intended to delay or frustrate the negotiating process is difficult to determine and perhaps all that can be said is that such dilatory measures appear to be less prevalent and of lesser concern in the State-owned enterprises.

Similarly in terms of disclosure of information the fact that employers in the privatised enterprises are reluctant to provide financial information to the trade unions coupled with the absence of express legal duty to disclose information tends to create suspicion and mistrust between the social partners. However, in the State-owned enterprises, although the present labour law does not impose the duty to disclose information, this has been filled by reintroducing it in their respective collective agreements.

In terms the legal framework and the enforcement machineries, in addition to the withdrawal of the duty of disclosure, the repeal of laws which prescribed the maintenance of benefits acquired by existing collective agreement while renegotiation is underway to replace it is another challenge to trade unions at the level of bargaining. Moreover, the ruling of the Cassation Division of the Federal Supreme Court in the two land mark cases mentioned above might have an adverse impact in ensuring effective collective bargaining and enforceable collective



agreement. Finally, the weak organisational set up of the labour inspectorate which could have monitored violation of the duty to bargain in good faith and prosecute the same has been noted under Chapter 4 of the study. Thus, seen collectively, with the economic liberalisation process the legislative, the executive and the judicial positions appear to be challenges in undertaking effective collective bargaining in Ethiopia. This seems a reverse process from the apparently favourable formal laws for trade unionism thereby reflecting an ambivalent position from the state in this regard.

As to the content of collective agreements at the privatised enterprises, profit sharing in post-privatisation collective agreements required a higher threshold of profit in order to accord similar amount of bonuses and/ or wage increments to that of the pre-privatisation level. Even where a profit threshold similar to that of the pre-privatisation period is set for awarding bonuses, the manner of allocating the benefit to the employees is unilaterally retained by the employer, thereby marginalising the role and influence of trade unions. During the pre-privatisation period the manner of allocation was spelt out in advance by the collective agreement, providing no room for unilateral employer action, the post-privatisation provisions are less transparent. Conversely, the case studies for the two State-owned enterprises have indicated that although the profit threshold required in order to make bonuses and/or wage increments payable is more or less similar with that of the privatised enterprises, however the amount payable in the form of wage increment or bonus is expressly spelt out in advance in the collective agreements as a result of which little or no room is available for employers' unilateral action at a later stage.

In terms of practical implementation, since all the enterprises until recently (2010) reported to have been operating at loss, the profit sharing arrangement in the collective agreements was a mere aspiration without any measurable gain. However, now that almost all of them have begun to record profit, the issue of profit sharing will obtain significant practical importance at the enterprise levels. Nevertheless, the recent ruling of the Cassation Division pertaining to the non-enforceability of 'wages and other benefits' provisions in a collective agreement transforms the issue from that of an economic challenge to a legal one.

Interestingly, however, even after the ruling of the Cassation Division on the non-enforceability of provisions in collective agreements pertaining to wages and other benefits through judicial process, employers in the present case studies honoured their commitments in the collective

agreements. It may be because of the fact that they are not yet aware of the recent position of the Cassation Division or due to a rational decision that employer preferred maintenance of industrial peace and productivity by complying with the terms of the collective agreement rather than resorting to unnecessary confrontation with the labour force by dishonouring the collective agreement. Hence, it is not solely for fear of judicial sanction that members of society comply with their commitments, there could be additional reasons to compliance. However, due to uncertainty involved in them it is difficult to fully rely on such means of compliance.

All the same, the position of the Cassation Division deserves due consideration. Earlier (prior to 2010), the courts' rulings were in favour of promoting effective collective bargaining in the sense that negotiation and subsequent agreements undertaken by delegates were irrevocable at a later stage and all terms and conditions of registered collective agreements were enforceable before courts of law. The recent trend of the judicial interpretations appear to lean towards leaving the conduct of collective bargaining and the execution of registered collective agreements to private ordering. Compa documented the tendency that in some jurisdictions courts tend to adopt *investment-friendly* interpretations in the era of global economic order (2006: 12). It may be safe to tentatively hold that the Ethiopian judiciary seems to have been influenced by changes in the economic front.

Finally, although the provisions of the labour laws pertaining to employee participation in the management of the enterprises have been similar in content in pre-and post-privatisation, the actual implementation showed variations. The collective agreements in the State-owned enterprises engage trade union representatives in some personnel management issues. Conversely, the post-privatisation collective agreements stipulated provisions that enable private employers to reassert their managerial prerogatives by significantly limiting the role of trade unions. This has had the tendency of limiting the participation of the employees in matters that directly affect their interests. This outcome suggests that with 'rolling back' of the State from the economy, reasserting employers' prerogative on the one hand and 'rolling back' of employees from managerial functions on the other hand have resurfaced.

Now that the legal framework for collective aspects of labour rights and the privatisation programme together with case studies have been considered in the preceding chapters (Chapters 2-7), the next chapter will be the concluding part of thesis in which the key issues from the discussions in the preceding chapters will be consolidated and analysed in an integrated manner.

## **Chapter 8. Reflections and Conclusions**

### **8.1. Introduction**

The thesis analysed how Ethiopia responds to the apparently conflicting goals of the desire to positively respond towards donor and lending institution prescriptions on the economic front on the one hand and labour rights protection on the social sphere on the other hand. In order to deal and handle the issues in concrete terms the study examined the status of unionisation and collective bargaining in the privatised enterprises in Ethiopia. The examination involved the consideration of cases studies and the drawing of comparisons between the pre-and post-privatisation status of the enterprises and between the privatised enterprises and State-owned enterprises in similar line of businesses. The data used from the enterprises identified for the study had been collected as at December, 2012. Hence, subsequent change of data, if any, pertaining to the enterprises has not been taken into account.

The data collected and compiled in this thesis does not of itself tell the whole story in terms of the adoption of a privatisation programme in Ethiopia and the implications of its implementation for the collective aspects of labour law. In fact, the outcomes from the case studies are not meant to be generalisable beyond the sectors in which the enterprises operate. However, the method employed for the present assessment can be applied more widely to provide insight into other sectors and other issues of labour relations. The findings can also provide a basis on which further research can be based.

Beyond the interpretation and the results of the case studies a number of more fundamental questions were asked. It has been thus necessary to consider whether there is something distinctive about the Ethiopian approach to introducing privatisation on the one hand and maintaining the right to collective labour laws on the other and whether the Ethiopian experience can offer us fresh insights as to how this has been managed. Indeed, the global pressures for liberalisation and privatisation had to be tempered by the international commitment the country has had to protect and respect collective labour rights and the specific social, political and economic history of Ethiopia.

With this purpose in mind, the thesis explores the following research questions: first, how did labour law in general and the collective aspect of labour law in particular develop in Ethiopia?

What influence, if any, do the ILO instruments on freedom of association and collective bargaining bring to this pattern of development? The second question which was addressed is what challenges does the privatisation programme in Ethiopia pose to unionisation and union density? The third issue for consideration was what are the implications to collective bargaining and collective agreement post-privatisation in Ethiopia? The final and fourth research question which was subjected for examination was what experience does the Ethiopian collective labour law reform offer in terms of responding to the demands of economic liberalisation on the one hand and the country's commitment towards the ILO on the other?

## **8.2. Overview of the Thesis**

Broadly the thesis is divided into two parts. The First Part of the thesis examined the historical development of the legal framework for labour rights in Ethiopia in general and collective labour laws in particular. The introduction and implementation of the privatisation programme in the country was also explored because of the fact that the exercise of the collective aspects of labour right are to be examined within the context of privatisation. Both of the collective labour rights and privatisation were analysed from the historical point of view. The reason for employing a historical perspective is that it is a contention of this thesis that the specific experience of the development of labour relations and labour law is best understood by reference to the distinctive social and political backgrounds of Ethiopia. It is further suggested that the understanding developed is not simply relevant to the path of development but is also necessary to help shed light both on the current legal framework for labour relations and also as a 'diagnostic aid' to help inform debates about the future direction of the framework for collective labour relations.

Accordingly, Chapter 2 dealt with historical development of labour law in Ethiopia. It would have been incomplete to discuss aspects of collective labour law without having an idea on the emergence and development of labour relations itself in Ethiopia. For labour relations to exist in a modern industrial development the prerequisite elements are capital and a 'free person' to be able to respectively contractually hire and sell their labour. A distinctive historical feature of the Ethiopian state pertaining to labour relations is that whereas the country has been a member of the ILO since 1923, slavery was a legally recognised social relation and was not abolished until 1942. Therefore, ILO membership at the international level and slavery as a mode of social relation in the domestic sphere existed side by side for some time. In fact, there existed a societal attitude of regarding labour and labourers as socially inferior that had adverse impact on labour

relations and labour law development. A further distinctive feature was that capitalist development in Ethiopia was not an outcome of internal dynamism but rather an imported one where the service sector emerged prior to the development of agricultural and manufacturing sectors. Chapter 2 discussed these issues and further elaborated the change in the content of labour laws with regime change and change of economic policies overtime.

Chapter 3 of the thesis examined the emergence and development of the legal framework for unionisation in Ethiopia. In order to place the issue in a broader frame of reference, the special status the ILO accorded to freedom of association since 1998 on the one hand and the challenge the global economic order posed to the actual exercise of the freedom on the other hand have been addressed in this chapter. Prior to assessing the actual implementation of the right to unionisation through the medium of case studies in Chapter 6, it was found appropriate to consider the legal framework in Chapter 3.

Trade unionism in Ethiopia has been transformed from a self-help association to a full-fledged employees' organisation through a combination of hard-won struggle of the labour force domestically and the influence of regional and international circumstances. The reaction towards trade unionism by the successive Ethiopian regimes which manifested itself through prohibition and regulation (the Imperial regime), over-regulation (the military regime) and minimal regulation (post-military regime) has been documented in the Chapter. In terms of organisational objective, unlike trade unionism in colonial Africa where, at times, political objectives had overlapped with economic ones, trade unionism in Ethiopia mainly focused on 'bread and butter' issues and was more apolitical (except the few years during the military regime).

Chapter 4 explored another aspect of collective labour law which is closely related to unionisation namely collective bargaining and its outcome. The development of the legal framework for collective bargaining and collective agreement both nationally and internationally has been extensively discussed. It was found that there is no explicit international instrument that provided for the right to collective bargaining. It is only through a purpose-oriented interpretation of the ILO instruments that the right to collective bargaining has been read into the right to form and join unions to protect members' interests.

In the Ethiopian situation, however, the right to collective bargaining has been expressly spelt out in the Federal Constitution and the labour laws. The labour laws further stipulated for the duty to bargain and to bargain in good faith together with sanctions for non-compliance. Nevertheless, it was noted that overtime, appreciable changes in labour law have been introduced to the detriment of effective collective bargaining. Notable instances have been with the introduction of the market oriented-economy, the withdrawal of the duty of disclosure and the elimination of provisions which maintain the legal force of the terms of collective agreements until replaced by another collective agreement. While effective collective bargaining requires honest and trustworthy relationship between the social partners, non-disclosure of information brought suspicion and mistrust between them.

The assessment of the legislative reforms on collective bargaining and collective agreements in Ethiopia identified a somewhat ambivalent policy. This is apparent from provisions which are suitable to collective bargaining on the one hand and provisions that would adversely impact collective bargaining on the other have both been introduced in the existing legal framework. While the duty of disclosure was withdrawn from the law in 1993, the 1995 Constitution of the country incorporated the right to collective bargaining thereby providing the right a constitutional status. Later in 2003, the provision of the law that used to maintain rights and duties emanating from collective agreement until replaced by another collective agreement was withdrawn from the law.

Chapter 5 deals with the introduction of privatisation in Ethiopia, its modalities together with the legal and institutional arrangement put in place in order to give effect to it. The reason why the privatisation programme was brought to discussion was the actual exercise of the collective aspect of labour rights was evaluated within the framework of privatised enterprises. In terms of social consequence of the programme, job loss due to it was given emphasis in the literature.

The Ethiopian privatisation process is mainly prescribed by the multilateral lending institutions and it can be characterised as gradual rather than rapid and moving from simple to complex in terms of sequence. Total and full divestiture has been the predominant mode over other modalities of privatisation, with preference being granted to national investors over foreign investment in Ethiopia's privatisation programme. This contrasted with some other jurisdictions

where privatisation was implemented more rapidly and with divestiture commencing from the complex industries and the provision of equal opportunity to foreign and domestic capital.

The Second Part of the thesis encompasses the case studies and this concluding chapter. The case studies are further divided into two dealing the challenges and opportunities available in the actual exercise of the collective labour rights. Chapter 6 considered issues of unionisation and union membership density. The figures suggested that privatisation has been positively correlated with diminished union membership density and the reduction becomes more visible the longer the enterprise stays in a privatised setting.

However change of ownership by itself does not seem solely responsible for such an outcome. Rather the increase in casualisation of employment and an increase in feminisation of the workforce who for their own reasons are less enthusiastic to join unions seem to contribute in bringing about that outcome. As indicated in Chapter 3, the formal labour law provisions appear to be more supportive and facilitative towards unionisation than ever before. Nevertheless, a favourable legal environment though necessary does not seem sufficient to secure higher union membership density. Aside from law factors of economic, social and political environment are equally relevant points and this was developed in the thesis.

Chapter 7 deals with the process and outcome of collective bargaining. On the basis of the international framework laid down in Chapter 4 of the thesis, the actual implementation of the right to collective bargaining and the challenges thereto were examined through the medium of the case studies in Chapter 7. It was observed that withholding essential information relevant for bargaining, dilatory tactics in bargaining together with suspicion and mistrust between negotiating parties overshadowed the bargaining process in the privatised enterprises. Moreover, the ‘rolling back’ of the State from the economy has been associated with the ‘rolling back’ of the labour force from involvement in managerial activities of the enterprises. Generally the trend to marginalise the labour force from participating in the allocation of profit and power has been witnessed.

### **8.3. The influence of the ILO in the development of the legal framework for collective labour law in Ethiopia**

It is argued that ‘how and to what extent any particular ‘imported law’ retains its identity or is accepted, used or rejected or selectively enforced depends largely on local conditions’ (Twining, 2009: 284). In light of this, Ethiopia’s ILO membership, in 1923, and its subsequent ratification of ILO Conventions No.87 and 98, in 1963, helped in introducing some of the basic principles of these instruments into the domestic legal system. However, successive regimes in Ethiopia have customized the contents of the instruments in a manner that reflected the policies of the respective regimes and social realities in the country.

During the Imperial regime, for instance, although a domestic law was issued (Labour Relations’ Proclamation No.210/1963) soon after the ratification of the above two ILO Conventions in order to give them legal effect in the domestic setting, the Ethiopian social partners at the time had been skeptical as to the appropriateness of the law, thereby manifesting polarised views. The employers’ side had the impression that the law on unionisation was too premature for the then Ethiopian industrial development while the workers’ side had the perception that the law was too restrictive to ensure labour rights.

Moreover, the Imperial regime at the time wanted to ensure that organised labour remain apolitical as a result of which the law proscribed associations from engaging in any political activities although a general prohibition of this nature is in contradistinction with the ILO jurisprudence (ILO, 1996: Para. 452). Trade unions in many colonial African countries, at the time, had anti-exploitation and anti-colonial objectives, whereas trade unions in ‘non-colonised’ Ethiopia by then were limited to entertaining ‘bread and butter’ issues in their agenda. It appeared that given the geographical concentration of the labour force in closer proximity to the power centre it was feared that a politicised organised labour would endanger the royal dynasty and stability.

Similarly, the local condition during the military regime had also influenced the way in which the imported ILO conventions were being implemented so as to reflect its communist ideology. The politicisation of the trade unions under the single party system and the ‘monopoly union policy’ together with the denial of the right of association to the employers had been consistent with its communist inclinations. In fact, it is important to recall that although the proposal was



rejected by delegates at the ILO Conference including by workers' representatives, during the deliberation for the adoption of the Convention on Freedom of Association, government delegates from two East European countries [communist bloc at the time] proposed that the word 'employers' be deleted from the text on freedom of association and the Convention would therefore provide only for the rights of workers to organise (*see, p.44, at foot note 41*). Thus, the exclusion of employers from freedom of association may be partly explained by ideological disposition of the military regime. The Committee of Experts on the Application of Conventions and Recommendations of the International Labour Conference in its Observations repeatedly reminded Ethiopian authorities, among other things, to undertake legislative measures in order to ensure compliance of the labour law with the ILO instruments.<sup>193</sup>

The post-military regime has been characterised by economic liberalisation in general and privatisation in particular in terms of economic policy. This local condition too has helped in reshaping the way the ILO conventions ratified by Ethiopia have been formulated in the domestic labour law. Accordingly, unlike the labour law of the military regime which provided for the right to association exclusively to the employees without granting similar opportunity to the employers, the post-military rule labour laws have made the right to associate available both to employers and employees thereby ensuring that the formal law of the country is in conformity with the ILO prescription in this regard.

Particularly since 2003 when economic liberalisation obtained prominence, the law on unionisation has also further been relaxed. Protection from anti-union discrimination, reduction of the minimum threshold of membership for trade union formation, the possibility for the establishment of plural trade unions in an enterprise and the immunity of associations from suspension or dissolution by an administrative organ have all been in line with the ILO prescription. With these measures of compliance, most of the outstanding issues of non-conformity of the law of unionisation with the ILO standard were rectified. This is where the influence of the relevant ILO conventions and the critical reports in the form of 'Observations' of the Committee of Experts appeared to have had some impact in terms of legislative

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<sup>193</sup> See generally Observations (CEACR) (available at: [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::No:13100\\_COMMENT\\_ID:2077703](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::No:13100_COMMENT_ID:2077703))

measures.<sup>194</sup> To sum up, it could be said that Ethiopia's membership in the ILO and the subsequent ratification of ILO Conventions No. 87 and 98 have influenced the content of its domestic labour laws on the subject. However, the level of influence and the local content varied from time to time and corresponding to the regime in power.

#### **8.4. Trade Union membership density in post-privatisation period**

The literature on freedom of association has indicated that freedom of association in general and trade unionism in particular has undergone substantial transformations overtime. It has developed from being a legally prohibited act to the position where it is currently situated as one among the 'core' labour rights. Generally therefore the current political rhetoric at the international level is that the duty to respect, protect and promote freedom of association is imposed on Member States of the ILO by virtue of their mere membership to the organisation. However, it is contended that with the enhanced bargaining position of capital owing to its ample opportunity of mobility on the one hand and the desire of nation states to attract and retain capital to their territories on the other hand have compelled nation states to offer concessions including reduced labour standards in order to attract investment.

From the labour standard perspective, the concession offered by nation states is claimed to be expressed through, among other measures, introducing *investment-friendly* labour law reforms or deliberately ignoring the enforcement of the apparently protective labour laws or both. Therefore, regardless of the rhetoric at the level of the international community in favour of freedom of association, there may be practical challenges of a 'race to the bottom' nature at the level of nation states and at the level of implementation, as a result trade unions found themselves in a challenging circumstance. Nevertheless, 'despite the alarming trends (...) trade unions and their allies in many countries have a capacity to resist these pressures and to defend their labour rights (...) (Compa, 2006: 4).

Trade unionism in Ethiopia has also undergone similar transformation. It was a punishable act under the Penal Code of 1957 (*see, p.56 at foot note 52*) until it was a tolerated act in the 1960 Civil Code and legally recognised in 1963. Since 1995, trade unionism has been upgraded to the

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<sup>194</sup> The labour proclamations adopted during the post-military regime (i.e. Proclamation Nos. 42/1993 and 377/2003) indicated in their preambles that one of the reasons for their adoption is to ensure '...conformity with the international conventions and other legal commitments to which Ethiopia is a party (...)'

status of being a constitutional right. Unlike the experience of other jurisdictions mentioned above where an economic liberalisation programme was accompanied by labour law reforms resulting in reduced labour standards, the labour law on trade unionism issued by the Ethiopia government during the economic liberalisation, particularly in 2003, has been favourable towards unionisation. For instance, minimum membership level to establish trade union has been reduced from twenty to ten, protection against anti-union discrimination has been expressly spelt out, law allowing the formation of diverse unions in an enterprise has been allowed and immunity of trade unions from dissolution by an administrative organ has been recognised.

Undeniably, with the adoption of the labour law that permits the establishment of multiple unions in an enterprise, trade union leaders expressed concerns that such a liberal law would undermine labour force unity and solidarity by providing opportunity for splinter groups to form alternative unions. The low level of literacy of the Ethiopian workforce and the absence of a well-established democratic culture of tolerance in the country were raised as concerns for the possible proliferation of unions and inter-union rivalry within the workforce. African literature on the subject has also indicated the adverse effect of a ‘plurality paradox’ in some countries. Nevertheless, the case studies suggested that at each level in the Ethiopian context this may be an unfounded fear in the sense that despite the law’s permission for plural unions, none of the enterprises under the study entertain multiple unions. Each enterprise has had a single union and hence the law that allowed the formation of multiple unions does not seem to be a credible threat to union solidarity. Thus, once the workforce is left to decide by its own whether and how to associate, the advantage of association and the disadvantage of fragmentation seems to have appealed to the workforce, thereby avoiding diverse trade unions and maintain unity and solidarity. It can be argued therefore that employees are knowledgeable about their own welfare and what is in their own interests.

The outcome from the case studies indicated that even the existence of an illiterate community and a lack of democratic culture should not be taken as justifying grounds to postpone or to suspend the exercise of fundamental rights until such time as a literate society and well established democratic culture are nurtured. Respect for fundamental rights should not be something to be postponed until conditions favourable to it are developed. It may indeed be argued that this should be a sort of ‘learning by doing’ process. The case studies suggest that trade unions exist in all the enterprises although some employers have had hostile attitude

towards union membership and leadership. This may manifest that, regardless of the difficulties, workers still have the desire to defend their labour rights in an organised manner.

As regards union density, it is evident from the case studies that, in all the enterprise, irrespective of the type of ownership, there is a general pattern of decline in union membership. However, the level of decline is much more noticeable in the privatised enterprises compared to their pre-privatisation situation and compared with the current union membership density in the State-owned enterprises. In fact, the extent of the decline is that the longer the enterprise stays in a post-privatisation setting, the further that the membership density declines. This makes decline in membership density, unlike job losses associated with privatisation which is a short-term problem, a long-term problem correlated with privatisation. Such a state of affairs may put the exercise of the right to unionisation at risk on the long run in the sense that with intensive and extensive implementation of the privatisation programme, unionisation would be adversely affected while the formal international visibility of the right is gaining momentum at the level of rhetoric.

Nevertheless, the challenge to unionisation could not be attributed to mere change of ownership. Privatisation is not a 'stand-alone' measure and it brings with it a combination of various factors such as investment-friendly mind-sets and policies by governments with a view to encourage private sector development. Employers' cost conscious production processes to withstand fierce competition are also areas for consideration. Moreover, international actors and actions are all factored into this equation. Thus, the issue requires a broader framework of assessment beyond a mere change of ownership.

#### **8.4.1. Lack of harmonised policy at the level of the relevant public international actors**

As indicated under Chapter 5 of the thesis, due to actual or perceived failures of states' involvement in the economy, countries began to embark upon a massive privatisation and private sector development agenda. Since the early 1980s, the WB and the IMF scaled up the privatisation programme by pressing developing countries and transition economies in receipt of financial support or loan to embark on economic liberalisation and privatisation as far as and as fast as possible as a condition for obtaining financial and technical assistances.

These multilateral lending institutions have been more concerned with economic growth and their prescription towards privatisation has been designed mainly to bring about economic success. If issues of labour rights are considered at all in their policies, it relates to the economic impact of the rights rather than for the very fact of their being rights to be protected. These institutions have had the tendency of an approach that Kaufmann has termed as 'economisation of core labour rights' (2007: 297).

Undeniably, they have overtime toned down their prescription as regards to pace and sequence of the privatisation process and begun to show greater sensitivity towards labour rights (Hepple, 2005:65; Kaufmann, 2007:111). However, the labour rights that feature as major concerns are limited to specific issues such as forced or compulsory labour, child labour and gender inequality. The promotion and protection of freedom of association and collective bargaining are not perceived as falling directly within their mandate and are seemingly of less concern to them. Freedom of association and collective bargaining are generally viewed with scepticism due to the perception that these are man-made barriers to the natural course of the labour market and thus counter-productive to economic growth.

A point to note, however, is that it is not because the multilateral institutions are wholly non-concerned with social issues. Indeed, they have extensive programmes on poverty reduction strategies world-wide, which manifest a milestone for social concern. It is rather a matter of approach and mind-set in the sense that their focus lies on economic growth on the assumption that social goals could be attained through private sector development and economic growth. In fact, the WB seemed to have the impression that nation states that provide for 'rigid' [solid] labour laws are less investment-friendly implying that they need to adopt labour market flexibility in order to attract and retain investment. For instance, this was evident from one of its

widely circulated annual publications under the title ‘*Doing Business*’ through which it annually ranks countries in terms of their suitability for investment.<sup>195</sup> .

The question for this thesis, however, is whether and to what extent these trends and approaches are manifested in the Ethiopian experience. The Ethiopian economy in the early 1990s was in a bad shape, requiring loans and technical assistance from these multilateral institutions. During its desperate need for development assistance, there were records that Ethiopian authorities were under pressure from their ‘development partners’ (the WB and the IMF) to liberalise the economy as far as and as fast as possible as a precondition to obtain loans and technical assistance. In fact, ADBG documented that loan disbursement to Ethiopia from multilateral lending institutions was delayed for 23 months than previously scheduled on account of delay in the process of implementation in the area of privatisation (2000: II). A poor country with a declining economy had scant political leverage to resist the external prescription. Thus, mainly (if not wholly) due to this external pressure, privatisation policy has been introduced since 1991 in Ethiopia and its actual implementation commenced in 1995. As privatisation is not a mere change of ownership from State to private legal and institutional reforms suitable for privatisation and private sector development, including labour market flexibility have been introduced since then.

It was mentioned in Chapter 1 that Ethiopia is one of the least developing countries in sub-Saharan Africa but also the oldest independent country in Africa and one which was never physically colonised. However, in reality, independence is not solely about being physically non-colonised by a foreign power. It is rather about the extent of independent decision making power that nation states possess in determining the destiny of their economic, social and political programmes and goals. Although the physical independence of nation states may not be directly challenged, poverty might significantly limit independent decision making and meaningful exercise of sovereign power. This was what the Ethiopian experience tended to show in its

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<sup>195</sup> For the 2013 *Doing Business* publication, the WB claimed that Employment Indicators have not been considered for ranking purposes (Available at: <http://www.doingbusiness.org/methodology/employing-workers>) Although it could be said that it is a good step to disregard (rather than retaining ) the Employment Indicators from the ranking check list, it would have been much more constructive had compliance with core labour rights including freedom of association and collective bargaining have been given credit in the ranking exercise.

dealing with the multilateral institutions as articulated by the then Prime Minister of Ethiopia and documented by Stiglitz (2002: 29).

Undeniably, at the level of political rhetoric, the international community claims to have been convinced to adopt ‘social and people-centred sustainable development’ as underlined in the Copenhagen Social Summit of 1995 (*see, p.45*). It was also argued that one way of ensuring the placement of people at the centre of development agenda is to respect fundamental rights at workplaces. As a result, the international community underlined the need to promote, respect and protect human rights and fundamental freedoms (within which freedom of association is included) in order to ensure inclusive and sustainable development (*ibid.*). Since then a holistic approach to development has gathered momentum within the sphere of political leaders, transnational corporations and civil society organisations at least at the level of rhetoric. This approach duly recognised the social goals of development agenda in which society is put at the centre of development. The ILO has been one of the international actors in bringing about such a visibility to social goals of development. More importantly, the UN Charter underlined that one of its objectives is to promote social progress and better standard of life in larger freedom.

However, UN Specialised Agencies such as the WB and the IMF pressed for a privatisation programme which, as the case studies showed, has been associated with declining union density. It is therefore arguable that the efforts spearheaded by the ILO in promoting freedom of association have been to some extent undermined due to precedence being given to a particular set of economic objectives because the multilateral lending institutions pursue objectives that often conflict with the protection of collective labour rights. This mismatch of the institutional mind-set of ILO on the one hand and that of the multilateral lending institutions on the other can have the consequence of adversely affecting the effort to promote, respect and protect core labour rights. Particularly, in the context of developing countries, these multilateral institutions, as indicated in Chapter 5, have been influential in shaping policies and mindset of institutions owing to their economic leverage through the provision of grants and loans with conditionalities.

Thus the lack of harmonised approach to the issue at the level of the international public actors has influenced the way the domestic policy is shaped. The desire to liberalise the economy and to formulate an investment-friendly legal framework on the one hand and the need to provide protection for labour on the other proved to be a challenge in striking the appropriate balance.

Ethiopian labour law seemed to reflect this dilemma in the sense that whilst legislating suitable provisions for purposes of union formation, albeit of questionable assistance in increasing union membership density on the one hand and other rules on collective bargaining have been relatively relaxed presumably to ease the regulatory burden for the private sector on the other.

#### **8.4.2. The flexible labour market arrangement**

The other area where union membership density is claimed to have been adversely affected in the post-privatisation period is the perception that privatisation brought a change in the employment profile in the enterprises and the new labour profile brought a labour force that is less interested or disinterested towards unionisation. It is evident from the case studies that with the introduction of a market-oriented economic policy in Ethiopia, a change in the employment profile of the labour force has been witnessed. Fixed-term and temporary employment arrangements, and in some cases, out-sourcing of non-core activities, have been undertaken in the enterprises under study. Trade union leaders had the impression that these changes in employment profile are among the factors responsible for diminishing union density in the privatised enterprises. They even contended that the introduction of fixed-term or temporary employment relations is intended and designed to weaken trade unions as temporary employees are either ineligible or unwilling to join unions.

To some extent this general change of employment profile is unsurprising given the evidence from elsewhere that due to the stiff competition in the global economic order, companies are becoming cost sensitive in order to withstand the highly competitive business environment (*see, p.50*). Encouraging a more flexible labour market is seen as a measure suitable for cost reduction as it supports employers who wish to re-organise their labour force in a cost effective manner, thereby promoting ‘legitimate business interest’. As a result, it is becoming an acceptable way of labour management in many business entities.

Ethiopian labour law provides scope for flexibility by enabling employers to formulate fixed-term, temporary employment relationships schemes where the operational requirements of the enterprises warrant the same. As observed in the case studies, fixed-term and temporary employments have been utilised in both the State-owned and the privatised enterprises. Flexibility is not, therefore, a peculiar feature of the privatised enterprises. Thus, flexibility is not



specifically associated with privatisation and therefore opposition to privatisation just as a means of resisting flexibility in the labour market may be misguided.

On the other hand there is some evidence in the case studies that the proportion of casual employment in the privatised enterprises has been steadily increasing and is now more evident than in State-owned enterprises and therefore of greater concern to the trade unions. The consequence was that although there is no legal prohibition on casual employees forming and joining unions, the trend is that they are less enthusiastic or at times ineligible to join unions.

However, militating against a flexible labour market may not be an effective strategy for trade unions in the liberalised economic order because it is not advisable to maintain a more rigid labour market when the firm's product market is in constant flux. The challenge presented to the trade unions therefore is whether it is possible within the Ethiopian social context and its particular workforce profile to adopt a more inclusive approach. In the circumstances, trade unions may need to design a strategy, including amendment of their by-laws, on how to admit, attract and retain fixed-term and temporary employees into their membership who were not for various reasons within their traditional recruitment range. Indeed, as permanent employment relationship has shown the tendency of declining overtime, it would be detrimental for trade unions to focus narrowly on permanent employees for membership.

Together with the rise of casual employment in all enterprises in the study, the figure shows that the ratio of female employees in temporary status is higher than the male employees. However, from union membership perspective, their employment status does seem to have little effect. In a sense the figures suggest that female employees in the privatised enterprises, regardless of their employment status (permanent or casual), seem to have lower participation in trade union membership. For instance, in DT where the proportion of permanent female employment is the highest of all under the study, the record shows that it has the lowest union membership density of all enterprises. Cultural barrier, low level of literacy and low skill level among the female labour force in traditional societies like Ethiopia might have injected a sense of fear in many female employees towards trade union membership due to possible retaliation by employers.

In another note, it appears that the number of female employees in the enterprises studied, particularly in the textile sector, seems on the rise overtime, but assessment of whether they are

better-off or worse-off in their employment conditions with the introduction of the privatisation programme is an issue which may require further research of its own.

#### **8.4.3. The role of Certification mechanisms<sup>196</sup> as a means of ensuring compliance**

The fact that the enterprises studied here have shown an interest in participating in and have established a presence in international markets could in some instances provide an opportunity for the introduction of ‘end user’ regulatory mechanisms. The literature indicated (*see, p.83*) that some market destinations require assurances that products marketed in their territories have been produced in an ‘environmentally and socially responsible’ manner. In order to verify compliance with the responsible production process, among other things, possession of certificate from independent audit firms for a responsible production process becomes necessary and possession of the certificate requires voluntary submission to assessment and compliance with the check list of the certifying entity.

Many certifying firms focus on ensuring that products are processed in an ‘environmentally friendly’ manner. Overtime, however, firms such as ‘Fair Labour Association’ and WRAP have begun to include labour issues in their check list. For instance, the WRAP certificate requires, among other things, compliance with ‘core’ labour rights and national labour laws. Interestingly, one of the privatised enterprises (FT) in the present study which has higher union density, even with greater female worker concentration, has been issued with WRAP certificate since 2009. In fact, trade union leaders at FT recalled that the employer’s hostility towards the trade union was mitigated when it decided to apply for WRAP certification. Hence, strengthening certification mechanisms may assist in ensuring respect for the right to unionisation. The point is that with privatisation and private sector development, the private sector could be required to begin to assume a role in promoting fundamental rights with some sort of private regulatory mechanism.

However, heavy reliance on certification mechanisms could be misleading and overstating its contribution. Certification has its own limits. First, certification will have minimal impact for

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<sup>196</sup> In the floriculture industry, which is a newly emerging investment in Ethiopia, because of the certification and labelling requirements for purposes of market access in some parts of Europe, the employers’ association in the sector has persuaded its members to comply with labour conditions in which a Code of Conduct for the sector is put into effect that guarantees compliance with Ethiopian laws including but not limited to the right to organise and collective bargaining. As a result, it was recorded that unionisation and union membership density showed significant increase in the sector (EHPEA: 2007).

those enterprises whose substantial produce is marketed domestically as the Ethiopian domestic market does not yet require certification. Second, owing to its voluntary submission and lack of weak monitoring and enforcement mechanisms, it can only complement rather than replace the role of state actors. The literature in this respect suggests that (*see, p.84*), at times, certification mechanisms have been employed to appease consumers and more as public relations exercise rather than a genuine commitment to respect the fundamental rights.

A third limitation on the effectiveness of certification is that the Ethiopian economy is not well integrated with the global economy both because of a low level development and the fact that the country is not yet a member of the WTO. Nevertheless, the impact of certification should not be underestimated with further liberalisation of the country's economy and integration into the global economy. Fourth, topics such as denial of freedom of association and collective bargaining may not be as appealing as issues of forced or child labour or discrimination to the consumers' conscience and therefore may not interest many of the consumers (Kaufmann, 2007:112). Even within the ILO Member States the two ILO Conventions have not yet been as widely ratified as the other core conventions (ILO, 2008: Para.24) and freedom of association and collective bargaining rights are often marginalised or simply omitted (ILO, 2008: Para.141).

With these limitations on its effectiveness, the introduction of this voluntary and private regulatory mechanism by international private actors aimed at promoting and protecting unionisation would be timely and appropriate. In the Ethiopian context, at this level, it may be premature to assess its impact and further time and research may be required in this area, but strategically certification measure might have a positive impact in ensuring compliance with the right to unionisation.

### **8.5. Collective bargaining in post-privatisation period**

In terms of the international legal framework for collective bargaining, although the texts of Conventions No.87 and 98 do not expressly stipulate for the right to collective bargaining, formation of 'unions to protect members' interests' has been interpreted to implicitly include the right to collective bargaining. In fact, overtime, the interpretative meaning to the phrase has been extended to encompass the right to strike (ILO, 1996: Para.475). Moreover, by virtue of the ILO Declaration of 1998, Member States of the ILO have been obligated to respect, promote and

protect the ‘core’ conventions amongst which the Convention on the Right to Organize and Collective Bargaining is one. Regardless of these positive but superficial developments, evidence from the literature indicates that collective bargaining has been exposed to multiple challenges due to the perception of its adverse effect in the stiff global competition and the enhanced bargaining power of capital over labour in the global economic order.

In the Ethiopian context, unlike the provisions on trade union formation where the legal framework has been conducive towards trade unionism, the provisions on collective bargaining show a mixed feature. On the one hand the 1995 Federal Constitution of Ethiopia has incorporated the right to collective bargaining as a constitutional right (FDRE Constitution, Art. 42). Moreover, an explicit provision for a duty to collective bargaining and to bargaining in good faith on the negotiating parties to a collective agreement has been maintained in the current labour law.

Conversely, there are other areas where the law brought changes to the disadvantage of effective collective bargaining. One is related to the disclosure of essential information relevant for a well informed bargaining. In the labour law of 1975, this duty of disclosure was expressly imposed on the employer but it has been withdrawn from the labour law since 1993. Moreover, from 1975 to 1993, the position of the labour laws was that ‘unless replaced by another collective agreement, conditions of work, benefits and rights of workers stipulated in a collective agreement shall remain in force’. However, since the adoption of the labour law of 2003, the legal requirement that employment conditions stipulated by a collective agreement remain intact until and unless replaced by another collective agreement has been eliminated.

Where non-disclosure is concerned, as indicated in the body of the study, trade union leaders in the privatised enterprises have had difficulties in obtaining financial statements and financial performance reports of the enterprises. Requests for these documents by trade unions during collective bargaining were turned down by the employers on the contention that they are confidential document. As evidenced from the case studies, the information gap in this regard has been a source of mistrust and suspicion between the social partners. Due to the information gap, even in cases where the companies have been operating at loss, employees and trade unions have had the perception that profit has been generated. This is not a serious problem in the State-owned enterprises, because even though the law has withdrawn the disclosure obligation, their

collective agreements included provisions that obligate the parties to exchange information relevant to the bargaining process. It is in the privatised enterprises where the duty of disclosure is not included in their collective agreements.

With respect to the withdrawal of the terms of collective agreements, although Compa's report did not include any country from the African continent, his report noted that measures of 'eliminating the legal requirements that conditions of employment [stipulated by collective agreement] remain in place when collective agreements expire and negotiations for new agreements are still underway' (2006: 8) have been legislated or proposed for inclusion in legislation in many countries as part of their labour law reforms. The position taken by the Ethiopian labour law in this regard is consistent with the general observation of Compa's report.

Indeed, it is not only at the level of the formal Ethiopian law that the challenge towards effective collective bargaining has occurred. The enforcement and interpretation of the operative labour laws has also been watered down. For instance, although the labour inspection service has been empowered to prosecute violations such as anti-union discrimination and failure to bargain in good faith, there has no single case where the inspection service instituted an action in this respect. Even when a court action is brought against labour standard violations by inspection service, agencies such as the Ministry of Industry intervened in cases pending in court, asserting that the inspectorate should withdraw charges [against violators] because public knowledge of prosecutions may interfere with investment strategies (*see, p.96*).

Similarly, the Ministry of Trade (another executive organ) failed to enforce the publication of financial statements of business companies in Commercial Gazette although the Commercial Code gives it power to do so. Publication would have enabled trade unions obtain financial information relevant for well-informed and meaningful collective bargaining. It appears that the executive organs above tend to have the perception that enforcing legal provisions pertinent to the protection of labour rights would be undue regulatory burden to investment.

The judiciary in Ethiopia also has a role to play in this respect. Since 2010, the Federal Supreme Court Cassation Division has begun to hand down decisions in labour matters that will have significant impact on the overall collective labour relations in Ethiopia. The two landmark Cassation cases which were elaborated in Chapter 7 above are worth recapitulating here.

In one of the cases (*see, p.194*) the Cassation Division ruled that an employer can denounce what has been agreed by its representatives in a collective agreement if it considers that its delegates acted in excess of their authorisation. Prior to this judgment of the Cassation Division, the law was believed to have been clear and settled in that the employer was bound to the terms of a collective agreement agreed upon by its representatives. This position was reflected in the decision by the High Court in *Ethio-Leather Industry plc vs Ethio-Leather Industry plc Trade Union* (*see, p.185, foot note 168*). The Cassation Division felt that the law needs re-examination through interpretation. Nevertheless, even if interpretation was considered necessary in the context of the specific case the better opinion is that it should have been construed in a manner that promotes collective bargaining instead of undermining it. The proposition is that since Ethiopia has already committed itself to respect, promote and protect collective bargaining, the Cassation Division, as an organ of the state, has to interpret the law in a way that is consistent with the country's international commitments. However, the interpretation adopted by the Cassation Division is inconsistent with this principle as it would make collective bargaining a fruitless and an unpredictable undertaking, thereby undermining effective collective bargaining.

The other Cassation Division ruling (*see, p.199*) has a further chilling effect on collective bargaining. In that particular case, it held that the terms of a collective agreement pertaining to 'wage and other benefits' cannot be enforced before labour tribunals. According to the Cassation Division, it is rather for the party claiming the benefit (the trade union in this case) to take industrial action in order to put pressure on the other party to comply with the terms of the collective agreement. The Cassation Division proposed that calling on a strike as an appropriate measure to resolve disputes pertaining to wages and other benefits prescribed in a collective agreement. It did not view the terms of a collective agreement on wages and other benefits as legally enforceable provisions. It is submitted that this is not the intention of the legislature.

Ethiopian labour law requires a collective agreement be made in writing and signed by the parties. Moreover, it needs to be registered before a governmental organ. Once these formalities are satisfied, it is expressly stated that it begins to produce legal effect from the date of signature (Proc. No. 377/2003; Art.133 (2)). It is in the face of these rigorous procedures and clear legal stipulation that the Cassation Division denied enforcement. In our view, the legislature would not have prescribed this rigorous procedure for validity of collective agreement had the position been

that it would be enforced through private action. Interestingly, the court did not rule that a collective agreement is not enforceable before labour tribunals. It is only for the terms of a collective agreement relating to wage and other benefits that it denied judicial enforcement. Of course, if the terms of the collective agreement were not sufficiently clear, it may be appropriate to deny enforcement until the bargaining parties come up with clear and enforceable terms. Otherwise it would be going contrary to the intention of the parties to enforce some of their terms in collective agreements and deny enforcement to other terms within the same instrument.

Under the existing legal arrangement in Ethiopia, the interpretation of the Federal Supreme Court Cassation Division is binding on all courts and tribunals (Proc. No. 454/2005; Art.2 (4)). Seen together the above holdings of the Cassation Division seem to pose a challenge on the way collective bargaining is to be undertaken and collective agreement is to be enforced. Trade unions will be unsure as to whether the collective bargaining they are conducting with the representatives of the employer will be endorsed by the employer at the end of the negotiation process. Even if received and signed by the employer and registered before the appropriate organ, they will again be unsure as to whether its terms will be executed at a later stage with the help of state machineries. As a result, the whole bargaining exercise would be full of uncertainty and unpredictability. A problem with these judicial interpretations is that if the consequences of bargaining become unpredictable and terms and conditions unenforceable this will lead to a diminution in the willingness of the labour force to join trade unions. After all one of the main objectives for unionisation has been to obtain better concession from the employer through an organised and collective voice.

It may be argued that this is essentially an industrial relations issue. That is correct but it is an issue that has relevance for the commitment to and enforcement of the ILO Conventions. The significant question for this thesis is whether and if so, to what extent, the approach of the judiciary to legal interpretation is itself influenced by the privatisation and liberalisation agenda.

The literature in Chapters 3 and 4 showed that, in some foreign jurisdictions, challenges to unionisation and collective bargaining emanated from legislative reform measures and/or deliberate reluctance in the execution of protective labour laws by the executive organs such as labour inspection services. The Ethiopian experience suggests that in addition to legislative reform and the enforcement failings of executive bodies, the judiciary has also a role in this

endeavour. Interestingly, Compa after analysing national reports from various countries on labour law reform in the era of globalisation documented that there are recent tendencies from judicial organs towards adopting investment-friendly considerations in interpreting labour laws (2006: 12). Although Compa's report did not include the African experience, the Ethiopian case regarding the role of the courts appears to be consistent with what he observed in other jurisdictions.

Hence the proposition to be considered is how far the three main branches of the State (the legislature, executive and the judiciary) in Ethiopia are exhibiting an apparently coherent approach towards a common goal (i.e. investment-friendly goal) in posing challenge towards collective bargaining. Even though the measures of the respective State organs seen individually may not be sufficient to establish their investment-friendly measure at the expense of labour rights, it seems when seen the overall State measures in a holistic manner it tends to indicate a coordinated approach towards an investment-friendly goal. It is not therefore solely from the mere change of ownership point of view that the challenges to collective bargaining need to be entertained and explained. Rather the policies and attitudes affecting the institutions' mind-set need to be considered in assessing the modality and the magnitude of the challenges.

#### **8.6. Post-privatisation contents of collective agreements**

The other issue addressed in the study pertaining to collective labour relations is the assessment of the contents of the collective agreements signed by the parties at the end of their successful bargaining process. Although the collective agreements cover broad range of issues, three subjects; namely, profit sharing arrangements, training benefits and participation in management were nominated for examination.

All the enterprises in the present study, regardless of the type of ownership, have included provisions in their respective collective agreements on the timing and quantum of wage increments and bonuses payable to their employees. However, as evidenced from the contents of the collective agreements, employers at the privatised enterprises tend to require higher profit thresholds in order to grant bonus payments or wage increments as compared to the pre-privatisation period. A similar outcome was noted when comparing the collective agreements in the privatised and State-owned enterprises in that a higher profit threshold was required in the



privatised enterprises in order to grant wage increments or bonuses than that required by the State-owned enterprises. The profit-maximisation objective of the private sector might have influenced this outcome although it is arguable that profit sustainability would have been strategically more advantageous than a maximisation of short term profit.

Not only have privatised enterprises required higher profit thresholds in order to grant benefits to the employees but also the manner and the amount of allocating such benefits have tended to be left unregulated in the collective agreements, thereby opening up the possibility for unilateral determination by the employers. Conversely, the collective agreements at the State-owned enterprises prescribe more transparent and predictable provisions for implementation by spelling out implementation mechanisms in advance in the collective agreements.

Therefore, from the available evidence in the case studies, the following observations can be made with regards to collective bargaining and agreements. First, the collective bargaining process in the privatised enterprises took longer due to dilatory tactics and measures of feet dragging or uncompromising proposals from the parties. Second, privatised enterprises require a higher threshold of profit in order to accord bonuses and wage increments to the employees than their pre-privatisation period or compared to the collective agreements in the State-owned enterprises. Third, the collective agreements in the privatised enterprises tend to reserve the power of allocation of benefits to each employee to the exclusive authority of the employers even if the profit threshold is met. Finally, the privatised enterprises have cultivated the tendency of withholding essential information from the reach of trade unions as a result of which well-informed bargaining on financial matters is difficult to undertake for the unions. These all tended to show how collective bargaining has found itself in a very challenging circumstance in the post-privatisation setting. Unlike what has been indicated in the literature (*see, p.80*) in which transnational companies invoked threat of relocation in order to avoid or delay collective bargaining, private employers in Ethiopia tended to resort to the above mentioned ‘feet dragging’ measures which may have an effect in frustrating the collective bargaining process equivalent to the threat of relocation claimed to be employed by transnational corporations.

As all the enterprises under our study, regardless of the type of ownership, claimed to have operated at loss until recently, the profit sharing provisions in the collective agreements were mere optimistic aspirations rather than a source of measurable gains. Currently, however, almost

all of the enterprises are extricating themselves from loss and are becoming profitable. It is thus imminent that profit sharing provisions of the collective agreements will become a serious bone of contention between the social partners. Nevertheless, the ruling of the Federal Supreme Court Cassation Division on provisions in a collective agreement pertaining to wages and other benefits as spelt out in Chapter 7 creates fresh uncertainty as to their practical implementation. Hence, the privatised enterprises' economic challenge seems to have been overcome as a result of gaining profitability. But, the legal challenge comes to the forefront through the ruling of the Federal Supreme Court Cassation Division which held that the terms of wages and other benefits enshrined in a collective agreement are not enforceable before courts of law. Therefore a combination of economic and legal issues appears to be militating against the efficacy of collective bargaining.

As regards employee participation in management, the collective agreements both in the pre-privatisation period and in the currently State-owned enterprises provide for the participation of the representatives of the trade unions in committees involved in managerial activities. The contents of the collective agreements in the privatised enterprises proved to be less participatory in the sense that managerial functions are mainly left to the management staff with little or no room for employee participation.

Hence, with the introduction of privatisation, reasserting employers' prerogative on the one hand and exclusion of employees from managerial functions on the other have resurfaced. As a result, the findings of the case studies suggest that a 'rolling back' of the State from economic activities has been accompanied by the 'rolling back' of employees' from participation in the enterprises' managerial activities. This is consistent with Compa's summary from the national reports of various countries where labour law reforms brought an outcome in which 'management's right to run the business expanded by eliminating employees' rights in job assignments, promotion and layoffs etc' (2006:6).

Earlier an aspect of the literature has indicated the benefit of employee participation in bringing about sense of belonging, industrial peace and productivity. Thus, the tendency to marginalise employee participation would erode these values and bring about a sense of alienation and

indifference. From a unionisation point of view, the concern is that the moment trade unions are excluded from profit and power employees would be inclined to be less enthusiastic to join unions as they would not see any benefit in unionisation, thereby resulting in decline of union density. Lower union density will further erode the bargaining position of the trade unions as employers would not take them seriously because of their narrow membership base. The pattern of declining union density in post-privatisation setting, as observed from the case studies, could be partly attributed to this state of affairs.

### **8.7. The Ethiopia's collective labour law reform in the light of Compa's general report**

As indicated under Chapter 1, Compa prepared a general report by synthesising 23 national reports pertaining to labour law reforms they undertook in order to comply with the dictates and demands of the global economic order. Geographically, the national reports for the Conference were drawn from North America, South America, Central America and the Caribbean; from Western, Eastern, Northern and Southern Europe; and from the Asia-Pacific Region. Compa admitted that his general report did not benefit from the experience of labour law legal reform countries of Africa or the Middle East or from continental Asian Nations.

Ethiopia is the second most populous country in Africa. Although the Ethiopian experience may not be adequate enough to represent the African experience in this regard, its experience on the subject may still provide a modest contribution in widening the scope of coverage of Compa's report. It is with this purpose in mind that the present analysis is offered. Of course, Compa's general report covers labour law reforms in general pertaining to both individual and collective labour relations. However, as this thesis is focused on collective aspects of labour relations, the discussion in this part will be confined to analysing an aspect of the Compa's general report relating to collective labour issues.

According to Compa's observation 'no country is insulated against pressure to change its labour laws. Workers and their trade unions are under enormous pressure from the forces of globalisation' (2006:3). In this regard, the Ethiopian experience has suggested that multilateral lending institutions (forces of globalisation) have prescribed to Ethiopian policy makers that, among other measures, towards market deregulation which implicitly includes labour market deregulation as a condition to obtain loans and grants. Although it is not within their mandate and specialisation to prescribe the actual content of the labour law, the multilateral institutions

generally advise for labour market flexibility. Internally too, the policy towards private sector development required investment-friendly policies in which flexible labour market arrangement has been introduced, thereby making hiring and firing relatively easier. Flexibilisation in the present context is generally expanding management power and reducing employees' power in labour relations. Due to this investment-friendly policy environment, as gathered from the case studies, overtly and/or covertly trade union membership and leadership in Ethiopia have been placed under close scrutiny by employers. Consequently, trade unions' role to protect and defend their members' interests has been exposed to challenges. Therefore, it is tempting to conclude that Ethiopian experience is consistent with what Compa observed in other jurisdictions. But as Compa also points out matters have not proved to be quite so straightforward.

Indeed, Compa expressed an optimistic view by stating that 'despite the frustrating situation they found themselves, workers and trade unions and their allies have in many countries still have a capacity to resist these pressures and defend their labour rights, labour standards and labour laws (op cit: 4). Similar observation could be noted with respect to trade unionism in Ethiopia in the sense that although trade union density in the privatised enterprises is on the decline, there is no enterprise without a trade union nor is there an enterprise with more than one union manifesting an interest of the employees to associate and under a single and unified organisation. The reason for sticking to the single union could be because the employees anticipated the disadvantage of a fragmented association or since unitary union was the prevailing law and practice, employees do not want to deviate from that established practice due to fear of the unknown.

Another issue in the area of collective labour laws introduced in labour law reforms or proposed for law reform due to global influence as documented by Compa is that 'legal requirements that condition of employment [established by a collective agreement] when collective agreements expire and negotiations for new agreements are still underway be eliminated' (op cit : 8). Earlier, in order to maintain the status quo during the negotiation process, the prevailing position was that terms and conditions of employment established by the former collective agreement were to remain in effect until replaced by another collective agreement. Similarly, prior to the adoption of the Ethiopian labour law of 2003, the position of the labour law was that terms of employment formulated by a collective agreement were to remain valid until replaced by another collective agreement. Nevertheless, since 2003 the previous position of maintaining terms and conditions of collective agreement until replaced by another one has been withdrawn. The 2003

labour law reform withdrew the legal validity of the whole terms of the previous collective agreement unless the negotiating parties replace it within three months of its period of expiry.

Furthermore the 2006 amendment resorted to a partial withdrawal in the sense that it is not the whole collective agreement that will lose its legal force three months after the period of expiry but only those terms of the collective agreement pertaining to ‘wages and other benefits’ (which provide entitlements to the employees) which will lose their binding effect. This makes the Ethiopian experience a unique one from what Compa recorded.

From employee participation in personnel affairs point of view, Compa’s general report indicated that the current trend is ‘towards widening management’s prerogative to unilaterally run the enterprise by excluding trade union participation on personnel management issues’ (2006:8). In this connection the examination of the case studies showed that employee participation in managerial affairs of the privatised enterprises in which they render service has been diminishing. Promotion and Disciplinary Committees in which trade union representatives were included are now placed under unilateral managerial prerogative. Therefore, on this front too, the Ethiopian experience tallies with what Compa has observed in other jurisdictions.

In fact, it is not only at the level of legislative reform where signpost of flexibility has been noted but also that globalisation has influenced the attitude of the courts and the way they interpret labour laws. From this perspective, Compa indicated that reports from the 23 countries included in his report suggest that, in few cases, globalisation debates have affected decisions by national courts in labour law cases to favour employers’ interests’ (op cit: 12). In the Ethiopian context the two Cassation Division cases mentioned above which were handed down by the Federal Supreme Court Cassation Division (the highest court of the country) reflected the position of the judiciary in interpreting the labour laws in an investment-friendly manner. It was indicated in the body of the study that (*see, p.1*) with the downfall of the military regime and the introduction of the market-oriented economic policy, the judiciary was also restructured and the judges of the various benches who were considered to have affiliations with the previous military regime were removed and replaced by newly appointed judges. It can thus be argued that this ‘new breed’ of judicial personnel might have gradually influenced the attitude and mind-set of the institution of the judiciary towards investment-friendly approach.

Generally, it is admitted that Compa's general report does not include labour law reform efforts in the African continent and this was considered as a 'regrettable' gap. Nevertheless, the present analysis showed that the Ethiopian experience of collective labour law reform has had a striking similarity with some aspects of what has been included in Compa's report. Globalisation has made exchange of information and communication among and between nation states and social groups relatively easier. Due to this, diffusion of theories and laws is also becoming easier. This easier movement of ideas and principles seems one of the reasons why countries which are geographically remote from each other and at uneven level of development and following different path of development tend to adopt strikingly similar response to global challenges.

However, in a separate note Compa reported that the formerly socialist command economy followers of East European countries adopted a *Substantial Change* model in their labour law reforms due to global economic pressures. Ethiopia was also within the command economy during the military regime and hence its transformation was from a command to market economy. This economic policy transformation makes Ethiopia similar with the East European countries. Nevertheless, in terms of labour law reform Ethiopia deviates from them in the sense that it did not adopt *Substantial Change*. On the contrary it rather adopted a more favourable formal law towards unionisation on the one hand and adopted an *Incremental Change* model in the area of collective bargaining. It thus adopted a mixed approach reflecting another ambivalent position making generalisations unwarranted.

## **8.8. Conclusion**

The overall discussion in this thesis suggests that although there seems to exist, in the international sphere, a consensus at the level of rhetoric to respect, protect and promote core labour rights in which the right to freedom of association and collective bargaining are found, the practical exercise of these rights has been exposed to various challenges of an economic, political or social nature. The sources of the challenges are varied and multifaceted, ranging from international to national and from public to private. Over emphasis on the desire to ensure economic growth without providing comparable attention to the social goal would be inconsistent with the obligation to respect, protect and promote 'core' labour right. The social goal is equally important and relevant with that of economic achievement in order to attain sustainable development. Thus, the strategy towards addressing the problem is also to be found in a coordinated, multi-level, multi-layer and holistic approach.

In the Ethiopian context, an aspect of the challenge emanates from the pressure of international actors. With the economic leverage the multilateral lending institutions have had in Ethiopia the privatisation process was commenced and it is in motion. Moreover, laws, policies and institutional mind-set suitable for market-oriented economy and for private sector development have been put in place. The effort towards compliance with donor prescription, as shown in the case studies, directly or indirectly brought adverse effects to the exercise of the collective aspects of labour right. Conversely, such an adverse outcome on the exercise of the collective labour rights became a violation of another obligation assumed towards the ILO at the international level and the Federal Constitution at the national level.

Therefore, there lies a tension in which policy makers found themselves in a dilemma on how to strike a reasonable balance to manage these apparently conflicting interests. Due to this, it appears that Ethiopian State organs adopted ambivalent position which reflected the dilemma in which they found themselves.

From a legislative point of view, although the right to freedom of association and collective bargaining have been incorporated in the Federal Constitution, the labour law brought a mixed result. The legal reforms on the provisions relating to unionisation progressively extended favourable conditions for unionisation while those of collective bargaining gradually but consistently withdrew provisions which were beneficial to effective collective bargaining, manifesting the dilemma at the level of law making.

Similarly, at the level of executive agencies, while the labour inspectorate, though under resourced and understaffed, tried to enforce the collective aspects of labour rights on the one hand, ministries such as Trade and Industry have the tendency to ease regulatory burdens to investors including those regulations necessary for the protection and promotion of collective labour rights on the other. Finally, the judiciary through its highest organ, the Federal Supreme Court Cassation Division, began, in recent times, to adopt investment-friendly interpretation of labour law provisions, thereby potentially posing a challenge towards the promotion and protection of collective aspects of labour rights. This ambivalence at the national level seems partly a reflection of similar ambivalent disposition at the international level between the mindset of the multilateral financial institutions on the one hand and that of ILO on the other which was discussed above.

## Reference Materials

- Abebe Teferi & Admit, Zerihun (2001) Ethiopian privatization programme: Rational, Performance and Impact on the labour market. *Working Paper* (CETU: Addis Ababa).
- Aberra, Jembere (2000) *An Introduction to the Legal History of Ethiopia (1434-1974)*. (Munster: Lit Verlag).
- Adam, Christopher, Cavendish, William and Mistry S. Percy (1992) *Adjusting Privatization: Case studies from developing countries*. (London: James Currey).
- Adefolaju, Toyin (2012) 'Global Economic Challenges: Trade union growth implications in Nigeria' *The Journal of Pan African Studies*, Vol. 5, No.6, pp.92-107
- Adejumobi, Saheed, A. (2007) *The History of Ethiopia*. (West Port: Greenwood Press).
- Addis Garment Share Company (2008) 'Facility Policies and Procedures Manual'. [online] (Available at: <<http://www.augustagarment.com/Addis-Garment-Augusta-wrap-Policy>> accessed 25 October 2010).
- Addis Ababa Tannery; <<http://www.addisabatannery.com>> (accessed 02 October, 2010)
- Addis Zemen. (2008) Government owned *Daily News paper* in Amharic. 67<sup>th</sup> year No.236
- Addison, Tony and Alemayehu Geda (2001) 'Ethiopia's New Financial Sector and its Regulation' *Working Paper Series; Paper No. 39* [online] (Available at: <<http://www.sed.manchester.ac.uk/dpm/research/publications/archive/fd/fdwp39.pdf>> accessed 25 July 2010)
- Admit, Zerihun (2008) 'Industrialisation Policy and Industrial Development Strategy of Ethiopia', in Taye Assefa (ed.) *Digest of Ethiopia's National Policies, strategies and Programs* (Addis Ababa: Forum for Social Studies) pp. 239-283
- African Development Bank Group (2000) '*Ethiopia: Structural Adjustment Programme*'; Project Performance Evaluation Report (PPER)
- Alston, Philip(ed) (2005) *Labour rights as Human Rights*. (Oxford: Oxford University Press).
- Alston, Philip (2004) 'Core Labour Standards and the Transformation of the International Labour Rights Regime' *European Journal of International Law*, Vol.15, No.3, pp.457-521
- Altenburg, Tilman (2010) 'Industrial Policy in Ethiopia'. *Discussion Paper* (Bonn: German Development Institute)
- Ananaba, Wogu (1979) *The Trade union movement in Africa*. (London: C. Hurst & Company).
- Andargachew, Tiruneh (1993) *The Ethiopian Revolution 1974-1987: A Transformation from an aristocratic to a totalitarian autocracy*. (New York: Cambridge University Press).
- Anyemedu, Kwasi (2000) 'Trade unions response to globalization: Case study on Ghana': *Discussion papers*. (Geneva: International Institute of Labour Studies)
- Aregawi, Berhe (2008) *A Political History of the Tigray People's Liberation Front (1975-1991): Revolt, Ideology and Mobilization in Ethiopia* (PhD-thesis- Amsterdam)
- Arthurs, Harry (2006) 'Who is afraid of globalization? Reflections on the future of labour law'. in John D.R. Craig and S.Michael Lynk (eds.), *Globalization and the future of labour law*, (New York: Cambridge University Press). pp.51-74
- Arthurs, Harry (2002) 'Private Ordering and Workers' Rights in the Global Economy: Corporate Codes of Conduct as a Regime of Labour Market Regulation ', in J Conaghan, M Fischl and K Klare (eds) *Labour Law in the Era of Globalization* (Oxford: Oxford University Press)
- Arthurs, Harry (2001) 'Reinventing Labour Law for the Global Economy: The Benjamin Aaron lecture'. *Berkeley Journal of Employment and Labour Law*. Vol.22, No.2 pp.272-291.



- Assefa, Kassaye (2010) 'The impact of pluralism of labour unions in an enterprise'. (LL.B- Thesis: Addis Ababa), Faculty of Law Library.
- Aslund, Anders (2007) *How capitalism was built: the Transformation of Central and Eastern Europe, Russia and Central Asia*. (Cambridge: Cambridge Printing Press).
- Azubuike, O. Lawrence (2009) *Privatization and Foreign Investment in Nigeria*. (Florida: Brown Walker Press)
- Ba'ger, Gusztav (1993) 'Privatization in Hungary'. in Ramanadham, V.V. (ed.) (1993b) *Constraints and impacts of privatization*. (London / New York: Routledge), pp.93-101
- Bahru, Zewdie (2008) *Society, State and History: Selected Essays*. (Addis Ababa: Addis Ababa University Press).
- Bahru, Zewdie (2002) *A History of Modern Ethiopia*, Second edition, (Oxford: James Currey)
- Baldassarri, Mario (1993) *Privatization Process in Eastern Europe: Theoretical Foundations and Empirical Results*. (Rome: St. Martin's Press).
- Banderet, M.E. (1986) 'Discipline at the workplace: A comparative study of law and practice (the sources and substance of disciplinary law)' *International Labour Review* Vol.125 No.3, pp.261-278
- Banderet, M.E. (1986) 'Discipline at the workplace: A comparative study of law and practice (procedure)' *International Labour Review* Vol.125 No.4, pp.383-399
- Banks, Kevin (2005) 'The Impact of Globalization on labour Standards: A second look at evidence': in John D.R. Craig and S. Michael Lynk (eds), *Globalization and the future of labour law*, (New York: Cambridge University Press) pp.77-107
- Baudissin, V. George (1965) 'An Introduction to Labour Development in Ethiopia'. *Journal of Ethiopian law*, Vol.II, No.1, pp.101-110
- Bean, Ron (1994) *Comparative Industrial Relations: An introduction to cross-national perspective* (second ed). (London/New York: Routledge)
- Beaumont B. Philip and Harris D. Richard (1995) 'Union de-recognition and declining union density in Britain'. [online] *Industrial and Labour Relations Review*. Vol.48 No.3 pp.389-402. Stable URL: <<http://www.jstor.org/stable/2524770>> accessed 06 November 2010).
- Bellace, R. Janice and Gospel, F. Howard (1983) 'Disclosure of information to trade Unions: A comparative perspective'. *International Labour Review* Vol.122, Issue 1, pp.57-73.
- Bennell, Paul (2003) 'Privatization in sub-Saharan Africa' in David Parker and David Saal (eds.) *International Handbook on Privatization*. (Cheltenham/Northampton: Edward Elgar) pp.310-320
- Beyene, Solomon. (2010) *Fighter for Democracy: the Saga of an Ethiopian Labour Leader*. (Baltimore: Publish America)
- Birdsall, Nancy and Nellis, John (eds) (2003) 'Winners and Losers: Assessing the impact of Privatization'. *World Development*. Vol.31, No.10 pp.1617-1633 [online] available at: <<http://www.elsevier.com/locate/worlddev>> (accessed on 15 April 2009).
- Blackett, Adelle (2001) 'Global Governance, Legal Pluralism and the Decentered state: A labour law critique of codes of corporate conduct', *8 Ind.J. Global Legal Stud.* 401, pp.1-32
- Blowfield, Michael (2005) 'Corporate Social Responsibility: Reinventing the meaning of development?' *International Affairs* Vol.81, No.3. pp.515-524.
- Blowfield, Michael and Frynas, Jędrzej George (2005) 'Setting new agendas: Critical perspective on Corporate Social Responsibility in the developing world'. *International Affairs* Vol.81, No. 3 pp. 499-513.
- Boeri, Tito, Brugiavini, Agar and Calmfors, Lards (eds.) (2001) *The Role of Unions in the Twenty-First Century*. (New York: Oxford University Press).

- Boiral, Olivier (2003) 'The Certification of Corporate Conduct: Issue and Prospects'. *International Labour Review*. Vol.142, No.3 pp.317-340
- Bortolotti, Bernardo and Siniscalco, Domenico.( 2004) *The Challenges of Privatization: An International analysis*. (New York: Oxford University Press)
- Brabant, M.Van Jozef (1992) *Privatizing Eastern Europe: The Role of Markets and Ownership in the Transition*. (Boston/London: Klumer Academic Publishers).
- Brett, E.A. (1988) 'States , Markets and Private Power: Problems and Possibilities' in Paul Cook and Colin Kirkpatrick(eds.) *Privatisation in Less Developed Countries* (New York/London: Harvester Wheatsheaf) pp.47-67
- Buchs, D. Thierry (2003) 'Privatization in Sub-Saharan Africa: Some lessons from experiences to date' [online] available at: <<http://www.nioclibrary.com/privatization/e025.pdf> > (accessed 25 May 2010)
- Burda, Julien (2007) 'Chinese women after the accession to the World Trade Organization: A legal perspective on women's labour rights'. *Feminist Economics* 13, pp.259-285
- Burkett, Brain (2005) 'The International Labour Dimension: an introduction', in John D.R. Craig and S.Michael Lynk (eds), *Globalization and the future of labour law*, (New York: Cambridge University Press), pp.15-55
- Cao, Lan (2000) 'Chinese privatization: Between plan and market'. *Law and contemporary problems*, Vol.63, No.4 pp.13-62 [online] (Stable URL:<<http://www.jstor.org/stable/1192391>> accessed on 11 April 2009)
- Cazes, Sandrine and Nesporova, Alena (2003). *Labour markets in transition: Balancing Flexibility and Security in Central and Eastern Europe*. (Geneva: ILO).
- Chang, V. Claude, (2006) *Privatization and Development: Theory, Policy and Evidence*. (Aldershot: Ashgate Publishing)
- Chen, Yi and Ishac, Diwan. (2000) 'When the Bureaucrat move out of Business: A cost benefit assessment of labour entrenchment in China'. *Policy Research Working Paper* 235. (Washington, D.C.: World Bank)
- Cieslik, Jersy (1993) 'Privatization in Poland.' in Ramanadham, V.V. (ed.) (1993b) *Constraints and impacts of privatization*. (London / New York: Routledge), pp.102-114.
- Clapham, Christopher.(1987) 'Revolutionary Socialist Development in Ethiopia'. *African Affairs*, Vol. 86, No. 343. pp.151-165. [online] (Stable URL: <<http://www.jstor.org/stable/722468> >accessed 12 April 2009
- Commission on Industrial Relations (CIR). (1974) *Worker Participation and Collective Bargaining in Europe*. (London: her Majesty's Stationery Office)
- Compa, Lance A. (2006) *Trade Liberalisation and Labour Law* [electronic version]. Paper presented at the XVIII World Congress, International Society for Labour & Social Security Law, Paris; Available at: <<http://digitalcommons.ilr.cornell.edu/conference/6/>>
- Confederation of Ethiopian Trade Union (CETU). (1991) 'Workers' Movement in Ethiopia (Part-I)'. (Amharic-unpublished) CETU library: Addis Ababa.
- Cook, Paul and Kirkpatrick, Colin (2003) 'Assessment the impact of privatization in developing countries' in David Parker and David Saal (eds.) *International Handbook on Privatization*.(Cheltenham/Northampton: Edward Elgar) pp.209-219
- Cook, Paul and Kirkpatrick, Colin.(1998) 'Privatization, Employment and Social Protection in Developing Countries,' in Cook, Paul, Kirkpatrick, Colin and Nixon, Frederick (eds.) *Privatization, Enterprise Development and Economic Reform: Experiences of developing and Transition Economies*. (Cheltenham: Edward Elgar:), pp.251-264
- Cook, Paul and Kirkpatrick, Colin (eds.) (1988) *Privatization in less developed countries*. (New York/London: Harvester Wheatsheaf)

- Corodova, Eften (1978) 'A Comparative View of Collective Bargaining in industrialized countries.' *International Labour Review*. Vol.117, No.4, pp.423-439
- Cox, Archibald (1958) 'The Duty to Bargain in Good Faith' *Harvard Law Review*. Vol.71, No.8, pp.1401-1442
- Dahan, Yossi, Lerner hanna and Sivan Faina Milman (2011) 'Global Justice, Labor Standards and responsibility'. *Theoretical Inquiries in Law*, Vol.12, Number 2 Article 3 pp. 439-464 [online] <[http://www.bepress.com/til/default/vol\\_12/iss2/art3](http://www.bepress.com/til/default/vol_12/iss2/art3)> visited 13 January 2012.
- Daniel, Haile (1986) 'Workers' Participation in Management under Ethiopian Law'. *Journal of Ethiopian Law*, Vol. XIII, pp.123-138
- Davies, A.C.L. (2008) 'One step forward, two steps back? The Viking and Laval cases in the ECJ'. *Industrial Law Journal*, Vol.37, No.2. pp.126-148.
- Davies, Anne C.L. (2004) *Perspective on Labour Law*. (Cambridge/New York/Madrid: Cambridge University Press).
- Davies, Paul and Freedland, Mark (1993) *Labour Legislation and Public Policy*. (Oxford: Clarendon Press).
- Deakin, Simon and Morris, S. Gillian (2009) *Labour Law 5th ed*. (Oxford /Portland: Hart Publishing)
- Deakin, Simon (2008) 'Time is everything: Industrialization, Legal Origin and the Evolution of the Contract of Employment in Britain and Continental Europe,' in Bercussion, Brian and Estlund, Cynthia (eds.), *Regulating Labour in the Wake of Globalization: New Challenges, New Institutions*. (Portland: Hart Publishing), pp. 67-88
- Deakin, Simon (2005) 'Social Rights in a Globalized Economy,' in Alston, Philip(ed) *Labour rights as Human Rights*. (Oxford: Oxford University Press) pp.24-60
- De Gobbi, S.Maria (2006) Labour Market Flexibility and Employment and Income Security in Ethiopia: Alternative Considerations, *Employment Strategy Papers* (Geneva: ILO)
- Dunning, Harold (1998) 'The Origin of Convention No.87 on Freedom of Association and the Right to Organize'. *International Labour Review*. .Vol.137, No.2 pp.149-167
- Egorov, Vladislav (1996) 'Privatization and labour relations in the countries of Central and Eastern Europe'. *Industrial Relations Journal* 27:1 pp. 89-100
- Endalkachew, Sime (2006) 'Enterprise Management of State Owned cotton /textile/garment enterprises in Ethiopia,' in Getnet Alemu *et al* (eds.) Proceedings of the Third International Conference on the Ethiopian Economy (Vol.II) Ethiopian Economic Association: Addis Ababa, pp.207-224.
- Engerer, Hella (2001) *Privatization and its limits in Central and Eastern Europe: Property rights in transition*. (New York: Palgrave)
- Engle, Eric (2010) 'A Viking we will go! Neo-corporatism and Social Europe'. *German Law Journal*, Vol.11, No.6 pp.633-652.
- Ericsson, Barbara. (2009) Post-Privatization Impact Assessment. (Draft-unpublished) Addis Ababa: Ethiopia.
- Eshete, Taddesse (1994) 'The State and Performance of Public Enterprises', in. Abdulhamid Bedri Kello (ed) *Privatization and Public enterprise reform in Ethiopia*. (Addis Ababa: Ethiopian Economic Association), pp.1-29
- Estrin, Saul (1994) *Privatization in Central and Eastern Europe*. (London/New York: Longman).
- Estrin, Saul et al (eds). (1995) *Restructuring and privatization in Central, Eastern Europe: Case studies of firms in transition*. (London/New York: M.E. Sharpe)
- Ewing, K.D. and QC, John Hendy (2010) 'The Dramatic Implications of Demir and Baykara' *Industrial Law Journal*, Vol.39, No.1, pp.2-51

- Fairey, B. David (2009) 'Exclusion of Unionized Workers from Employment Standards Law' *Industrial Relations* Vol.64, No.1, pp.112-133
- Fashoyin, Tayo (2010) 'Collective bargaining and employment relations in Kenya' *Working Paper No.13* (Geneva: ILO)
- Fashiyon, Tayo (2008) 'Policy Reforms and Employment Relations in Zambia' *Issues Paper No.29* (Harare: ILO Sub-Regional Office for Southern Africa).
- Fashoyin, Tayo (2004) 'Tripartite Cooperation, Social Dialogue and National Development'. *International Labour Review*. Vol.143, No.4, pp.340-371
- Faundez, Julio (2010) 'Rule of law or Washington Consensus: The Evolution of the World Bank's approach to legal and judicial Reform' in Amanda Perry-Kesaris (ed) *Law in Pursuit of Development*. Warwick School of Law Legal Studies Research Paper Series (London: Routledge), pp.1-21
- Feller, E. David (1973) 'A General Theory of the Collective Bargaining Agreement' *California Law Review*, Vol.61, No.3, pp.663-857.
- Fenwick Colin, Kalula Evans and Landau Ingrid (2010) 'Labour law: A Southern African perspective'. In Tzehainesh Tekle(ed) *Labour law and worker protection in developing countries*. (Oxford and Portland: Hart publishing) pp.175-224
- Flanders, A.(1968) 'Collective Bargaining: A Theoretical Analysis'. *6 British Journal of Industrial Relations*. pp. 1-27
- Filipovic, Adnan (2005) 'Impact of Privatisation on Economic Growth'. *Issues in Political Economy*, Vol. 14 pp.1-22 [online] (<[http:// www. org.elon.edu./ipe/Adi final.pdf](http://www.org.elon.edu./ipe/Adi_final.pdf)> accessed on 27 May 2010)
- Freeman *et al*, (2010) *Stakeholders Theory: The State of the Art*. (Cambridge/New York: Cambridge University Press).
- Galal, Ahmed, Jones, Leroy, Tandon, Pankaj and Vogelsang, Ingo (1994) *Welfare Consequences of Selling Public Enterprises: An Empirical analysis*. (New York: Oxford University Press)
- Gernigon Bernand, Oredo Alberto and Guido Horacio (1998) 'ILO Principles concerning the Right to Strike'. *International Labour Review*, Vol.137, No.4, pp.441-481
- Gernigon Bernand, Oredo Alberto and Guido Horacio (2000)'ILO Principles concerning Collective Bargaining'. *International Labour Review*. Vol.139, No.1, pp.33-55
- Getachew Regassa (2003) Privatization in Ethiopia: Process and Performance of manufactured firms. M.A. Thesis.[online] < <http://hdl.handle.net/123456789/872>> (visited on 27 May 2009)
- Getachew, Yoseph (1994) 'Public Enterprise reform and privatization: A review of experiences', in Abdulhamid Bedri Kello (ed ) *Privatization and Public enterprise reform in Ethiopia*. (Addis Ababa: Ethiopian Economic Association), pp.67-84
- Girma, Kebede (1987) 'State Capitalism and Development: The case of Ethiopia'. *The Journal of Developing Areas*, Vol.22, No.1 pp.1-24[online] (Stable URL:<<http://www.jstor.org/stable/419615>> (accessed: 12 April 2009)
- Gladstone, Alan and Ozaki, Muneto (1975) 'Trade Union Recognition for Collective Bargaining Purposes'. *International Labour Review*. Vol.112, Nos.2-3, pp. 163-189
- Glinavos, Ioannis (2010) 'Transition or development? Reassessing priorities for law reform' *Progress in Development Studies*. Vol.10, No.1, pp.59-74.
- Gomez, Rafael (1998) 'Globalization and Labour Standards: Multilateral worker protection in an era of 'footloose' capital'. *Working paper* 1998-4. (Center for Industrial Relations: University of Toronto).

- Gong, Yundan, Gorg, Holger and Maioli, Sara (2006) 'Employment effects of privatization and foreign acquisition of Chinese state-owned enterprises'. *Discussion Paper No.2453*. (Institute for the Study of Labour (IZA):Bonn).
- Government of Ethiopia (GOE) (1975) 'Declaration of Economic Policy of Socialist Ethiopia.' (Addis Ababa: Ethiopia)
- Government of Federal Democratic Republic of Ethiopia (2002) *Industrial Development Strategy*. Ministry of Information (Amharic); (Addis Ababa: Ethiopia).
- Guadagni, Marco (1972) *Ethiopian Labour Law Handbook*, (Ilpoligrafico plc. University of Asmara; Ethiopia)
- Gunter G.Bernard and Hoeven, Van Der Rolph (2004) 'The Social Dimension of Globalization: a Review of the Literature'. *International Labour Review* Vol.143, No. 1-2, pp.7-43
- Hall, John G. (2003) *Ethiopia in the Modern World* (Philadelphia: Chelsea House Publishers)
- Hameed, M.A. Syed (1970) 'A Theory of Collective Bargaining' *Industrial Relations*, Vol.25, No.3, pp.531-551
- Harrison, Anne and Scorse, Jason (2003) 'The Impact of Globalization on Compliance with Labour Standards' [with Comments and Discussions [online] available at: <<http://www.jstor.org/stable/25063180>> (accessed 20/03/2009) pp.45-96.
- Hasselbalch, Ole, Neal, C. Alan, and Victorians Anders (1982) *A Perspective on labour law*. (Stockholm: Almqvist and Wiksell International).
- Hayter, Susan (2009) 'A fair Globalization: the role of collective bargaining in stemming the rising tide of inequality in earnings and income.' *International Journal of Labour Research*, Vol.1, Issue.2, pp.27-42
- Henze B.Paul (1989) 'Ethiopia's Economic Prospects for the 1990s' The RAND Publication Series. (RAND: USA)
- Hepple, Bob (2008) 'The WTO as a mechanism for Labour Regulation'. In: Bercussion, Brian and Estlund, Cynthia (eds.), *Regulating Labour in the Wake of Globalization: New Challenges, New Institutions*. (Portland: Hart Publishing), pp. 161-178
- Hepple, Bob (2005) *Labour Laws and Global Trade*, (Oregon: Hart Publishing)
- Hepple, Bob (ed) (2002) *Social and labour rights in a global context: International and comparative perspective*. (Cambridge: Cambridge University Press).
- Hiatti, P.Jonathan and Greenfield, Deborah (2005) 'The Importance of Core Labour Rights in World Development'. *Michigan Journal of International Law*. Vol.26, No.39, pp.39-62
- Hishu Hailu. (2005) 'An Assessment of the process of Privatization in Ethiopia'. M.A. Thesis [online] <<http://hdl.handle.net/123456789/795>> (visited on 07 June 2009)
- Hodge, Graeme (2006) *Privatization and Market Development*. (Cheltenham/Northampton: Edward Elgar)
- Hoeven, Rolph Van der and Sziraczki, Gyorgy (1997) *Lessons from privatization: labour issues in developing and transitional countries*. (Geneva: ILO).
- Hossain, Moazzem and Malbon, Justin (eds). (1998) *Who benefits from privatization?* (London/New York: Routledge)
- Hunter, Laurence (1980) 'Some economic aspects of Industrial Democracy' *Industrial Relations Journal*. Vol, 11, issue-3, pp.35-45
- International Confederation of Free Trade Unions (ICFTU) (2004) *A Trade Union Guide to Globalization*. 2<sup>nd</sup> edition [online] available at; <<http://www.icftu.org/pubs/globalization>> (visited on 21 May 2009)
- International Labour Organization (ILO) (1994) General Survey of the Reports on the Freedom of Association and the Right to Organize Convention(No.87),1948 and the right to Organize and Collective Bargaining Convention (No.98), 1949 (81st Conference Session Geneva)

- International Labour Organization (ILO). (1996) *Freedom of Association*, Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO (4th revised edn: Geneva)
- International Labour Organization (ILO) (1998) *Declaration on Fundamental Principles and Rights at Work and its follow up*. International Labour Conference, 86<sup>th</sup> Session, Geneva, June 1998 [online] available at: <http://www.ilo.org/public/english/standards/decl/declaration/index.htm>
- International Labour Organization (ILO) (2000) *International Labour Standards: A global approach*, First edition (Geneva: ILO).
- International Labour Organization (ILO) (2004) 'The Social Dimension of globalization: a review of the Literature'. *Working Paper No.24*. (Geneva: ILO)
- International Labour Organisation (ILO) Decent Work Country Programme-Ethiopia (2009-2012) Available at: <http://www.ilo.org/public/english/bureau/program/dwcp/download/ethiopia.pdf>
- International Labour Organisation (ILO) (2008) General survey on the Fundamental Conventions concerning the right at work in light of the ILO Declaration on Social Justice for a fair globalization, Report of the Committee of Experts on the Application of Conventions and recommendations (Articles 19, 22 and 35 of the Constitution), Report III (Part 1B) (Geneva: ILO).
- International Labour Organisation (ILO) (2009) 'Technical Memorandum: Ethiopia Labour Inspection Audit' Labour Administration and Inspection Programme (Geneva: ILO)
- International Monetary Fund (1999a) Privatization, Social impacts and Safety Nets. IMF *Working Paper*, WP/99/68 (Washington, D.C.: International Monetary Fund).
- International Monetary Fund (1999b) 'Ethiopia: Recent Economic Developments'. *IMF Staff Country Report No.99/98* (Washington, D.C.: International Monetary Fund).
- Ishikawa, Juniko (2003) *Key Features of National Social Dialogue: a Social Dialogue Resource Book* (Geneva: ILO)
- Jackson, M. Peter and Price, M. Catherine, (1994) 'Privatisation and Regulation: A review of the issues' in Peter M.Jackson and Catherine M.Price (eds.) *Privatisation and Regulation: a review of issues*. (London/New York: Longman), pp.1-34
- Jenkins, Rhys. (2005) 'Globalization, Corporate Social Responsibility and Poverty'. *International Affairs*. Vol.81, No.3, pp.525-540.
- Jonge, D.Alice (2004) 'Global Economic Forces and Individual labour rights: An Uneasy Coexistence'. *Human Rights and Human Welfare*, Vol.4, pp.107-118
- Kale-Kristos, Abay (2005) *The 1960 Attempted Coup: The Historical and Political Transformation of Ethiopia (1916-1974)* (in Amharic) (Addis Ababa: Berhannena Selam Printing Press).
- Katz, C. Harry (1993) 'The Decentralization of Collective bargaining: A literature review and comparative analysis'. *Industrial and Labor Relations Review*, Vol.47, Issue 1, pp.3-22
- Katz, C.Harry and Kochan, A.Thomas. (1992) *An Introduction to Collective Bargaining and Industrial Relations*. (New York: McGraw-Hill Inc.)
- Kaufmann, Christine (2007) *Globalization and Labour Rights: the conflict between core labour rights and international economic law* (Oxford: Hart Publishing)
- Kaufman, E. Bruce (2004) *The global evolutions of industrial relations* (Geneva: ILO)
- Kikeri, Sunita. (1997) 'Privatization and Labour: What happens to workers when Governments Divest?' *World Bank Technical Paper*, 396. (Washington DC: The World Bank)
- Kikeri, Sunita, Nellis, John and Shirley, Mary (1992) *Privatization: The lessons of experience*. (Washington, D.C.: World Bank)

- Kikeri, Sunita and Nellis, John. (2004) 'An Assessment of Privatization'. *The World Bank Research Observer*. Vol.19, No.1. pp. 87-118
- Kikeri, Sunita, Nellis, John and Shirley, Mary (1994) 'Privatization: Lessons from Market Economies'. *The World Bank Research Observer*, Vol.9, No.2. Pp.241-272.[online] (Stable URL:< <http://www.jstor.org/stable/3986326>>. (accessed 29 September 2009)
- Kelly, John and Williman, Paul (eds.) (2004) *Union Organization and Activity*. (London / New York: Routledge )
- Kornai, Janos (2001) 'Hardening the Budget constraint: the experience of post socialist countries'. *European Economic Review* 45, pp.1573-1599 [online] (available at: <<http://www.elsevier.com/locate/econbase>> (accessed on 25 Jan 2009)
- Kosar, R.G. and Hayter, S. (2011) Comparative Study of labour relations in African countries'. *Working paper 116* (Amsterdam: University of Amsterdam)
- K.S., Jomo.(2008) 'A Critical Review of the Evolving Privatization Debate'. In: Ronald Gerard(ed). *Privatization: Successes and Failures*. (New York: Colombia University Press), pp. 199-211
- Kubi, A.Kojo (2001) 'State-owned Enterprises and Privatization in Ghana'. *The Journal of Modern African Studies*. Vol.39 No.2, pp.197-229
- Law S. David (2008) 'Globalization and the Future of Constitutional Rights', *Northwestern University Law Review*, Vol.102, No.3, pp.1278-1343
- Lee, Eddy (1997) 'Globalization and Labour Standards' *International Labour Review*, Vol.136, No.2, pp.173-189
- Lee, Eddy and Vivarelli, Marco (2006) 'The Social impact of Globalization in the Developing Countries'. *International Labour Review* Vol.145 No.3, pp.167-184
- Locke, Richard, Qin, Fei and Brause, Alberto. (2007) 'Does monitoring improve labour standards? : Lessons from Nike', *Industrial and Labor Relations Review*, Vol.61, Issue1; pp.3-31[online] (available at: <[heinonline.org.pugwash.lib.warwick.ac.uk/HOL/page?handle=hein.journals/ialrr61&div=4&collection=journals&set](http://heinonline.org/pugwash.lib.warwick.ac.uk/HOL/page?handle=hein.journals/ialrr61&div=4&collection=journals&set)> (accessed 15 May 2009)
- Macklem, Patrick ( 2005) 'The Right to Bargain Collectively in International Law: Workers' Right, Human Right, International Right? In: Alston, Philip(ed). *Labour rights as Human Rights* ( Oxford: Oxford University Press) pp. 61-84
- Mahteme -Selassie, Wolde-Meskel (1949) *Zekre-Neger*. (in Amharic). (Addis Ababa: Artistic Printing Press)
- Masondo, Themba (2010) 'Worker participation in workplace restructuring in the automotive industry: A comparative study of German and South-African Volkswagen plants (1970-2009)' (MA-thesis- Johannesburg).
- Mcgowan, Francis (1994) 'Internationalization of Privatization' In: Thomas Clarke(ed). *International Privatization: Practices and Strategies*. (Berlin/NewYork: Walter de Gruyter), pp.25-42.
- McMillan, H.Carl (1996) 'Foreign Direct Investment in Eastern Europe: Harnessing FDI to the Transition from Plan to Market': in Steve Chan (ed.) *Foreign direct Investment in a Changing Global Political Economy*. (Macmillan: International Political Economy) pp.127-149
- Meggison L.William, Nash C.Robert and Van Randenborgh Matthias (1994) 'The Financial and Operating Performance of Newly Privatized Firms: An International Empirical Analysis' *The Journal of Finance*, Vol.XLIX, No.2, pp.403-452.
- Meggison L. Williams and Netter M. Jeffery (2001) 'From State to Market: A Survey of Empirical Studies on Privatization' *Journal of Economic Literature*, Vol.XXXIX pp.321-389

- Meknassi, Rachid Filali (2010) 'the effectiveness of labour law and decent work aspirations in the developing countries: a framework for analysis' in Tzehainesh Tekle(ed) *Labour law and worker protection in developing countries*. (Oxford/ Portland: Hart publishing), pp.51-91.
- Millward, Robert (2005) *Private and Public Enterprise*. (Cambridge: Cambridge: Printing Press)
- Ministerio de Trabajo Y Asuntos Sociales (Spain) (2004) *Collective Bargaining in Europe*. [online] available at: <[http://www.empleo.gob.es/es/sec\\_trabajo/ccncc/descargas/CollectiveBargainingInEurope.pdf](http://www.empleo.gob.es/es/sec_trabajo/ccncc/descargas/CollectiveBargainingInEurope.pdf)> (accessed on 24 April 2012).
- Ministry of Information (MOI) (2004) *Facts about Ethiopia*. (Press and Audio-Visual Department; Addis Ababa)
- Ministry of Labour and Social Affairs (MOLSA) (2009) National Employment Policy and Strategy of Ethiopia, *Policy Report* (Addis Ababa: MOLSA)
- Ministry of Labour and Social Affairs (MOLSA) (2003) 'A study on redundant employees due to structural adjustment and privatisation' unpublished-Amharic (Addis Ababa: Ethiopia).
- Ministry of Labour and Social Affairs (MOLSA) (1983) 'The Ethiopian Working class: Yesterday and Today' (in Amharic). *Meskerem*, Vol.2, No.13.
- Morehous, G.Lynn. (1970) 'Ethiopian Labour Relations: Attitudes, Practice and Law'. *Journal of Ethiopian law*. Vol. VII, No.1, pp.241-287.
- Morgan, R.David and England, E.Robert. (1988) 'The Two Faces of Privatization'. *Public Administration Review*. Vol.48, No.6, pp.979-987 [online] (Stable URL: <<http://www.jstor.org/stable/976994>> (accessed on 29 September/2009 )
- Morin, Marie-Laure (2005) 'Labour law and new form of corporate organization' *International Labour Review*, Vol.144, No.1. pp.5-30.
- Musa, Ali, El-Khider (1994) 'Privatization of Public enterprises in less developed countries' In: Thomas Clarke(ed). *International Privatization: Practices and Strategies*. (Berlin/New York: Walter de Gruyter) pp.354-379.
- Neal, C.Alan (1988) 'The Collective Agreement as a Public Law Instrument' in E.K. BANAKAS(ed) *United Kingdom Law in the 1980s* (London:1988)
- Neal, C.Alan (2008) 'Corporate Social Responsibility: Governance Gain or Laissez-Fair Figleaf?' *Comparative Labor Law and Policy Journal*, Vol.29, Number 4, pp.459-474
- Nellis, J (2008) 'Privatization in Africa: What has happened? What is to be done?' in Gerard Roland (ed.). *Privatization: Successes and Failures*, (New York: Colombia Printing Press), pp.109-135
- Nellis, J (2007) 'Privatization: A Summary Assessment'. *SAIS Review Vol. XXVII*, No. 2, pp.3-29
- Neumayer, Eric and Soysa, Indra de. (2007) 'Globalization, Women's Economic Rights and Forced Labour'. *The World Economy*; pp.1510-1535.
- Njola, Wanjiru (2007) *Property in Work: The Employment Relationship in the Anglo-American firm*. (Aldershot: Ashgate)
- Nola, Suzanne and Rueda, Marleen (1998) Privatisation, Labour Law and Labour Relations: A Comparative Report. *Working paper IPPRED-18* Labour Law and labour Relations Branch (Geneva: ILO)
- Novitz, Tonia (2010) 'Core Labour Standards and Conditionalties: A means by which to achieve sustainable development?' in Faundez and Tan (eds.) *International Economic Law, Globalization and Developing Countries* (Cheltenham/Northampton: Edward Elgar), pp.234-251.



- Palley, I.Thomas. (2004) 'The Economic Case for International Labour Standards'. *Cambridge Journal of Economics*, 29. pp.21-36
- Paliwala, A. (2001) 'Privatization in Developing Countries: The Governance Issue' *Law, Social Justice and Global Development (LGD)*.  
<[http://www2.warwick.ac.uk/fac/soc/law/elj/2001\\_1/paliwala/](http://www2.warwick.ac.uk/fac/soc/law/elj/2001_1/paliwala/)> )
- Pamacheeche, Fudzai and Koma Baboucarr (2007) 'Privatization in sub-Saharan Africa: an essential route to poverty alleviation' *African Integration Review* Vol.1 No.2 pp.1-22
- Pankrust, Rchard (1971) *Italian and 'native' labour during the Italian fascist occupation of Ethiopia (1935-41)* (Addis Ababa: Hailselassie I University)
- Paul, C.N. James and Clapham, Christopher (1967) *Ethiopian Constitutional Development: A Source Book*. (Vol. I) Addis Ababa: Haileselassie I University (Faculty of Law)
- Paulos, Tesfagiorgis (1972) 'Collective Bargaining and Collective Agreement with special emphasis on employees covered by collective agreement'. (LLB-.thesis: Addis Ababa), Faculty of law.
- Posusney, Marsha Pripstein and Cook, Linda J(eds) (2002) *Privatization and Labour: Responses and Consequences in Global perspective*. (Cheltenham: Edward Elgar)
- PPESA News. (2007). 'An Overview of the Privatization Process'. Vol. I No.2; A biannual and bilingual news magazine published by the information and public relations service of Privatization and Public Enterprises Supervising Agency, pp.21-34
- Price, Catherine (1994) 'Privatisation in less developed countries' in Peter M.Jackson and Catherine M.Price (eds.) *Privatisation and Regulation: a review of issues* . (London/NewYork: Longman) pp.237-254
- Rahel, Abebe (2007) 'Challenges and Opportunities in AGOA: The Case of Ethiopian Textile Sub-Sector.'[online] Available at:  
<<http://www.afdb.org/fileadmin/uploads/afdb/documents/Knowledge/25068298-FR-PAPER-RAHEL-ABEBE.PDF>> (accessed 16 June 2010).
- Rama, Martin (2001) 'The Gender implications of public sector downsizing: The reform programme of Vietnam'. *Policy Research Paper*.2573. (Washington, D.C.: World Bank)
- Ramamurti, Ravi (1992) Why are Developing Countries Privatizing? *Journal of International Business Studies*. Vol.23, No.2. pp.225-249. Stable URL:  
<<http://www.jstor.org/stable/154899>> (accessed: 29/08/2009)
- Ramandham, V.V.(ed) (1993a). *Privatization: A global Perspective*. (New York/London: Routledge)
- Ramanadham, V.V. (ed.) (1993b) *Constraints and impacts of privatization*. (London / New York: Routledge)
- Randriamaro, Zo (2006) Gender and Trade Bridge Development- Gender Overview Report, Institute of Development Studies, Brighton. (Available at: <http://www.bridge.ids.ac.uk/reports/CEPTrade-OR.pdf>).
- Redden, R.Kenneth (1968) *The Legal System of Ethiopia*.( Charlottesville: The Michie Company law publishers)
- Renn, Ortwin (2008) *Risk Governance: Coping with Uncertainty in a Complex World*. (London: Earthscan Publishing)
- Rodgers, Gerry (2005) 'The Pattern of Globalization and some implications for the pursuit of social goals'. *Working Paper No.55*. (Geneva: ILO)
- Ronald, Gerard(ed) (2008) *Privatization: Successes and Failures*, (New York: Columbia University Press)
- Sader, Frank (1995) *Privatizing Public Enterprises and Foreign Investment in Developing Countries, 1988-93*. (Washington, D.C.: The World Bank)

- Santos, Alvaro (2006) 'The World Bank's uses of the 'Rule of Law' promise in Economic Development' in Trubek, D.M. and Santos, A (eds.) *The New Law and Economic Development: A Critical Appraisal* (New York: Cambridge University Press) pp.253-300
- Scherer, Christoph. (2007) 'International Workers' Rights and Competitiveness'. *Labour, Capital and Society* 40:1&2 pp.135-159
- Schillinger, Rene Hubert (2005) 'Trade Unions in Africa: Weak but Feared' *Occasional papers: International Development Cooperation* (Bonn: Friedrich-Ebert-Stiftung).
- Schregle, Johannes, (1993) 'Collective Bargaining and Workers' Participation: The Position of the ILO'. *Comparative Labour Law Journal*, Vol.14, Issue.4, pp.431-444.
- Schregle, Johannes (1976) 'Workers' Participation in decisions within undertakings'. *International Labour Review*, Vol.113, No.1, p.1-15.
- Selvam, Jesiah (2008) 'Impact of Privatization on Management Issues: empirical Evidences from Ethiopia' *Journal of Management Research*, Vol.8, No.1, pp.112-120
- Selvam, Jesiah (2007) 'Privatisation Programme in Ethiopia: is the cause justified' *African Renaissance*, Vol.No.1, 1<sup>st</sup> quarter (available at: <http://ssrn.com/abstract=987606>)
- Selvam, Jesiah and Meenakshi Iyappan, T (2005) 'Privatisation and Capital Accumulation: Empirical evidence from Ethiopia.' *African Journal of Economic Policy*, Vol.12, No.1 (available at: <http://ssrn.com/abstract=984381>)
- Sen, Amartya (1999) *Development as Freedom*. (New York: Oxford University Press)
- Sen, Ratna (2012) 'Employee participation in India' *Working Paper No.40* (Geneva: ILO)
- Seyoum, Gebreegziabher (1969) *The Development of Some Institutions Concerned with Labour Relations in Ethiopia*. ( Addis Ababa: Haileselassie I University)
- Sheehan, Peter (2008) 'Beyond Industrialization: New Approaches to Development Strategy Based on the Service Sector. *Research Paper No.2008/60*. (United Nations University: World Institute for Development Economics Research), pp.1-18
- Shutt, Harry (2010) *Beyond the Profits System: possibilities for a post-capitalist era*. (London/ New York: Zed Books).
- Singer, Norman J. (1970): 'Modernization of Law in Ethiopia: A Study in Process and Personal Values' *Harvard International Law Journal*, Vol. 11, p. 73-125.
- Slomp, Hans (1996) *Between bargaining and politics; an introduction to European labour relations*. (Westport/ London; Praeger)
- Sommer, Monika M, (2003) 'National Labour Law Profile: Federal Democratic Republic of Ethiopia'[online] Available at: <http://www.ilo.org/public/english/dialogue/ifpdial/info/national/eth.htm>
- Sonebe, Tetsushi, Akoten, E, John and Otsuka, Keijiro. (2007) 'Development of Industrial Culsters in Ethiopia: How different from East Asian Experience?' Available at; <[http://www.fasid.or.jp/daigakuin/fa\\_gr/kyojyu/pdf/discussion/2009-04-001.pdf](http://www.fasid.or.jp/daigakuin/fa_gr/kyojyu/pdf/discussion/2009-04-001.pdf)>
- Standing, Guy (2010) 'Global Monitor: The International Labour Organization' *New Political Economy*. Vol.15, No.2, pp.307-318
- Stiglitz, Joseph (2002) *Globalization and its discontents*. (London: Penguin Books).
- Stone, V. Katherine (2008) 'Flexibilization, Globalization and Privatization: three Challenges to labour rights in our time', in Bercussion, Brian and Estlund, Cynthia (eds.), *Regulating Labour in the Wake of Globalization: New Challenges, New Institutions*. (Portland: Hart Publishing), pp.115-137
- Stone, V. Katherine (1999) 'To the Yukon and Beyond: Local Labourers in a Global Labour Market'. 3 *J of Small and Emerging Business Law* 93, pp.1-37
- Stutz, Robert (1962) *The Developing Industrial Relations System in Ethiopia*.( Addis Ababa: Institute of Ethiopian Studies )

- Tadele *et al* (2007) The impact of the COMESA and EPA trade liberalization on workers of Textiles and Leather industries in Ethiopia, A study prepared for the Confederation of the Ethiopian Trade Union (Addis Ababa :Ethiopia).
- Tamiru, Wondimagegn, Yohannes, Heruy and Yehenew, Tsegaye (2005) *Ethiopian Labour Legislation (ELL)* ( The Netherlands: Kluwer Law International)
- Tatahi, Motasam (2006). *Privatization Performance in major European Countries since 1980*. (New York: Pal grave Macmillan)
- Teffera, Haileselassie (2007) *Industrial and Civil Service Administration and Development in Ethiopia* (in Amharic). (Addis Ababa: Forum for Social Studies)
- Tekle, Tzehainesh (2010) 'Labour law and worker protection in the South: An evolving tension between models and reality.' in Tzehainesh Tekle(ed) *Labour law and worker protection in developing countries*. (Oxford/ Portland: Hart publishing), pp. 3-47
- Thirkell, J.E.M, Petkov, K. and Vickerstaff, S.A.(1998). *The Transformation of Labour Relations: Restructuring and privatization in Eastern Europe and Russia*.( Oxford/New York: Oxford University Press)
- Theron, Jan *et al*.(2007) Globalization, the impact of trade liberalization, and labour law: the case of South Africa, *Discussion paper series No.178*, (Geneva: Institute of Labour Studies)
- Thomas, Albert.(1996) 'The International Labour Organization: its origins, developments and future'. *International Labour Review*. Vol.135, No.3-4, pp.261-276
- Transitional Government of Ethiopia (TGE) (1991) *The Economic Policy of the Transitional Government* (Addis Ababa: Ethiopia)
- Twining, William (2009) *General Jurisprudence: Understanding of law from global perspective* (Cambridge: Cambridge University Press)
- United Nations Conference on Trade and Development (UNCTAD) (2011) 'Report on the implementation of the investment policy review: Ethiopia'. [online] available at: <[www.unctad.org/en/docs/diaepcb201007\\_en.pdf](http://www.unctad.org/en/docs/diaepcb201007_en.pdf)> (accessed on 13 July 2012).
- Vanderlinden, J. (1966) 'Civil and Common law influences on the developing law of Ethiopia' *Buffalo Law Review*, Vol.16, Issue, 1, pp.250-266
- Vestal, Theodore G. (2003) *Ethiopia: A Post-Cold War State* (Westport/London: Praeger)
- Vickers, John and Yarrow, George. (1988) *Privatization: An Economic Analysis*. (Cambridge: The MIT press)
- Vickers, John and Wright, Vincent.(1989) *The Politics of Privatization in Western Europe*. (London: Frank Cass)
- Visser, Jelle (2006) 'Union membership statistics in 24 countries' *Monthly Labor Review*, January, pp. 38-49
- Voice of Labour. (1970) 'The Ethiopian Labour Movement: the Aftermath of Birth'. (Special Issue) (Addis Ababa: Institute of Ethiopian Studies)
- Wedderburn, Lord (2003) 'Freedom of Association or Right to Organize?' *Industrial Relation Journal*. Pp244-254
- Weiss, Manfred (1995) *Labour Law and Industrial Relations in Germany*. (Deventer: Kluwer Law and Taxation Publishers)
- Wellis, Don. (2007) 'Corporate Code of Conduct, Non-Governmental Organizations and Regulation of International Labour Standards'. *Global Social Policy*. Vol.7 (1), pp.51-74
- Wendesen, Birhanu. (2008) 'Anbessa within the prospect of export': In a Special Issue Magazine published by Anbessa Share Company in commemoration of the Ethiopian Millennium in 2008, pp.32-33.

- Wheeler Jeff and Goddard Keith (2013) 'Assessment of Ethiopia's Labour Inspection System' (Bureau of International Labour Affairs: U.S. Department of Labor)
- Williamson, J. (2000) 'What should the World Bank think about the Washington Consensus?' *The World Bank Research Observer*, Vol. 15, No.2, pp.251-264.
- World Bank (2004)'Determinants of Private Sector Growth in Ethiopia's Urban Industry: The Role of Investment Climate'. *Investment climate assessment paper*. Washington, D.C.: The World Bank [online] (Available at: <<http://www.ethiopia.gov.et/English/MOTI/Resources/Documents/investment%20climate%20in%20Ethiopia.PDF>>; accessed on 10 June2011)
- World Bank (2000) *Reforming Business-Related Laws to Promote Private Sector Development: The World Bank Experience in Africa* (Washington D.C.: World Bank)
- World Bank (1987) *Ethiopia: Recent Economic Developments and Prospects for Recovery and Growth*. Report No.5829ET (Washington D.C.: World Bank)
- World Commission on the Social Dimension of Globalization (2004) *A fair Globalization: Creating opportunity for all*. (Geneva; ILO)
- Wright, Vincent(ed). (1994) *Privatization in Western Europe: Pressures, Problems and Paradoxes*. (Pinter Publishers)
- Yarrow, George (1993) 'Privatization in the UK' In: Ramanadham, V.V. (ed.) (1993b) *Constraints and impacts of privatization*. (London / New York: Routledge) pp.64-80.
- Young A, Ralph (1995) 'Privatization: African perspectives'. In: Cook, Paul and Kirkpatrick, Colin (eds.) *Privatization policy and performance: International perspectives*. (New York/London/ Toronto: Harvester Wheatsheaf), pp.163-177
- Zhou, Mei-Xiang and Cheng, Kou-Tai (2007) 'Ownership, Competition, Management and Labour in Public Enterprises Transition: Literature Review'. *Public Administration and Policy*, No.44, pp.129-180

## **Annex I Selected extracts from the collective agreements of the privatised enterprises (pre- and post-privatisation)**

### **COMPANY FT**

#### **A. Pre-privatisation Period**

Art. 3(2) (2) - the enterprise shall cooperate with governmental and private entities that have interest in upgrading the knowledge and skill of the labour force.

Art. 11(1) - in cases where the employee has grievance as regard a disciplinary measure taken against him, he shall, upon notifying the trade union of his intention to challenge the measure, file his complaint to the management within three days.

Art. 12(2) - on the basis of the recommendation from the 'Promotion Committee' to be established by the management of the enterprise, the General Manager shall have the final decision on the promotion. The promotion shall be effective upon the General Manager's approval.

Art.12 (8) - the 'Promotion Committee' shall be composed of the following:

12(8) (1)-the Personnel Manager of the enterprise- **Chairperson**;

12(8) (2) - the Head of the Department where the promotion is sought- **Member**;

12(8) (3) - a representative of the trade union-**Member**

12(8) (4)-Personnel Section Head of the enterprise- **Secretary**

Art.14 (1) in cases where an employee is selected for training by the management of the enterprise, his entitlements shall be determined on the basis of the Administrative Manual.

Art.14(2)-in cases where a request is submitted from Ministry of Labour and Social Affairs or the trade union organisation to train the employees, the enterprise shall cooperate in such an endeavour.

Art.14 (3)-any employee who was given training shall be obliged to render proportionate service to the enterprise (*details of implementation shall be regulated by internal rules*).

Art.16 (1) - the enterprise and the trade union shall cooperate in bringing about productivity and efficiency in the enterprise's production system.

Art.16 (2) - with a view to cultivate a competitive spirit among the labour force, the employer shall reward better performing employees. Performance based incentive scheme will be worked out.

Art.32 (1) - where the enterprise generates a net profit of Birr 150,000 or more a salary increment will be accorded as per the salary scale of the enterprise.

Art.32 (2) - the salary increment shall be granted to employees who have at least one year of service.

Art.32 (3) - whenever salary increment is due, bonus shall also be payable.

Art.33. Bonus shall be payable after the necessary deductions for production cost, tax and other expenses are made and in the following manner:

-net profit of Birr 150,000 one month's salary;

-net profit of more than Birr 200,000 one month and half salary;

-where net profit proved to be less than Birr 150,000, 10% of the net profit shall be set aside for bonus purposes.

-eligibility for bonus is conditional upon obtaining three points out of five points on job performance evaluation.

### ***B. Post-privatisation collective agreement***

Art. 3(2) (2) - the enterprise shall cooperate with governmental and private entities that have interest in upgrading the knowledge and skill of the labour force.

Art. 11(1) - in cases where the employee has grievance as regards a disciplinary measure taken against him, he shall, upon notifying the trade union his intention to challenge the measure, file his complaint to the management within three days.

Art.11 (2) - the General Manager of the enterprise shall render final decision on the matter.

Art. 12(1) - without prejudice to the power of the employer to bring in new employees outside of the enterprise, it shall issue internal notice for employees of the enterprise to compete for a promotion to a higher post. The trade union shall participate in evaluating the candidates for the post to which promotion is sought.

Art. 12(4) - the elements to be considered for the competition and the weight thereof shall be determined by the parties in due course.

Art.14 (1) - for trainings organised by the employer, the duration and benefits shall be regulated in accordance with the Administrative Manual of the enterprise.

Art.14(2)-in cases where a request from Ministry of Labour and Social Affairs or the trade union organisation to train the employees is submitted, the enterprise shall cooperate in such an endeavour.

Art.14 (3)-any employee who was given training shall be obliged to render proportionate service to the enterprise (*details of implementation shall be regulated by internal rules*).

Art.16 (1) - the enterprise and the trade union shall cooperate in bringing about productivity and efficiency in the enterprise's production system.

Art.16 (2) - with a view to cultivate a competitive spirit among the labour force, the employer shall reward better performing employees. Performance based incentive scheme will be worked out.

Art.32 (1) - where the enterprise generates a net profit of Birr 1, 000,000 or more a salary increment will be accorded as per the salary scale of the Company.

Art.32 (2) - the salary increment shall be granted to employees who have at least one year of service.

Art.33 –bonuses shall be payable to the employees where a net profit of Birr 500,000 or more has been registered in a budget year. In such cases, 10% of the net profit shall be set aside for bonus purposes.

## **COMPANY DT**

### **A. Pre-privatisation period**

Art. 5(18) - priority to fill vacant position in the enterprises shall be offered to the employees working there.

Art.5 (19) – in cases where the enterprise promotes, transfers, dismisses and recruits employees such measures shall be copied to the trade union.

Art.5 (20)-the trade union shall participate in promotion, recruitment, transfer, disciplining and reduction of employees.

Art.7(4) - in cases where the enterprise takes disciplinary measure against an employee, the ground for the measure and the nature of the penalty shall be notified to the concerned employee with a copy to the trade union.

Art.7 (7)-where job orders are received by the management from customers, the trade union shall be informed about it.

Art.7 (8) - the enterprise shall establish a promotion and recruitment committee in which the trade union shall be represented.

Art.11(5)(4)- where an employee decides to pursue further education, the enterprise shall cover 70% of the educational expense provided that the education is directly related to the job he performs.

The employee shall have the following obligations:

-If he resigns after one year of education, he shall refund the employer for the educational expense of one year.

-If he resigns after two years of education, he shall refund the employer educational expense of two years.

-In all other cases, the employee shall render two years post-training service for one year education or shall refund the total cost of education to the employer.

Art.11(6)(1)- where an opportunity for further education abroad is obtained and the enterprise is convinced that such an education is relevant to the operational requirement of the enterprise, the employees shall be granted a scholarship on competitive basis.

Art.11 (6) (2) - local and in-house trainings shall be organised to the employees.

Art.11 (6) (3) - the enterprise shall establish an in-house training centre. Prior to offering training to the employee, the latter shall be required to sign a contract of commitment requiring him to serve the enterprise for fixed years after completion of training. The period of post-training service shall be formulated by the management of the enterprise.

Art. 21(9) - evaluation of competition among employees for promotion shall be conducted in a committee where a trade union representative is included.

Art. 21(10)-when the successful candidate for the promotion is declared, a copy of such a declaration shall be communicated to the trade union.

Art. 28 - incentive schemes for the employees shall be drawn up in consultation with the trade union.

Art.43 (1) - where the enterprise generates a net profit of more than Birr 500,000, the employees shall receive bonuses. However, they will not be entitled to wage increments.

Art.43(2)- where the amount of the net profit is between Birr 1,000,000 and 1,500, 000, each employee shall receive one month's wage in the form of a bonus and a wage increment based on the salary scale of the company.

Art.43 (3)- where the amount of the net profit is more than Birr 1,500,000, each employee shall receive one month and a half wage in the form of bonus and a wage increment in accordance with the company's salary scale. However, employees eligible for such a benefit are those whose performance evaluation is more than three out of five points.

Art.43 (5)-employees who were dismissed on disciplinary grounds would not be eligible for those entitlements.

Art.43 (6)-a minimum of six months service in the budget year is a precondition to obtaining a bonus.

### ***B. Post-privatisation collective agreement***

Art. 5(18) - the trade union shall participate in issues relating to promotion and reduction of the labour force.

Art. 5(22) - the enterprise shall make consultations with the trade union in matters that generally affect the interest of the labour force.

Art. 5(23)-the enterprise shall inform the trade union on the company's performance as regards profit and loss.

Art.11(6)(1)- where an opportunity for further education abroad is obtained and the enterprise is convinced that such an education is relevant to the operational requirement of the enterprise, the employees shall be granted a scholarship on competitive basis.

Art.11 (6) (2) - local and in-house trainings shall be offered to the employees.

Art.11 (6) (3) - the enterprise shall establish an in-house training centre. Prior to offering training to the employee, the latter shall be required to sign a contract of commitment requiring him to serve the employer for fixed years after completion of the training.

Art.21 (5) - where an employee applies for promotion and the 'Promotion Committee' recommends the same; such promotion shall be given effect upon approval by the General Manager.



Art.42 (1) - where the enterprise generates a net profit of more than Birr 1,000,000 in a budget year, 13% of such a profit shall be distributed to the employees in the form of bonuses.

Art.42 (2) - where the amount of the net profit is more than Birr 2,000,000, 14% of such a profit shall be distributed to the employees in the form of bonuses.

Art. 42(3) - where the amount of the net profit is more than Birr 3,000,000, 15% of such a profit shall be distributed to the employees in the form of bonuses.

Art. 42(4) - where the amount of the net profit is more than Birr 4,000,000, 16% of such a profit shall be distributed to the employees in the form of bonuses.

Art. 42(5) - where the amount of the net profit is more than Birr 4,500,000, wage increment shall be made to the employees as per the company's salary scale.

Art. 42(6) - where the amount of the net profit is more than Birr 5,000,000, 17% of such a profit shall be distributed to the employees in the form of bonuses.

Art. 42(7) - where the amount of the net profit is more than Birr 6,000,000, 18% of such a profit shall be distributed to the employees in the form of bonuses.

Art. 42(8) - where the amount of the net profit is more than Birr 7,000,000, 19% of such a profit shall be distributed to the employees in the form of bonuses.

Art. 42(9) - where the amount of the net profit is more than Birr 8,000,000, 20% of such a profit shall be distributed to the employees in the form of bonuses.

## **COMPANY DL**

### **A. Pre-privatisation Period**

Art.6 (5) - the employer shall promptly respond to the grievances of employees submitted either individually or through the trade union.

Art. 6(6) - with a view to maintaining industrial peace, the employer shall formulate clear Work Rules for the effective use of the labour force and employment of cost saving technologies.

Art.6 (15) -the employer shall provide office space and stationary materials to the trade union as may be necessary.

Art.6 (21) -the employer shall allow and encourage employees to pursue higher education in fields relevant to their job.

Art. 12(4) - promotions shall be examined and recommended by a Promotion Committee in which two representatives of the trade union shall be members of such a committee.

Art.12 (5) - in order to have smooth management and labour relationship, the trade union shall be involved in formulating structural adjustment measures and salary scale studies; and the implementation of the same.

Art.14(2)- for an employee who pursue Technical and Vocational Education and Training at public or private TVET institutes, the employer shall reimburse 75% of the training expense provided that the management consented to the training and the employee scored a pass grade and submit the receipt for payment.

Art.14(3)- for college and university education, reimbursement for 75% of the training expense shall be made where the management has verified that the education the employee pursues is closely related to his job; payment receipts are submitted; and where the employee scored at least 'D ' for the courses he registered.

Art.14 (5)-an employee who was sponsored on the basis of the provisions above shall be required to serve one year to the enterprise after the completion of the studies. If he failed to serve one year after completion of studies, the employee will be required to refund the amount paid by the employer.

Art.15 (1) - in order to upgrade the skill and qualification of the employee, the employer shall arrange local and international trainings to the extent the resource of the enterprise permits. The employee shall be entitled to wages and other benefits while at the training.

Art.15 (2)-in cases where training was organised by the government or non governmental entities, the employer shall cooperate in such an endeavour.

Art.15 (3)-where the employer arranges local or international trainings to the employees, it shall cover the expenses thereof. However, this cost covering commitment does not include for trainings arranged by the trade union or the employee concerned.

Art.31 (1) -where the enterprise generated a *gross profit* of more than Birr 1,000,000 a wage increment shall be due to the employees. However an employee who earned a job performance score below 2.5 shall not be eligible. Employees who earned more than 2.5 job performance score shall be eligible for the wage increment. The detailed implementation of such a scheme will be worked out in consultation with the trade union at the enterprise.

Art.31 (2) - for purposes of eligibility, the job performance score of an employee shall be the average performance evaluation for the budget year.

Art.31 (3) -without prejudice to the sub-article hereinabove, where an employee's performance evaluation was filled only once in a year that will be taken as an average.

Art.31(4)- where for a justified reason an employee's performance evaluation report was not filled in the budget year , his evaluation report of the previous year will be considered.

Art.31 (5)-wage increment shall be made in accordance with the salary scale of the company.

Art. 31(6)-in order to be eligible for wage increment an employee should serve a minimum of nine months in the budget year.

Art. 33(1) - The granting of bonus at the enterprise shall be implemented in the following manner.

Expected amount of gross profit (in Birr)	Job Performance Evaluation score out of 5 (4.5. and above)	Job Performance Evaluation score out of 5 (3.5-4.4)	Job Performance Evaluation score out of 5 (2.5-3.4)	Job Performance Evaluation score out of 5 (below 2.5)
500,000-1,000,000	One month's wage	75% of one month's wage	50% of one month's wage	Non-eligible
1,000,000-2,000,000	150% of one month's wage	One month's wage	75% of one month's wage	Non-eligible
Above 2,000,000	200% of one month's wage	150% of one month's wage	One month's wage	Non-eligible

Art.41 (4) - the trade union shall be represented in a Disciplinary Committee membership which is entrusted to investigate alleged misdeeds of the employees.

Art.41 (5) - the recommendation of the Disciplinary Committee shall be approved by the General Manager or an official delegated by him for final action.

Art.45 (1)-the enterprise shall involve the labour force in formulating annual operational plans in order to cultivate a sense of ownership by the employees in implementing the same.

Art.48 (1)-in order to implement the disciplinary measures which are drawn up by the collective agreement, five persons Disciplinary Committee shall be established in the enterprise. From among the five members, the Chairperson, the Secretary and another member shall be appointed by the enterprise while the trade union shall nominate two for membership in the Disciplinary Committee. Decisions shall be passed by a majority vote.

Art.48 (2) - the objective of the establishment of a Disciplinary Committee with the participation of representatives from the trade union is to ensure that the administration of the enterprise is transparent, democratic and participatory.

### ***B. Post-privatisation collective agreement***

Art. 5(2) - the enterprise shall have the power to recruit, train, transfer, promote, discipline, dismiss and suspend employees.

Art.6 (5) - the employer shall respond to any proper and lawful grievances of the employees submitted either individually or through the trade union within seven days from the date of submission.

Art. 6(6) - with a view to maintaining industrial peace, the employer shall formulate clear Work Rules for the effective use of the labour force and employment of cost saving technologies.

Art.6 (15)-the employer shall provide an office space to the trade union and shall cover expenses for stationary material to the office.

Art.12 (4) - a Promotion Committee shall be established by the General Manager. Where the General Manager is doubtful as to the appropriateness of the recommendation of the Promotion Committee, it may seek the opinion of the trade union.

Art. 12(5)-studies on organisational structure and salary scale of the enterprise shall be undertaken by the management staff.

Art. 12(6) - without prejudice to sub-article 12(4) above, promotion shall be implemented in accordance with the rules and procedures of the enterprise and the provisions of the collective agreement.

Art.14(2)- in cases where the enterprise upon its initiative arranges trainings for the employees, the enterprise shall cover the full cost for such an arrangement. For a trainee-employee who failed in his exams only once, his expenses will still be covered by the employer. However, repeated failure shall result in withholding of commitment by the enterprise.

-where an employee who was trained by an expense covered from the employer terminates his service prior to rendering two years' service, he shall refund the employer.

Art.15 (1) - in order to upgrade the skill and qualification of the employees, the employer shall arrange local and international trainings to the extent the resource of the enterprise permits. The employee shall be entitled to wages and other benefits while at the training.

Art.15 (2)-in cases where training to the employees was organised by the government or non-governmental entities, the employer shall cooperate in such an endeavour.

Art.15 (4)-where the employer allows the employee to attend local or international trainings, it shall cover the expenses thereof. However, this cost covering commitment does not include for trainings arranged by the trade union or the employee concerned.

Art.31 (1)-where the enterprise generated a net profit of more than Birr 1,000,000 a wage increment is due to the employees. But an employee who earned a job performance score below 2.5 shall not be a beneficiary of the wage increment scheme. The detailed implementation of such a scheme will be effected in accordance with the enterprise's Work Rules.

Art.31 (2) - for purposes of eligibility, the job performance score of an employee shall be an average of one year performance evaluation during the budget year.

Art.31 (3)-without prejudice to the sub-article 31(2) hereinabove, where an employee's performance evaluation was filled only once in a year that will be considered as an average.

Art.31(4)- where for a justified reason an employee's performance evaluation report was not filled in the budget year , his evaluation report for the previous year will be taken into account.

Art.31 (5)-wage increment shall be implemented in accordance with the salary scale of the company.

Art. 31(6)-in order to be eligible for wage increment an employee should serve a minimum of nine months in the budget year.

Art.33-in order to enhance productivity, where the enterprise registers a *gross profit* of Birr 500,000 as verified by the Finance Department, the Managing Board of the enterprise shall set aside a fixed sum to be distributed in the form of bonuses to the employees proportionate to their job performance evaluation report.

Art.41 (4)-the General Manager or the official delegated by him shall approve the recommendation of the Disciplinary Committee. The party aggrieved by the decision shall take his case on appeal based on the provisions of the labour law.

Art.48 (1) - in order to implement the disciplinary issues spelt out in the present collective agreement, the management shall establish a ‘Disciplinary Committee’.

## **COMPANY FL**

### **A. Pre-privatisation period**

Art.8 (1) - the enterprise shall not interfere in the activities of the trade union nor shall it discriminate against union leaders in any manner whatsoever.

Art.8 (2)-any reprimand or penalty imposed on any employee shall be copied to the trade union.

Art.11 (2) - the enterprise shall, prior to implementing new methods of work and Work Rules, notify the trade union about its plans.

Art.13 (1) - in order to upgrade the skill and qualification of the employees, the employer shall arrange local and international trainings to the employees.

Art. 13(2)-in cases where the enterprise offers training opportunity to an employee, the latter should accept the training as long as his benefits and job positions remain unaffected.

Art. 13(3)-where the enterprise arranges training abroad, payment of wage shall be made in the following manner:

- full wage of the employee shall be paid for the first six months;
- 50% of the wage for the remaining six months.

Art. 13(4)-in cases where training to the employees was organised by entities other than the enterprise, the employer shall cooperate in such an endeavour.

Art.13(8)- for employees who pursue vocational training or distance education, the enterprise shall cover 50% of the training expenses provided that the training closely relates to the job the employee performs and the enterprise has consented in advance to the programme.

Art.13 (9) - covering of expenses shall be made through reimbursing the employee upon presentation of a certificate showing a pass grade together with the payment receipt.

Art.15 (4) - when promotion is given to an employee, the trade union shall be consulted about it.

Art.15 (10) - in case an employee has grievances as to the manner a promotion was processed, the enterprise and the trade union shall resolve the issue through consultation.

Art.19 (1) - wage increment shall be made when the enterprise registers a net profit in the same budget year. However, the net profit shall be at least twice in amount to the amount to be set aside for wage increment.

Art. 19(2) - net profit shall mean the residual amount after cost of production and government taxes are deducted.

Art.19 (5) - in order to be eligible for wage increment, an employee should earn a minimum of 2.5 job performance appraisal.

Art.19(6)-any transferred or newly recruited employee who joins the enterprise but has a service below nine months in the budget year shall not be eligible for a wage increment.

Art.33(1)- with a view to establishing smooth management and labour relationship towards enhancing productivity, consultations between the enterprise and the trade union shall be undertaken at the initiation of the management or the trade union.

Art.33 (2) - not more than five trade union representatives shall attend such consultations.

Art.33 (3)-a week prior to the consultative meeting, the enterprise and the union shall exchange agenda for discussion. Unless the parties agree otherwise, no item other than those agreed shall be discussed.

Art.33 (4)-the minutes of the meeting or the items on which agreement was reached shall be submitted within seven days from the date of the meeting to the concerned officials of the parties for signature.

Art.33 (5)-whenever necessary, items which were agreed through such a consultative meeting will be integral parts of the collective agreement upon being registered before the pertinent organ.

Art.34(2)-when the enterprise considers it necessary, it may establish a Disciplinary Committee in which representatives of the management and the trade union shall be consisted in so that alleged misdeeds of the employees shall be investigated and punitive measures recommended.

Art.38- where the enterprise registers a profit in a budget year, bonus shall be accorded to the employees as follows:

Art.38 (1) (1)-where the profit generated amounts to a *gross profit* of Birr 1,500,000-3,000,000, Birr 150 shall be granted to each employee in the form of bonuses.

Art.38 (1) (2) - for a gross profit amounting to Birr 3,000,001-5,000,000, Birr 300 shall be granted to each employee in the form of bonuses.

Art.38 (1) (3) - for a gross profit amounting to Birr 5,000,000-10,000,000, Birr 400 shall be granted to each employee in the form of bonuses.

Art.38(3)- except for those employees who are separated from employment due to death or retirement to whom a nine month service is sufficient in order to be eligible for bonus, one year

service and 2.5 out of 5.0 points job performance appraisal is a precondition for eligibility to bonuses.

***C. post-privatisation collective agreement***

Art.6(1)-the enterprise shall have the exclusive power to draw up and revise operational plans, recruit, assign, transfer, promote, discipline and suspend employees.

Art.7 (32)-any letter issued by the enterprise to an employee shall be copied to the trade union.

Art.12 (4) (5)-the ‘Promotion Committee’<sup>197</sup> at the enterprise shall comprise the following members:

- the Administrative Section Head of the enterprise-**Chairperson**
- a representative of the General Manager-**member**
- the Section Head of the position in which the promotion is sought-**member**

Art.12 (5) (1) - in order to upgrade the skill and qualification of the employee, the employer shall arrange local and international trainings to the employees.

Art.12 (5) (2)-taking into account the operational requirements of the enterprise, a training programme shall be drawn up with a view to developing the employees’ skills.

Art. 12(5) (3)-where the enterprise arranges training abroad, payment of wage shall be made in the following manner:

- full wage of the employee shall be paid for the first seven months;
- 50% of the wage for the remaining five months.

Art.12(5)(4)-where an employee is offered training abroad, he should, prior to his departure, enter a commitment and provide a guarantor to render service to the enterprise after completion of training in the following manner:

- for a training between six to nine months-three years of service
- for a training that lasts more than nine months-five years of service.
- where he fails to observe such a commitment, he shall refund the enterprise expenses incurred in connection with transportation, training expenses, wage and other allowances.

Art.12(6)(2)- for employees who pursue college education on their private initiative, the enterprise shall cover 70%<sup>198</sup> of the employee’s educational expense provided that the education is closely related to the job the employee performs and the employee scores satisfactory grade.

Art.12 (6) (5) - the employee shall submit a copy of his transcript showing his academic performance to the enterprise every semester. If he fails to submit, he will not be paid for the next semester.

Art.25(1)-where the total sum up of net profit generated amounts to Birr 3,000,000<sup>199</sup> one month’s wage of the employee shall be granted in the form of bonus.

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<sup>197</sup> The composition of the Committee was amended by the collective agreement signed in September 2011 in which a representative of the trade union was included to the committee.

<sup>198</sup> Based on the second collective agreement signed in September 2011, full cost coverage (100%) has been committed by the enterprise provided that the training is undertaken in *public colleges*.

Art.25(2)- except for those employees who are separated from employment due to death or retirement to whom a nine month service is sufficient in order to be eligible for bonus, one year service is a precondition for eligibility towards bonus.

Art.27(1)- where the total sum up of net profit generated amounts to Birr 3,000,000<sup>200</sup> employees shall be accorded wage increments as per the company's salary scale.

Art.27(2)- employees who are eligible for the wage increment are those who scored 2.5 points in job performance appraisal and who served one full year of service in the budget year. New recruits who served below nine months are not eligible for the benefit.

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<sup>199</sup> Based on the collective agreement signed in September 2011, the minimum amount has been increased to Birr 8,000,000

<sup>200</sup> Based on the collective agreement signed in September 2011, the minimum amount has been increased to Birr 8,000,000



## **Annex II Selected extracts from the contents of the collective agreements at the two State-owned enterprises.**

### **1. COMPANY SL**

Art. 6 the enterprise and the trade union may, whenever necessary, undertake joint consultative meetings.

Art.8 (15) - the enterprise shall notify the labour force in the form of report on the overall activities of the enterprise.

Art. 11(1) - the labour force shall be involved in plan and performance evaluation of the enterprise's production process.

Art.14- the management of the enterprise and the trade union shall regularly undertake consultations on issues such as production and sales, employees' discipline; and employees' promotion. One of the parties may call for a meeting whenever it deemed necessary.

Art.15 (2) (2) - the trade union shall be notified in advance whenever the management intends to undertake recruitment of new employees.

Art.16(2)(1)-whenever the enterprise intends to promote employees to a higher post within the enterprise's internal structure, a 'Promotion Committee' that will evaluate candidates and submit recommendation to the General Manager shall be established.

Art.16 (2) (2) - the Promotion Committee shall comprise of the following members:

- the Head of the Department in which the post for promotion is sought- **Chairperson**;
- the Administrative Manager of the enterprise- **Member**;
- a representative of the General Manager- **Member**
  - a representative of the trade union-**Member**
- the Personnel Section Head of the enterprise- **Secretary and non-voting member**

Art.16 (4) (3) - no promotion shall be effected without prior evaluation and recommendation from the 'Promotion Committee'.

Art.21 (2) (1)-where the education or training the employee intends to pursue has been determined to be beneficial to the enterprise's overall activity, leave with pay shall be granted to the employee.

Art.23 (1) (3) - for an employee who pursue technical and vocational trainings at public TVET institutes, the employer shall reimburse 75% of the training cost provided that the management consented to the training and where the management has determined that the education the employee pursues is closely related to his job, and the employee earned a satisfactory result and submit receipt of the payment made.

Art.23 (1) (4) - for college and university education, reimbursement of 75% of the training expense shall be effected upon submission of payment receipts. Reimbursement shall not be made for courses to which 'Fail' grades are recorded.

Art.23(1)(5)-an employee who was sponsored on the basis of the provisions above shall be required to serve two years to the enterprise after the completion of the studies. If the employee fails to serve the enterprise after completion of studies, he will be obligated to refund the amount paid by the employer for the training. Where the employee resigns prior to completion of studies, payment made up to the period of resignation shall be refunded to the employer.

Art.23 (1) (6) - any employee who intends to pursue higher education shall, prior to registration, obtain a written consent from the company.

Art.23(1)(7)- permission to pursue higher education shall be granted only when it has been determined, by the relevant management group, that the study intended to be pursued is closely related to the job the employee is performing.

Art.23 (2) (2)-training needs from the various departments shall be submitted to the Administrative department during budget preparation.

Art.23 (2) (3) - the training need and plan shall be approved by the General Manager of the Company.

Art.23 (2) (4)-participants for trainings shall be selected on the basis of the company's Administrative Manual.

Art.23 (2) (5)-selection of participants for training shall be based on criteria such as level of education, age, and the specific requirements of the training institute.

Art.23 (2) (6) - the company shall cover the education and transport cost for the trainee-employee.

Art.23 (2) (7) - the trainee shall be required to submit written report about the training he attended.

Art.23(2)(8)-any employee who obtained an opportunity for training abroad shall serve double of the training period to the company or else refund the company all costs associated with the training. No extension of period of training or change of field of training shall be made without the consent of the company.

Art.23 (2) (9)-unless agreed otherwise, the company shall pay the wages to the employee for the duration of the training.

Art.28 (3) (4)-where the company generates a net profit of Birr 600,000-750,000 in a budget year, 75% of the employee's wage shall be granted in the form of bonus. Where the net profit generated amounts to more than Birr 750,000 and less than Birr 1,000,000, the amount of bonus due to the employee shall be one month's wage.

Art.28(4)(2)-where the company generates a net profit of more than Birr 1,000,000, the employee shall be entitled to one month wage in the form of bonus and a wage increment.

Art.28 (4)(3)- the wage increment granted to each employee shall be proportionate to the performance evaluation report of every employee. The company and the trade union shall work out detailed rules of implementation in this regard.

Art.28 (5) (3)-bonus and wage increment shall not be granted to new employees who do not render service for twelve months in a budget year.

Art.28 (5) (4) - employees who were subjected to serious disciplinary measures shall be denied bonus and wage increment during the budget year when the misdeed was committed.

Art.32(5)(1)- where an employee is suspended due to an alleged misbehaviour, a ‘Discipline Committee’ , in which a trade union representative shall be included shall investigate the allegation and recommend what it deems appropriate.

Art.32 (5) (2) - the General Manager shall hand down a final decision based on the recommendation of the Disciplinary Committee.

## **2. COMPANY ST**

Art.2(1)-the company shall recognise the trade union as a sole representative of the employees in all matters relating to working conditions, collective agreement and labour disputes.

Art.2 (2) - the company shall not support, encourage or entertain any group that intends to challenge the very existence of the trade union.

Art.5 (1) - with a view to attaining improved productive and administrative system, the trade union shall be allowed to undertake consultations with the management.

Art. 5(2) - the company shall notify the trade union prior to implementing the Work Rules that may affect the employees.

Art.5 (3)-the trade union shall be entitled to be represented in recruitment and promotion committees. However, the management shall not be restricted from proceeding with its activities even if the trade union is not willing to be part of the committees. Nevertheless, if the trade union presents justified reason for non-participation, the process shall be suspended and will be resumed when the trade union is ready to engage.

Art.5 (6) - the company shall provide the trade union with the quarterly plan of the company at the beginning of the budget year and the performance evaluation report of the year at the end of the budget year.

Art.5 (8) - whenever Work Rules and internal directives are issued and studies relating to the labour force are conducted a copy of the same shall be delivered to the trade union.

Art.7 (9) - any recruitment, promotion or disciplinary measure taken against an employee shall be communicated to the trade union.

Art.7(20)- the enterprise shall be duty bound provide the trade union with quarterly, bi-annual and yearly financial reports and profit and loss statements.

Art.8 (1)-the enterprise shall made available sufficient office space and facilities to the trade union. Telephone lines and a communication cost amounting to Birr 70 per month shall be covered by the enterprise.

Art.9(5)-the trade union shall be consulted whenever the enterprise draws up new work methods or undertakes change to the existing work methods.

Art.13 (5) (5) - where an employee who completed secondary education intends to pursue further college education and

-the company determines that the education the employee plans to attend is closely related to the job he performs; and

-where the education does not interfere with working hours; and

-where he signed a commitment to serve the company after completion of education shall be allowed to pursue his studies.

An employee who has been allowed for such an education will be entitled to cost coverage of 50% by the employer if he scored a pass grade and submits receipt of payment.

Art. 13(5)(6)- based on the Work Rules of the enterprise, an employee who attended education on the expense covered by the enterprise shall be required to serve the enterprise for fixed years proportionate to the length of the training.

Art.13(5)(7)- where the employee changed the field of training without obtaining the consent of the enterprise, it shall not cover the training expense; if the expense was paid in advance by the enterprise, the employee will be required to refund it.

Art.13 (7) (8)-issues of recruitment and promotion shall be processed by recruitment and promotion committee as per the stipulation of the collective agreement.

Art.13 (7) (10) - the recommendation of the recruitment and promotion committees shall be given effect upon approval by the General Manager or an official delegated by him.

Art.13 (7) (11) - the company shall sent a copy of the recruitment and promotion notices to the trade union.

Art.13 (7) (18) the promotion and recruitment committee shall comprise the following;

- the Head of the Human Resource Development or its representative - **Chairperson**;

- the Head of the Department where the recruitment or promotion is sought -**Member**;

- a representative of the General Manager- **Member**

- a representative of the trade union-**Member**

- the Personnel Section Head of the enterprise or representative – **member**

-a person to be assigned by the enterprise- **Secretary and non-voting member**

Art.18(1)-wage increment and bonus to the employees shall be accorded with a view to encouraging and initiating profitability and its implementation shall depend on the net profit

which is the difference between the annual income and annual expenditure of the enterprise in the following manner:

Art.18(1)(1)- where the net profit of the enterprise equals to one month gross wage bill of the enterprise, 40% of each employee's wage shall be granted in the form of bonus.

Art.18(1)(2)- where the net profit reaches more than two months gross wage bill of the enterprise, 60% of each employee's wage shall be granted in the form of bonus.

Art.18(1)(3)- where the net profit reaches more than five months gross wage bill of the enterprise, 40% of each employee's wage shall be granted in the form of bonus and a wage increment as per the salary scale of the company.

Art.18(1)(4)- where the net profit reaches more than seven months gross wage bill of the enterprise, 60% of each employee's wage shall be granted in the form of bonus and a wage increment as per the salary scale of the company.

Art.18(1)(5)- where the net profit reaches more than ten months gross wage bill of the enterprise, each employee shall be granted one month's wage in the form of bonus and a wage increment as per the salary scale of the company.

Art.18 (2)-the following employees shall not be eligible for bonuses and wage increments;

- a )employees whose annual job evaluation score is below satisfactory [ below 2.5 out of 5.0];
- b) except for annual leave, leaves associated with employment injury and maternity leave, employees who were absent from duty for three months or more in the budget year;
- c) employees who were dismissed on disciplinary grounds;
- d) employees who did not complete their period of probation.

Art.39(1)- where the immediate supervisor of an employee suspects that the employee has committed a misconduct, the former shall deliver a report to the Section Head for purposes of imposing disciplinary measure against the employee. However, prior to delivering a report to the Section Head, the trade union representative at the enterprise should be notified of the incident so that he will have the information as to the alleged misdeed and provide his recommendation in writing on the matter.

Art.39 (4)- when a disciplinary measure is taken against an employee, the trade union shall be informed about it. Where the trade union is dissatisfied with the measure, the trade union and the Human Resource Department of the enterprise shall undertake consultation with a view to resolving the issue.

## **Annex III Interview guide for discussion with trade union leaders at the privatised enterprises**

### **The purpose of the discussion**

This discussion has been arranged with the object of obtaining an insight as to how unionisation and collective bargaining are being operated in the privatised enterprises.

It is believed that the basis for fruitful study rests up on unbiased and objective information. Thus we respectfully request you to provide us honest, objective and tangible information.

**Thank you in advance for your cooperation.**

#### **I. Issues on Unionisation**

1. How many trade unions exist in the enterprise? -----
2. If there is more than one trade union, what do you think is the reason to have multiple unions? -----
3. If there is one trade union how many members does it have? Female-----Male-----  
-
4. What is the number of labour force in the enterprise? Female---- Male-----
5. Which type of employment relationship makes an employee eligible for union membership? a) permanent b) temporary c) all
6. If the trade union does not admit employees other than permanent employees into its membership, what do you think is the reason for the exclusion?
7. Did the enterprise have a trade union during the pre-privatisation period? -----
8. If there was one, how many members did it have? Female----- Male-----
9. What about the total number of employees in the enterprise then? Female---- Male-----
10. Did it admit employees other than permanent employees to its membership?
11. How do you evaluate and compare the current management-trade union relationship with that of the pre-privatisation management-trade union relations?
12. Are there any new methods of work or out-sourced jobs which have been introduced since post-privatisation?
13. Are there any new technologies introduced since the privatisation of the enterprise?

#### **II. Issues on Collective Bargaining**

1. Did the enterprise have a collective agreement at the time of privatisation? If yes, please provide a copy.
2. How long did the collective bargaining take to reach at a collective agreement?
3. How did the union manage to obtain relevant information of the enterprise necessary for the bargaining process during pre-privatisation?
4. Does your trade union have a collective agreement at post-privatisation? -----  
(please provide a copy)
5. How long did the bargaining process take?
6. How does your union manage to obtain relevant information of the enterprise that is essential for the bargaining process in post-privatisation period?
7. What is the scope of application of the post-privatisation collective agreement?
8. What levels of participation did the trade union have while the enterprise was under State ownership?
9. What about the trade union's participation in post-privatisation setting?
10. Do you face any difficulties in executing the terms of the collective agreements? If yes what are these?

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## **Annex IV Interview guide for discussion with trade union leaders at the State-owned enterprises**

### **The purpose of the discussion**

The objective of this interview is to gather information from trade union leaders at State-owned enterprises as regards the labour and management relation at workplaces. As similar information is to be collected from the privatised enterprises in similar line of business, the information gathered hereunder will enable us to compare and contrast it with the information obtained from the privatised enterprises.

It is believed that the basis for fruitful study rests up on unbiased and objective information. Thus we respectfully request you to provide us honest, objective and tangible information.

**Thank you in advance for your cooperation.**

### **I. Issues on Unionisation**

1. How many trade unions exist in the enterprise?
2. If there is more than one trade union, what do you think is the reason to have multiple unions?
3. If there is one trade union how many members does it have? Female-----Male-----  
-
4. What is the size of labour force in the enterprise? Female---- Male-----
5. Which type of employment relationship makes an employee eligible for union membership? a) permanent b) temporary c) all
6. If the trade union does not admit employees other than permanent employees into its membership, what do you think is the reason for the exclusion?
7. How do you evaluate the current management-trade union relationship with that of the command economic system management-union relations?
8. Are there any new methods of work or outsourced jobs which have been introduced in the current market economy?
9. Are there any new technologies introduced in the working system of the enterprise since the introduction of the market economy?

### **II. Issues on Collective Bargaining**

1. Is there an operative collective agreement at the enterprise? -----(please provide a copy)
2. How long does the collective bargaining take to reach at the collective agreement? What about during the command economic system?
3. How does the trade union manage to obtain relevant information of the enterprise necessary for the bargaining process?
4. What levels of participation does the trade union have in the enterprise's management?
5. What changes in management-labour relation do you observe since the change in economic policy from State to market?
6. What problems do you encounter in executing the terms of the collective agreements?

## **Annex V Interview guide for discussion with Managers at the privatised enterprises**

### **The purpose of the discussion**

This interview is arranged with the object of obtaining an insight as to how unionisation and collective bargaining are being exercised in the privatised enterprises.

It is believed that the basis for fruitful study rests up on unbiased and objective information. Thus we respectfully request you to provide us honest, objective and tangible information.

### **Thank you in advance for your cooperation.**

#### **I. General Information**

1. When was the company transferred to your ownership and management?
2. The size of labour force at the time of divestiture
  - a) Male----- Female-----
  - b) Permanent-----Temporary-----
3. Have you introduced new work methods since privatisation? If yes what types of change have you undertaken and why?
4. Have you introduced new technologies since privatisation? If yes what type of technology? Why was it necessary/? What impact did it bring to productivity, size and profile of the labour force, if any?

#### **II. On Unionisation**

1. Does a trade union exist in your company?
2. If yes? How many unions exist?
3. If the trade unions are more than one, how do you deal with them? Do you encounter any problem in handling multiple unions?
4. How do you assess the relationship of the trade union with the management?
5. What support, if any, does your company provide to the trade union?

#### **III. On collective bargaining**

1. Is there any collective bargaining concluded in the company post-privatisation? (Please provide a copy)
2. How long did the collective bargaining take?
3. What were the main issues of contention in the bargaining process with the trade union?
4. How are financial and other relevant information for the bargaining process be communicated to the trade union?
5. In what areas of enterprise management does the trade union participate? Does such participation emanate from the terms of the collective agreement or the unilateral decision of the employer? What benefits or problems, if any, do you notice in allowing employees' representatives participation in managerial activities?



#### **Annex VI Informed Consent Form for the interviewees**

I,....., hereby consented to participate in the interview for the research conducted by Ato Mehari Redae on '**Privatisation in Ethiopia: the challenge it poses to unionisation and collective bargaining**'. The purpose of the study has been explained to me and I consented to participate without any direct benefits or rewards for my participation in the study. I obtained an assurance from the researcher that my identity will be kept confidential.

Name of the participant.....

Signature.....

Date.....