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PROTECTION OF EMPLOYEES' RIGHTS UNDER PUBLIC CORPORATE REORGANIZATION
WITHIN ETHIOPIAN LEGAL FRAME WORK, THE LAW AND PRACTICES.

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DECLARATION

I declare that this thesis is my original work and has not been presented for a Masters/degree in any University and all resources used in the Study are duly acknowledged.

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Acronyms And Abbreviations.

ADLI-Agricultural Development Lead Industry

CBE-Commercial Bank of Ethiopia

EPA-Ethiopian Privatization Agency

ERA-Ethiopian Road Authority

EPRDF-Ethiopian People Revolutionary Democratic Front.

FDI-Foreign Direct Investment

FDRE-Federal Democratic Republic Of Ethiopia

ICESCR -International Covenant on Economic Social and Cultural Rights

ICSPR-International Covenant On Civil and Political Rights

ILO -International Labor Organizations

ILS-International Labor Standard

MNC-Multi-National Corporations

UN -United Nations

UNDHR -Universal Declaration of Human Rights

USA-United States of America

SAP-Structural Adjustment Program

Abstract

Whether Ethiopian legal frame work does strike the balance between Employers' Interests and employees' rights underPublic corporate reorganization in accordance with international convention for the employment termination?is the main questions behind this study.

Accordingly three Public Enterprise; the Bedele Brewery, the Harar Brewery and the Limu Coffee Farm Enterprises are purposively selected as sample representative of the rest Public Enterprises which are sold to private investors. The theory behind the research states that "standardized protection to employees right underPublic corporate reorganization does not exist in Ethiopia'.

First and second sources, international and national legal documents are reviewed, data are collected through interview with 10 employees from each organization, interview with the representatives of trade union, with the concerned labor and social affairs office are also conducted, International labor standards and national laws are examined, some experience of foreign countries are also observed.

The study revealed the deviation of Ethiopian labor laws from the international termination convention and some practical problemsare also identified, as a result amendment of relevant provisions of labor laws and ensuring participation of employees in corporate decision making are recommended.

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Protection of Employees' rights under public Corporate Reorganization within Ethiopian legal frame work, the law and practices.

Chapter One

1. Introduction

Minimization of Un-employment rate is commonly believed as one unit of measurement for economic development of one country. Government of Country's with high un-employment rate is required to work hard on creation of job opportunities and stabilizing the working environment for the worker. For the fact that, high un-employment rate may end up with social insecurity, It may call for the government to implement its' constitutional responsibility or to adopt policy aiming at addressing issues of social security. Industry /business organizations are one major sector which plays a determinant role by absorbing labor forces in the market. That is why in Ethiopia Promoting and developing business organization is taken as one for-front measures of the leading government. Accordingly, the government has adopted ADLI asits' core economic policy and strategy of the country which has been adopted and being implemented country wide since the coming in power of the current government,¹.Since the transitional period the ruling government or EPDRF has enacted laws and has been working towards promoting and supporting for the expansion of private Investors for they are the major actors in bringing about economic development of the country,².That is why theEthiopia Government has engaged inselling shares of public enterprises and has decided to sale shares of corporations such as Ethio-Telecom, Electric

¹*Industrial Development Strategies of the Federal Democratic Republic Of Ethiopia:June,1994*
pg.13

²*Public Enterprise proclamation no.25/1992, see also privatization of public enterprise proclamation no.146/1998*

Power Corporations, rail way industry; Sugar manufacturing and Ethiopia industrial park to private organization.³

Since 1992 the overall economic Policy of the country characterizes the context of global economic Policy; legal reforms and structural adjustments targeted towards deregulating government role in the market (liberalization of market), privatization of public Undertaking, promoting national and FD investors are the major contemporary agendas which is progressively implemented as economic reform for achieving the sustainable development goal of the country,⁴.

Promotion of privatization by privatizing public enterprises and attracting local and FDI is incorporated under the country's economic reform program, because, favorable legal ground or liberalized system under which company could adopt themselves to the competing change of technological and economic condition of the global economic system is needed by investors. Since the main purpose for the establishment of business organization is profit making one can easily draw that investor could not invest their capital unless the legal systems and practices of the hosting countries are reliable in protecting the economic interests of the business organizations.

In Labor oriented Business Organization coordinated effort of labor force and the management is needed for successful implementation of the desired plan of the organizations. But problems comes when the employer consider consultation with the employee as discrediting the wellbeing of the organizations.

2. Background of the Study

³ FANA FM 98.1 ,90 minutes news broadcasting on Thursday morning at 1:49

⁴ Bulletin of Ethiopian Economic Association, *Lissane Economic*, vol.3.n0.1, Feb.2000, pg.7

The evidence in Sab-Saharan Africa revealed that transference of public corporation to private investors has aggravated unemployment and job insecurity,⁵. In Ethiopia Antagonist idea argues that the government economic reform and sustainable development program which oriented at restructuring government enterprise couldn't solve economic problem of the country rather it helps a few top government corruptive individuals and investors to fatten their pocket at the expense of massive employees lay off.

Those who support Pro privatization idea argues that the transference of public enterprise to private investors could minimize extra government expenditure, promote efficient and effective utilization of resources, promote competition and job opportunities in Ethiopia.

During the Dergu regime under the command economic policy state play an active role in the market, through nationalization policy private investors were expelled from the market government has played a determinant role in the investment, public enterprises were the major actors in absorbing labor forces and serving the people. Therefore, the Dergu Regime has been antagonistic to the principles of privatization. But Contrary to the Dergu Regime the Pro-Privatization idea has prevailed in the country's economic Policy after the Dergu regime is overthrown by EPRDF.

Employment Creation has been adopted as one strategy for the economic development of Ethiopia⁶. The government has paid emphasis for enhancing privatization by adopting micro and small scale enterprises and facilitating FDI in business in order to expand employment opportunities,⁷. Such measures for expansion of labor intensive industries are taken as the main industrial Development Strategy of the country,⁸.

The government measures towards expansion of industries for the creation of employment opportunities for the citizen needs a careful articulation of laws and

⁵Agba A.M.Ogaboh, and others:*Journal of Science and Commerce*:privatization,job security and performance efficiency of private enterprise in Nigeria,a critical assessment, oct.2010, vol.1, issue 1, pg.99

⁶*National Employment Policy and Strategy of Ethiopia*, Addis Ababa Nov.2009

⁷*National Social Protection Policy of Ethiopia*, Ministry of labor and social affairs, 26 March 2012 page 12.

⁸*Ethiopian Investment Proclamation* No. 280/2002 art. 4(8)

regulations, because, In a country where the influence of the investors is higher it is found that a decision for enhancing productivity of an organization result in mass of employees layoff and contrary to that in a country with greater employees influence it is found when the employees welfare has got priority over enhancement of deteriorating business organizations⁹.

Ethiopia has a cheap labor force or human power which is realized as one pulling factor of labor intensive industries. Due to Cheapness of labor forces some fundamental rights of the employees' are alleged to be over looked either by the investors or by the government. Government or Investors measures for reorganizing/restructuring corporation are the main scenario under which employees' rights are claimed to be infringed.

Reorganization/Restructuring of public corporation involves - transfer of the whole or part of asset of a transferor organization to a transferee company in exchange of shares or cash, or it can be merger or division or consolidation of corporations' assets which may results in change of the owner/employer, change of legal status, or change of administration¹⁰.

On the side of the government absence of a clear legal provision or unavailability of legal frame work and policies guarantying employees' rights during restructuring measures are the major points to be considered. We can observe that Protection of employees' rights under public corporate reorganization requires a coordinated effort of the investors, the employees and the government and thus we will investigate whether this three actors are fairly playing their role in Ethiopia.

3. Literature Review

The researcher has made a search for identifying whether a research is previously conducted on the title 'The Protection of Employee's Rights under Corporate re-

⁹Julian Atanassov, *Labor Laws and Corporate Governance: International Evidence from Restructuring Decisions*, Michigan University school of business:June,2008, working paper no.1044 pg 3.

¹⁰Bryan A. Garner, *Black's Law Dictionary*, 9th edition

organization within Ethiopian Legal Frame work the law and practices' but to the knowledge of the researcher no any study is conducted on the topic, no writing designed for resolving similar issues is observed, thus the writer has confidence in that this research could bring the issues to the mind of many scholars. Out of the research reviewed by the researcher, there is one research conducted on the topic dealing with the Compatibility and limitation of the 377/96 labor proclamation vis-à-vis Fundamental principles International Organization'.¹¹ the research seems to have some touching point when it evaluates Ethiopian labor laws in light of international standards, However, it is emphasized on the right of freedom of association and the effective recognition of the right to collective bargaining (ILO Conventions Nos.87 and 98) excluding issues under this topic which deals with the evaluation of Ethiopian legal frame work of Employees rights under corporate reorganization in light of ILO Standards.

Another research is the research conducted on the title' Reorganization Under USA and Ethiopian Bankruptcy Law'. Under this research the writer has emphasized on assessing Ethiopian Legal framework available for reorganization of financially distressed business in light of well-developed and practically tested USA Bankruptcy law'.¹² The paper deals more with concept of reorganization, Comparative study of Ethiopian Bankruptcy law vis-à-vis to the USA bankruptcy law and legal frame work for the reorganization of financially distressed business Organization, the writer under the research has recommended for the adoption of efficient and effective legal frame work for the rehabilitation of financially distressed business. But, though the study is devoted to the assessment of availability of Ethiopian legal frame work for the rehabilitation of financially distressed business, this researcher has realized that the study has not observed the availability of legal frame work for the treatment of employees' rights vis-à-vis employers' interests under corporate re-organization, therefore, as to this researcher's perception this study is believed to bring a new area of study to the Ethiopian Literature on the issues of employees' rights under corporate re-organization.

¹¹MesfinSileshi, *The extent of compatibility and limitations of the Labor Proclamation No.377/2003 vis-à-vis Fundamental ILO Conventions*, Addis Ababa University, Sept.29/2012

¹²AkliluBeyene, *Reorganization Under USA and Ethiopian Bankruptcy Law*, Central European University, March 29,2012

Another research which have some touching point with this study is the research conducted by ElileMulugetaWolde, it deals with social impact of privatization in Ethiopia, it studied the impact of public corporate acquisition by private investors on employees' income, on management-employee relations, change in working conditions, but the since it is not legal research it has not covered the legal perspective of privatization and its' impact on employees' right'¹³.

4. Statement of the Problem

With the growing global economic system or free market competition, government decision for transferring public enterprises to private investors for allowing autonomous decision making of enterprise free from political interference, efficient and effective management for promoting national economic development is considered as one salient measures in the current economic policy of the country. Such desired measure enforces the government to transfer rights and responsibility over the enterprises/corporate to private companies which in effect results in takeover or acquisition of government enterprise by private companies.

Corporate restructuring may take different forms and whatever forms it takes, the issue comes to the point where the decision of re-structuring intersects with the employees' rights within the concerned business entity. During corporate restructuring readjustments and reduction of work forces are a common character which crosses all types of business restructuring; such measures are expected to be undertaken without violating employees' right of job-security.

¹³ElileMulugetaWolde, *Social Impact of Privatization in Ethiopia*, University of South Africa: nov.2010

Our Country Ethiopia is a signatory to many International Labor conventions. Out of this Convention the so called 'termination of Employment Convention and its recommendation is the one which the researcher has paid great emphasis'¹⁴.

Since Ethiopia is a party to this convention each provisions of the convention should be made an integral part of the labor laws of the country and be implemented accordingly'¹⁵.

Thus measuring Ethiopia Corporate restructuring in light of this convention is required because it is an international standard which all member countries to the convention are obligated to adopt and implement in their country regardless of their economic status. It is an international standard which is set to strike the balance between the economic interests of business organization requesting for restructuring on one hand and the employees' right protection.

Looking at the legal frame work of Ethiopia and the practices, Ethiopian labor law doesn't seem to have accommodated all the provisions stated under the convention and also it seems to have some legal loophole in its' content. The practical situation in the restructured corporation pre, during and post restructuring labor related issues and its handling mechanisms in light of the aforementioned labor standard is also seems to have some defects. Thus this study is needed to find out whether Ethiopian labor laws and the practices are adequately addressing employees' rights and interests under corporate reorganization.

5. Objective of The Study;-

5.1 General Objective

General Objective of the study is to assess whether Ethiopian laws and practices are adequately addressing employees' right under Public corporate reorganization in Ethiopia.

¹⁴*Termination of Employment Convention:1982 (No. 158)*

¹⁵Google search on 'profiles of member countries to the convention shows that, Ethiopia has ratified the Convention, in 1991

5.1.1 Specific Objective

To examine whether Ethiopian labor law embodied the provisions in compliance with the international employment termination convention.

To investigate whether the tripartite organ: the employers, employees and the government fairly play their role in resolving employees' issues under public corporate reorganization.

6. Research Questions

The questions of the study are listed here under, accordingly at the end of the study the questions intended to be resolved are;-

1. Do Ethiopian laws provide adequate protection for employees' right protection under public corporate reorganization?
2. Do the exercises of the rights and duties of concerned organ conform to the standardized laws?

7. Significance Of The Study

The study on the *'protection of employees' rights under public corporate reorganization within Ethiopian legal frame work the law and practices* 'could have its own general significance in contributing for the development of Ethiopian legal systems.

Ethiopia is said to have cheap labor force which could serve as a pulling factors for attracting FDI OR MNC. It can be clearly realized from the investment proclamation that the policy behind the enactment of proclamation is to create conducive environment for huge companies¹⁶. The flexibility or stagnation of labor policy and laws of investment hosting country may have a significant influence over the decision of labor oriented corporations. But, some developing countries are criticized for racing to the bottom for attracting and

¹⁶ Supra note 8. The preamble.

promoting multi-national corporations at the expense of employees' rights and other public interests. Therefore, this study could contribute for;-

- identifying the legal loopholes and practical challenges and may bring the attention of concerned government organ for resolving the issues, fulfilling the legal gaps, and may also help the employees in particular and the public at large to have some know-how regarding its rights and duties during corporate reorganization.
- It is also believed to have some contribution for employers, employees in decision making and the government in deciding for appropriate utilization of Ethiopian cheap labor forces and guarantying secured and sustainable economic interests of corporations. Because, Privatization of Government owned corporation is being carried out as one fore-front economic measures of the current governing party for stabilizing the market and getting hard currency, unless tripartite participation on labor issues are standardized the counter forcing massive employees' claim may be escalated to social disorder and civil strife.
- The study is also expected to use as a precursor for further study on the areas. It may serve as a reference and ground for further studies on these particular areas for Ethiopian Scholars.

8. Methodology of the study

In Empirical legal study a reasonable and precise answer to the research questions should be hypothesized in a way that can develop observable implications. Observable implication is a claim what we would expect to observe in the real world if our theory is right,¹⁷. Thus, according to the hypothesis of this study we expect that Ethiopian laws and practices do not provide standardized protection for employee's right under public corporate reorganization.

¹⁷Epstein. L. and King.G.: *The Rules of Inference*: University of Chicago Law Review 69: (2002).pg. 191

The following Observable implications are used to detect the reality of this hypothesis; under this study they are claims used for explaining the relationship between dependent variable/what the study is trying to prove on the ground and an independent variable/the above suggested hypothesis, the following four elements are employed in this study as an indicative for ascertaining the above suggested hypothesis, because, they are international measures of legal standards, therefore our observable implications are derived from elements embedded in the body of international termination convention. These are;-

1. Employee's right to be informed the reason for employees' reduction, the time of reduction, and the number of employees to be affected in public corporate restructure is not respected.
2. Contemplated massive employees reduction due to restructuring process is not informed to government authority beforehand.
3. Government authority has no clear directives and they are not investigating the justifiability of employee's dismissal.

Therefore in order to measure the above implications this study is designed to be undertaken by employing scientific methods of data collection, qualitative data analysis, literature review and document analysis.

8.1 Target Population

Identifying the target of data collection and the subject or documents to be analyzed could serve for the researcher to make a reliable inference. For collecting data concerning the practical aspect of the study; collecting data from merged/acquired public organization, conducting interview with their employee or employees' representatives, their employer and concerned government organ such as labor and social affairs minister could help to reach at a right inference.

8.1.1 Representative Sample drawn

Out of different forms of corporate reorganization, acquisition/takeover of the public corporation is selected. The typical example is the process of selling public corporation to private investors or privatization. Because, privatization makes public corporation to be acquired by private companies under consideration. Post transaction the public corporation will lose its independent legal personality and acquire the personality and ownership rights of the acquiring private company.

Thus out of different forms of reorganization, based on the scope of our study, acquisition of Public enterprise by private company (privatization) is selected as representative of our sample.

Accordingly, due to time and resource restriction, three Public Enterprises which are acquired by private companies are purposively selected. Data collection is curiously made to avoid bias of data collection, because, wherever its' location in Ethiopia the relevant law assessed under this study is national laws which governs all privatized corporations, the transferor is also same organ (the government). If data is collected from the employees and employer of unselected privatized companies it is expected to bring similar output. Thus the data collected from the three undertaking and the inference made on the basis of the data would help to reach at the right conclusion regarding employees' right protection under public corporate reorganization.

Thus Harar Beer share company, Bedele Beer Share Company, and Limu Buna Tekil enterprises are selected. These organizations are purposively selected because, they qualify the term 'Public corporate reorganization' in general and acquisition forms of reorganization in particular in Ethiopia. They are reorganized state owned enterprises whose ownership right is transferred from government to private share companies through sale of the whole of government shares to private companies. The transferor government agency has losses its employer rights and duties over Harar and Bedele Beer enterprises by selling the organization to transferee (Heineken International Share Company) which has taken over employer's position. The former Limu Buna Tekil is also sold to Horizon private limited company, the transferor government is the former employer whereas the transferee share companies and

private limited company are the later employer who acquires ownership rights to the transferred organizations. This entities has lost its' former personality and merged to the personality of acquired private companies.

Horizon Plantation part of MIDROChas involved in buying government shares of Limu and Bebeke Coffee farm enterprises¹⁸, whereas Agri-Ceft Tea Processor which is a subsidiary of Horizon plantation and member of MIDROC has bought the Wush wush and Gumaro tea with its' packing factory in Addis Ababa in 2000¹⁹. All are public enterprises which are restructured under the process of privatization.

However, since Limu Buna Tekil, Wush wush and Gumaro are part of MEDIROC out of the three enterprises Limmu Buna Tekil is purposively selected as a sample representative for the rest privatized enterprises.

Therefore, the researcher has selected these organizations believing that they represent character of acquisition types of Public corporate reorganization in Ethiopia. The methods used in this research are a sort of multiple methods, data triangulation method or different kind of data from different source is employed, it includes;-

1. Literature reviews, analyzing the relevant theoretical matters, Laws, regulations, primary and secondary sources and any relevant available office documents, official letters, minutes are employed.
2. Interview with the representatives of ministry of labor and social affairs, Ethiopian Trade Union Confederation, Regional labor and social affairs Biro, employers or their agents. Interview with employees of re-structured public corporations are conducted.
3. Investigations of dead files (court cases) are made in the course of the study.

Thus, researcher has employed qualitative and quantitative method of data collection and interpretation.

¹⁸www.sheikhmohammedalamoudi.info/home/news/bebeke-coffee-horizon Google assessed on Oct.11/2011

¹⁹www.ethioagriceft.com/Tea.html Google assessed on Oct.11/2011

Table 1. Shows methods of data collection in brief manner.

1	Methodology employed	subject	Quantity	Its relevance
2	Literature review	Relevant laws, regulations, articles, any related secondary sources	-	Useful for identifying legal gaps
3	Interview	Employees' Confederation	1	All are useful for identifying practical implementation of the relevant provision of international convention and related laws Useful to test what they did/do regarding employees' right during restructuring of the undertakings.
		Employers	3	
		labor and social affairs federal and regional	2	
4	Interview and focus group discussion	employees 10 from each undertaking	30	
5	Investigation of dead court file	From federal court	2 cases	

8.2 Scope of the Study.

The Study is limited to analysis of Ethiopian labor laws and the facts vis-à-vis employees' rights during restructuring of state enterprise in light of international labor standards. However, the scope of the study is limited to public enterprises or state companies which shares are totally sold to private companies. The notable measures for privatizing public corporation which is being undertaken country wide by the federal government is resulting in massive dismissal of employees and causing high grievance on behalf of employees and

local people at large, this study is intended to solve such social grievances and thus the study is limited to investigating public corporation which is sold by the federal government to private companies.

The study doesn't deal with the general protection of labor rights in non-restructuring business entity, it doesn't include public enterprise undertaking internal structural or administrative adjustment from one organ of government to another organ of government. It doesn't deal with all forms of corporate reorganization but only with the acquisition of public enterprise by private companies.

9. Limitations

The possible constraint is lack of literature on the Ethiopian laws dealing with restructuring process, lack of articles or materials written on labor rights under corporate reorganization. Because of that the researcher is self-sponsored; shortage of time and financial problem are also the major constraints faced in the study. The research could have more accuracy had it been conducted on the giant reorganized multi-national and national public and private companies in a wide manner.

However, in order to curb the aforementioned limitation researcher has opted to assess soft books and articles, laws, the rule and laws at international and country wide and to locate the practical assessment on those purposively selected public business organization, Harar Brewery Share Company, Bedele Brewery share company and Limu Coffee Plantation Plc. are selected believing that they could represent the rest similar organizations.

6.6 Organization of the study;-

This study contains four chapters; - Chapter one is an introductory part of the thesis. It deals with background of the study, objectives of the study, statement of the problem, the research questions, the methodology, significance of the study, the scope of the study, and limitations of the study.

Chapter two deals with literature reviews, under this, concept of public corporate reorganization under international instruments and national legislation, experiences of

some countries are observed to illuminate for the reader about the main areas and subjects of the study, particularly with a focus on those types of employees' rights nexus to forms of reorganization.

Chapter three deals with analysis of laws and collected data. The legal frame work of the country is analyzed, the collected data are interpreted, de jure and de facto problems are elaborated under this chapter.

Chapter four deals with the conclusion part of the study, the recommendations and references.

Chapter Two

International Instruments and National laws governing employees' rights under corporate reorganization.

2. Introduction

Before proceeding to discussion on the international and national legal frame work for the protection of employees' rights under public corporate reorganization it is better to see what we mean by corporate reorganization under this topic. We will see what we mean with the forms or types of corporate reorganization. We will also observe the main controversial rights of employees' under corporate reorganization and some countries' experiences, how countries strive to strike the balance between employees expectation of retaining in the job in accordance with their contractual agreement and the antagonistic companies economic interests. Then we will proceed to the view of international and national legal frame works.

2.1 Concept on corporation and reorganization

2.2 Definition and nature of Public Corporation

In Ethiopia the term public corporation compose similar definition and similar governing laws with the law governing public enterprises, it is commonly known that public corporation such as Ethiopia Telecommunication corporation, Ethiopian rail way corporation, Ethiopia electric power corporation, Ethiopian Sugar Corporation are state owned enterprises, they are administered by board of directors, general managers and possess separate legal personality, can sue and be sued, own and administer properties,

inters into contract and can borrow moneys²⁰. The same definition is given for the term enterprises under the Ethiopian public enterprises proclamation, Public enterprise is defined as wholly state owned enterprise established for by the proclamation to carry on economic activities such as manufacturing, distribution or service rendering for gain²¹.

The dictionary meaning of public corporation is also similar with the definition of enterprise stated under Ethiopian proclamation. It is defined as an entity having authority under the law to act as a single person distinct from the shareholders who own it and having a right to issue stock and exist indefinitely a part from them'²². Public corporation is defined as a publicly held corporation which is created by state as public agency for engaging in activities which benefit the general public while remaining financially independent and managed by publicly appointed board²³. However, the word private is added to the term 'corporation' named as Private Corporation to mean corporation founded by and composed of private individuals principally formed for non-public purpose. It seems that the dictionary meaning of private enterprise conforms to the basic features of companies under the Ethiopian law of commerce²⁴.

Therefore, under this study public corporation and public enterprises are used interchangeably to denote wholly state owned public enterprises established to carry on for gain manufacturing, distribution, service rendering or other economic and related activities.

2.3 What do we mean by reorganization;-

once again when we look at its dictionary meaning of the term reorganization; - reorganization is described as merger or consolidation under state statutes, or transfer of some or all of its assets to another corporation controlled by transferor or a mere change in a corporation's identity, form or place of organization and it is also described as a transfer

²⁰ *Public Enterprises Proclamation* no.25/1992, chapter two and three.

²¹ *Ibid*, art.2(1).

²² *Back's Law Dictionary* 9th edition

²³ *ibid*

²⁴ *Commercial code*, 1960 art.210(2), 212,

of all or part of the corporation's assets to another corporation in a bankruptcy or similar proceedings.²⁵

Therefore from the above description given to the term public corporation and reorganization one can understand as the phrase public corporate reorganization implies the merging, division, consolidation of public enterprises or change of the place, identity, form or transference of all or parts of its assets to another corporation.

Why public corporate reorganization;- the purpose of corporate reorganization may vary from one to the others, but commonly speaking, In case of public enterprise corporate reorganizations are made mainly for the purpose of promoting economic development of the concerned states, for attracting investors, promoting efficient and effective market computation, or for reducing government costs and budget deficiency.

If so the What is the policy behind public corporate reorganization in Ethiopia;- The government desire for changing the role and participation of government in the economy, to encourage the expansion of private sectors and then promotion of economic development of the country is mentioned as the policy behind transference government owned corporations /enterprises to private corporations'.²⁶

2.4 Forms of corporate reorganization

In Ethiopia legal frame work we do have no common definition given to different forms of corporate reorganization however we do have some common understanding by looking at different provisions of the laws, corporation reorganization may be undertaken in different forms and may end up with different effects. Thus we will proceed to see some basic features of reorganization.

2.4.1 Merger/amalgamation;- it is a transaction by which all assets and liabilities of one or more transferor company is transferred to a single transferee company in exchange for

²⁵ Supra note 22

²⁶ *Privatization of public enterprise* procl.no.146/1998, the preamble.

share or cash where by the transferor company cease to exist by the operation of the laws not by the consensual agreements of the parties or and not through liquidations.²⁷

2.4.2 Consolidation;- it is similar to merger but the difference is that in case of consolidation the transferee is the newly established corporation.²⁸

2.4.3 Corporate division;- is the opposite of merger or amalgamation, which mean all or substantial assets of one corporation is transferred to two or more newly established or pre-existing corporations'²⁹.

2.4.4 Corporate Acquisition;- is reorganization transaction by which substantial assets or shares or liability of one or more company is transferred to newly established or pre-existing company in exchange of any form of consideration whereby the transferor company continue to exist or may liquidated and the transferee company acquire important say on the affairs of acquired company,³⁰.. In acquisition company A(acquirer) Buys Company B(acquired). Company B become wholly owned by company A. Company B may be totally absorbed or cease to exist as a separate entity or company A might retain Company B n its' pre-acquired form.In most cases the acquirer the acquires by buying the share of acquired company from shareholders. Achieving ownership may require purchase of all of the target shares or a majority of them.³¹In both merger and acquisition there is combination of two or more companies in to one new company or corporation. However in case of merger there is a negotiation on both side in promoting profit in the combined company, this however not the case in acquisition because one will take over the share of others.

²⁷*Trade Competition and Consumers Protection proclamation*:no.813/2013, art.9(3), see also commercial code art.549 by which two or more firms could amalgamate either by taking over or by formation of a new company which is equivalent to the term consolidation.

²⁸ Kenate Hora: *Taxation Of Corporate Reorganization Under Federal Income Tax Proclamation: An Exploration In To Its Prospects And Challenges*, Jimma Univesrity,june,19, 2017,pg.25

²⁹*Ethiopian Income tax proclamation* no.286/2002, art.24(4), merger of two or more resident companies, take over or acquisition of more than 50% of share. voting percent or asset of one resident company by other is defined as reorganization for the taxation purpose.

³⁰ id

³¹ Roberts,Wallace,Moles; *Mergers and Acquisitions*; Edinburgh Business School, Heriot-Watt University ,2010 pg.1

2.4.5 Change in set or jurisdiction;-change in forms or change from one type of company to another which may affect the legal structure of the company without involving the economic change is also considered as corporate reorganization so long as it brings liquidation of the corporation under former laws and application of new laws³².

In Ethiopia under the process of privatization share of Public enterprise is sold to private company which may end up with transference of legal personality, government ownership rights will come to an end through sale of share of the company to the acquiring private company. Though the corporation may continue with its identity or economic activities the transference of its' total shares from transferor to transferee has changed its' legal structure or personality, thus the adjustment of ownership rights from the seller to the buyer qualifies the elements mentioned under the definition of acquisition forms of corporate reorganization.

2.5 Major Employees' rights matters under corporate reorganization.

There is no concrete closed definition for the term of labor rights under international or national laws, dynamic nature of the elements constituting labor rights and the broadness of its content could be one factor which drives us to have descriptive definition of labor rights. Thus, labor rights are described in illustrative manner so as to involve different types of rights under international and national laws. For instance internationally different constituents of workers' rights are illustrated to explain labor rights, as it involves the right to work, free choice of employment to just and favorable condition and **protection against unemployment**, the right to just and favorable remuneration ensuring for the existence of himself and his family, the right to join and form trade union for the protection of his/her interests are listed to describe meaning for labor rights.³³

When we observe what to mean for labor rights in the national laws, it is stipulated in a general manner in our constitutions so as to accommodate the right to job security, to form associations, to improve their conditions of employment and economic well-being which

³² ibid

³³ *Universal Declaration of Human Rights*: 1948 art. 23

includes the right to form trade union, the right to bargain collectively with employers, the right **to express their grievances**, the right to strike, the right to reasonable limitations of working hours, the right to rest, leisure time, periodic leaves with pay, remuneration for public holidays, as well as healthy and safe working environment.³⁴Labor rights are not limited to this but also it involves the right no to be subjected to slavery and servitude or free from compulsory labor.³⁵The same to the labor law proclamation which is enacted to implement the general provisions of the constitution, the proclamation defined the worker as a person having employment relations with the employer whereas workers' rights are found throughout the provisions, and even we can say that every obligation of the employer stated in the proclamations are meant to describe workers' rights.³⁶Thus we can realize that the constituent of labor rights are very broad but since the emphasis of this study revolves around the workers' rights which matters under public corporate reorganization we are not going to observe the whole types of labor rights under unbroken business organization. Out of employees' rights we have elaborated above employees' right to protection against unemployment stated under universal declaration of human rights, employees' rights to express their grievance as stated under our constitution are the major rights to be observed since by their nature they are more frequently happened and claimed during corporate reorganizations due to employer's economic reason.

2.6 Over view of Some Overseas Country

Under this topic we will observe the protection extended for the employees' rights particularly collective right protection mechanisms afforded for the employee against employers decision on matters affecting massive employees. This is needed because, it will contribute for Ethiopia to Share the best practices which could confirm with the International standards by taking in to account the principles of good corporate governance or corporate social responsibilities.

³⁴ *Constitution of the Federal Democratic Republic of Ethiopia*, 1994 art.42

³⁵ *Ibid* art.18

³⁶ Labor proclamation no.377/1996 art,2(3) , art.12

2.6.1 Germany

In Germany works councils have existed since 1920, the work council act was amended in 1972 and 2001 to take account of alteration in the technology and method of works, the act lay down the rights of bodies representing worker's interests at the plant level in non-state companies'³⁷. The business of workers council is to speak all matters pertaining to conditions of employment, hours, flexible working, overtime, payment, leave, safety work, incentives, they can negotiate with employers and if fail a Committee with neutral Chairman which can make a binding settlement they have also rights of co-determination in the case of dismissals in the field of vocational training.'³⁸.

in Companies with more than 100 employees there must be small economic Committee having the rights to information on economic and financial situation of the company, the production and sales of the company, the investment program, organizational changes including mergers and proposed changes in method'³⁹.

The idea behind works council participation in co-determination is to secure the right to participate in decisions on matters affecting employees, and getting background information about the enterprises could promote trust, cooperation, and harmony.

Another important means by which employees protect their rights in German is through employees' representation on the Supervisory Board. Corporate Governance in Germany has dual / two tier boards. One is the Supervisory Board and the Second is the Management Board'⁴⁰.

The balance between the antagonistic economic interests of the employers and employees rights at the work place and in the management decisions are well protected by these two arms of boards, because, Supervisory board are empowered to appoint the member of board of management and to supervisor and control over strategic acquisition, closures,

³⁷ Jonathan P. Charkham: Keeping Better Company Corporate Governance in Ten Years On, United States, Oxford University Press, 2005, pg. 63

³⁸ id

³⁹ ibid pg. 64

⁴⁰ The German Co-determination Act. no. 1976

appointing and dismissing board of management whereas the function of direction and management are placed in the hands of the management board, it works for the best interests of the shareholders and for increasing sustainable value of the company and respect for the laws, regulation and social responsibility of the companies⁴¹.

in Private limited Company having more than 500 employees, and in share company having up to 2,000 employees the principles of co-determination applies. Employees could have one-third seats and 2/3 seat for share-holder in private limited company, but In share companies having more than 2,000 employees the composition of employees representative in supervisory board is 1/2 of the board members'⁴².

Therefore, In Germany legal frame work it seems that employees can exercises more democratic rights by participating on matters affecting their rights, the proportion of employees and shareholders representatives' at the supervisory board and having one management board with special responsibility for labor matters reveals existence of better employees' rights protection in Germany.

2.1.1 France

In France two-tier structure is has been possible, likely to the German system the Company is administered by two bodies, the Supervisory Board whose main function is to appoint and remove the members of management board and control their management, and management board is in charge of managing and administering the company'⁴³. Representative from the company's works council are included in the meeting of the board. For instance In privatized national Companies such as Arcelor, BNP Paribas, Renault etc. two to four directors are directly elected by employees to represent them on the board of directors.⁴⁴

⁴¹.id.

⁴² id

⁴³supra note 30 pg.191, until 1940 board of director is elected from General shareholders meeting which then elect chairperson and delegate the power for electing CEO or manager for the Directors, due to reaction to capitalism and directors irresponsible behavior But now it is less frequent and since 1966 two-tier board structure has been exercised.

⁴⁴ ibid pg.222

2.1.2 Netherland

In Netherland there is two tier-boards, supervisory board and Management Board;- The role of management board is to manage the company, responsible for achieving the firms aim, managing the risk, and corporate social responsibility, management board is accountable to the supervisory board and to the general meeting of the share holders'⁴⁵. The Supervisory Board role is to supervise the policies of the management board, to assist the management board by providing advice, in discharging its duty it shall be guided by the interests of the company by taking in to account the relevant interests of its stalk holders'⁴⁶. It is responsibility of an employer to create a work council if employees are more than 50 employees. In Netherland, the Work Council has an Advisory right for each important decisions such as Mergers, transfer of undertaking and change in company structure and shall have the right to be informed the grounds, it's consequences for the employees and the manner by which the consequences are compensated'⁴⁷.

2.1.3 Sweden

Sweden has one tier Board of Director which shares some similar feature with Ethiopia Corporate governance structure. The Swedish Company act stipulates three decision making bodies in hierarchical relationship to one another, these are the shareholders meeting, the board of directors and the executive officers. However, in Sweden since 1973 Employees' has a right to participate in in the board of Director'⁴⁸. The Swedish employee act provides for the representation of two to three employees' representative in the board of director'⁴⁹. The provision guarantees industrial peace by giving the employers the prerogative right to run the institutions and to give order to the employee'⁵⁰. However, the

⁴⁵*The Dutch Corporate Governance Code: March 2017, art.II*

⁴⁶ Ibid no.III

⁴⁷*Labor and Employee Benefits Handbook: Employee Representation and co-determination rights in Europe: 2010/11 Vol.1*

⁴⁸ Professor Anders V. : *Employee Participation on the Company Board: Organization for Economic Cooperation and Development: The Swedish Experience, Sweden, Stockholm University faculty of Law, 8 Dec/2000*

⁴⁹*Swedish Co-determination act:1976.*

⁵⁰*The Swedish Corporate Governance code: Dec.1/2016 no.II*

employees' participation in the decision of the board of director is granted by the Swedish Codetermination of the 1976, accordingly before an employer take any measures regarding significant change in the undertaking he shall be duty bound to consult and negotiate with the worker's representatives'⁵¹. Employees are represented on the Single-tier boards of almost all companies with more than 25 employees, there are 2 to 3 members which accounts for 1/3 members in most companies'⁵². Electing two members for employees' representation in the board for companies having minimum of 25 workers and electing three representative of employees at the board for companies having more than 1,000 employees are granted for the employee's union as per collective agreement with employer by the Swedish law'⁵³, however the employee representation can never be majority number in the board membership.

2.1.4 In Belgium

In Belgium employees are not represented at the board level of a company'⁵⁴. They are represented by works council in a company with more than 100 employees, and in companies with more than 50 employees committee for presentation and protection at work must be established. The Works Council is elected by all employees from a candidate presented by trade Union, the works council is entitled to economic, financial and social information. The works council has the right to be consulted on a lot of matters which could have an impact on the company, employment policy and labor organization, the Committee for prevention and protection at work is entitled to be informed and consulted on all issues related to wellbeing, health and safety at work, the Union delegation, if collective labor agreement provides for its establishment, can represents Unionized employees and deals with; negotiation of collective labor agreements, represent unionized employees, implementation of social legislations, individual and collective labor disputes. It also deals with employees' right of co-determination under collective agreement system with the employer on employees matters, regarding conclusion and termination of the

⁵¹Section 10,11 of the Swedish Employment Co-determination act.1976

⁵²www.worker-participation.eu/National Industrial relations/countries/Sweden/Boar-level representation.

⁵³Board Representation, private sector employees; Swedish, act.1987.

⁵⁴ Supra note 40

contract, the operation of the activity in general are also provided under section 32 of the co-determination act.

2.1.5 Hungary.

Employees representation occurs at two levels; one is at the trade Union Level;- the primary purpose is to promote and protect the employees' interests, inform employees about their rights and obligations, represent them before employer and public authorities, control the working conditions, enjoy the right to consult with the employer in relation to planned measures affecting a larger group of employees in case of reorganizations and privatization, plan of measures affecting large number of employees and to request information on issues having an impact on the economic and social interest of the employees⁵⁵. They also object any illegal action directly affecting the employees and nominate candidate for election to the works council. Employer must consult with trade union before ordinary and extra ordinary dismissal. The second is a labor safety Committee elected by employees which represents the employees' rights and obligations concerning non-harmful and safe working conditions⁵⁶.

2.1.6 USA

In USA there is no federal law for company. Companies incorporate under the laws of the state of their choice and thus more than half of the companies have chosen Delaware.⁵⁷. Because, the board of directors and officers are elected by the shareholders and responsible to them for ensuring that company is properly running, bears duty of loyalty to shareholders and care the corporation in good faith. Workers don't have representation in decision making even on matters affecting the employees. Some criticize this as it effects in manipulation of the majority working population by the few company owners in USA. Thus, USA has weak employee protection. However, recently, there is some evidence showing USA positive tendencies for employees' representation for decision making at the Board Level, for instance in 1970 a number of corporations including Chrysler

⁵⁵ ibid pg.6

⁵⁶ id

⁵⁷ ibid pg.236

appointed workers in their board of directors as per the collective agreement they have with their trade union. In April 2018 there was a request for the amendment of federal legislation to require companies at least to have one third representation of worker's representative in board of directors', during her speech Hillary Clinton,⁵⁸ promised to strengthen worker's rights and interests and she called for rewriting the rules by which companies share profit with their employees.

2.1.7 UK

In UK no employee representation at the board level, no co-determination right enacted, but, employee representation consists trade unions, the legislation requiring employers to inform and consult more generally with employee representatives was introduced in 2005. But it applies in employers with more than 50 employees and if employer voluntarily set up a structure for consultation⁵⁹. and UK Prime Minister Theresa May has also stated her intention to reform corporate governance such that workers and consumers are represented on the board to reform the 'Capitalism' so that it works for every one not just for privileged few one'⁶⁰.

Sogenerally we can draw that In USA and In UK we can notice that the duty of loyalty requires the directors to act solely in the best interest of the corporation. The request for a good faith, proofing validity of the measure is not imposed over the employers; in this system employers possess prerogative reorganization rights for economic reasons than employees' rights of Job security.

⁵⁸Hillary Clinton Campaign Speech, Newyork City, june 13/2015,
<https://time.com.3920332/wiki/> transcript-full-text-hillary-clinton-campain -launch

⁵⁹Supra note 40, pg.8

⁶⁰ The speech Theresa May gave after she was asked to form a government and become Prime minister, 14th july 2016, available at; www.toryworkers.co.uk/Theresa-may-speech-we-will-make-a-Britain-a-country-that-works-for-every-one-of-us.

2.2 International instruments governing protection of employees' rights under corporate reorganization.

ILO is the UN Specialized agency dealing with drawing up and overseeing international labor standards. Since its' establishment in 1919 fundamental conventions are enacted and ratified by member countries so as to serve as a fundamental principles which the member states are obligated to respect under their national laws irrespective of their economic status,⁶¹. They are the major international fundamental labor principles set as a minimum threshold for the member countries in protecting employees' rights'⁶².

ILO has 187 member countries. Ethiopia is one of members to ILO and it has ratified the termination of employment Convention in 1991'⁶³. Out of the aforementioned rights this study is concentrated on the relevant convention dealing with employees' right under the process of corporate reorganization, which mean, the international labor standard governing termination of employment convention. Economic difficulty and technological changes experienced in many countries are mentioned as the factor behind the adoption of termination of employment Convention, 1982.⁶⁴ Its' Purpose is to coordinate minimum level of job security in the Laws of ILO Member states. The move of Ethiopia for the enactment of the current labor law is also envisaged to adopt the convention in our legal system'⁶⁵. The main elements of employees' right embodied in the convention are:-

⁶¹ See; *Forced labor convention*,1930, *Freedom of association and Protection of the Right to Organize Convention*,1948, *right to organize and collective bargaining Convention*,1949, *equal remuneration convention* 1951, *abolition of forced labor convention* 1957, *Discrimination convention*,1957, *minimum age convention*, 1973,*termination convention* 1982, and *Worst Forms of Child Labor Convention*,1999.

⁶² *International labor organization fundamental conventions*: international labor office, 2002. see also termination of employment convention, Geneva, 1982(no.158), which regulates termination of employment relations at the initiations of the employer.

⁶³ https://en.m.wikipedia.org/wiki/Termination_of_employment_convention_1982 country profile, Google assessed on Aug.22, 2018,at.11:10 . the result shows that Ethiopia has ratified the Convention on 28/1/1991.

⁶⁴ Termination of employment convention, 1982, the preamble.

⁶⁵ supra note 29,the preamble

- A. **Justification for the termination**;- employment of a worker shall not be terminated unless it is based on the operational requirements or establishments of the undertaking. The convention negatively stated what shall not constitute valid reasons for termination, but what constitutes operational requirements of the undertaking is not clearly stated.⁶⁶
- B. **Procedure prior to or at the time of termination**;- The convention provides an opportunity for the employees to claim against unjustified termination to impartial bodies such as court, labor tribunal, arbitration committee or arbitrator. These impartial bodies are empowered to decide whether termination is indeed for the stated reason and whether it is sufficient to justify the termination. If the empowered bodies find that the termination is unjustified, in accordance with the national laws and practices, they are empowered to declare the termination as invalid termination and order reinstatement of the worker or payment of adequate compensation⁶⁷. In addition to this provision the convention involves supplementary provisions starting from article 13, concerning termination of employment for economic, technological, structural or similar reasons.
- We have observed that economic factors such as cost reduction, adoption of technology, structural arrangement for effective and efficient management as factors behind corporate reorganization. Here, when one employer decides to terminate employees due to the above reasons the convention imposes an obligation over the employer to consult with workers' representatives, in good time, regarding the reasons for termination, number and categories of workers likely to be affected, and the period of time to be carried out. The employer is also obligated to consult with workers' representatives regarding the measures to be taken to avert or minimize the adverse effects of termination on any worker as early as possible, but here an exception to the above obligation is made only to workers below a specified number or percentage of the total workers.
- C. **Notification to competent authority**; - moreover, the convention imposes an obligation over the employer to notify, in accordance with the national law and practices, to the competent authority as early as possible on matters regarding the reason for the terminations,

⁶⁶ Supra note 32 art.5

⁶⁷ Ibid art.7,8,9,10

numbers and categories of employees likely to be affected and the period of time at which the intended termination is to be carried out.⁶⁸

These are the main fundamental rights of the employees incorporated under the conventions and of course they are basic provisions which could guarantee employees' rights to protection from unemployment or dismissal as stated in UNDHR, it provides an opportunity for the worker to bring their grievance to the empowered authority to rectify unjustified dismissal as it is mentioned in FDRE constitution. Here we have to note that the obligation is imposed on the employer, whoever the employer it is, whether it is the public organization or the private organization it doesn't matter. Thus every employer who hires and administers the employee in accordance with the labor proclamation is subjected to the convention.

2.3. National Legal frame work governing employees' rights under corporate reorganizations.

We have observed the relevant provision of the FDRE constitution art.42 which stipulates protection of employees from unemployment measures. Contrary to that corporate reorganization is one scenario at which massive workers are likely to lose their employment. One relevant legal provision governing workers' rights during corporate reorganization is provision of labor proclamation. Labor provision state as merger, division or transferring of ownership of undertaking shall not have the effect of modifying contract of employment. However, the provision has provided an exception which allows modification of contract of employment by collective agreement, work rules issued in accordance with the proclamation and written agreement of the parties.⁶⁹

This means according to our labor proclamation;-unless otherwise provided in collective agreement, work rules and written agreements of the party, reorganization of any company has no the effect of modifying the contract employment.

Another law is the cassation decision by Federal Supreme Court on interpretation of laws which binds any federal or state court on similar legal interpretation.The decision has

⁶⁸ Ibid art. 14

⁶⁹ Supra note 29, art. 16

precedence and binding effect over the similar and lower court decision on similar case of legal interpretation, which binds and serves as a law throughout the country'⁷⁰. Thus, the researcher reviewed the court decision concerning employees' right related with corporate reorganization, only two files having some touching point with the concept of the study is yet publicized.

According to the ruling of the court; the amalgamation or division, transference of one undertaking to others has no effect on the termination of employment relations. The decision however stated the obligation of transferor in arranging the continuation of employees on their work by concluding agreement with the transferee or to terminate the employment relations and pay what deserves for the employee.⁷¹

In addition to that, the court laid down another exception to the principles which state the ineffectiveness of amalgamation or transference of undertaking from transferor to transferee on employment relation. The exception state that "since the bank accepts ownership over the undertaking due to failure of the debtor, on the basis of the foreclose proclamation no.97/90, the buyer is not responsible to the employees claim". The decision affirmed that the bank received the undertaking, the oil factory, for the purpose of selling later on and thus the bank is not liable for the employees rather the transferor.⁷²

2.4 The Practical Aspects of employees' rights treatment under Public corporate reorganization in Ethiopia.

In order investigate the practical implementation of employees' rights protection under public corporate reorganization the study is conducted on employees' rights under three public enterprises which is sold to two companies. This are the Harar Brewery share Company and Bedele Brewery Share Company which are transferred to Private

⁷⁰*Federal Court Proclamation no.454/97 art.2(1)*

⁷¹*The federal Supreme Court cassation decision: yirga trading private limited company Vs. Bezabih Mekonnin (three person), 'yekatit' 30/2008. vol.19 file no.119734*

⁷²*Federal Supreme court cassation decision: Mr. Alemayew Wolde and (10 persons) Vs. Ethiopian Commercial Bank of Ethiopia: on 28/2008 E.C.vol.6 file no.33314*

Company the so called Heineken International Share Company.⁷³ And the Limu Coffee Plantation' which is transferred to Horizon Private Limited Company in Nov.2006.⁷⁴

2.5 The Case of Harar Brewery

Interview is conducted with the legal head of Ethiopian trade Union Federation's Confederation, the question proposed to the confederation is whether it has encountered employees' rights issues during transference of the undertaking to Private Company so far. The result shows that the office has involved in resolving the issues raised immediate to the transference of the Harar Brewery by privatization agency to Heineken in 2006 E.C, ⁷⁵. The respond indicated as the contractual provision between the transferor government's privatization agency and the transferee Heineken Company signed in a form that could not bring any change to the employees' right. However, immediate to the transference within six months' the transferee has made a decision to reduce the work forces which was intended to reduce more than 10% workers. The interviewee added that, according to the transferee introduction of new technology which could replace human power and outsourcing work was the main factor behind the reduction, but, added that though the company has brought some plant to the place of factory yet practically it has not been functional and thus whether the introduced machine could be considered as new technological introduction, whether it could be operational as intended by transferee it was not proofed at the time of disputes. According to him, the disagreement regarding the reduction of workforces between the representatives of the workers and representatives of the Heineken Company was finally resolved through tripartite conciliation;-The Ethiopian Labor Federation's Confederation as representative

⁷³Office letter showing year of acquisition of the company written by Bedele Share Company and Heineken international shows the acquisition of company in 2004 E.C ,the letter shows as the company has bought Harar Brewery share company with more than 1.3 billion birr. and Bedele Brewery with more than 1.4 billion.

⁷⁴ Document of contract of sale concluded between supervising agency of public enterprises and Horizon Plantation P.L.C on 14/01/06 E.C.

⁷⁵ Interview Conducted with legal Head of Trade Union's Federations Confederation Mr. Asnake Mengiste, at his office in Addis Ababa on August 1/2010 E.c at 2:45-3:30 local time.

of Harar Brewery trade Union, representative of Heineken International Share Company and Ethiopian Labor and Social affairs deputy minister as Conciliator of the two parties.

In nutshell, the result of the interview shows, non-observance of contract of transference by the transferee on matters regarding employees' rights, absence of control and supervision on behalf of the labor and social affairs minister in accordance with authority granted by the labor proclamation and non-observance of the regulation of workers reduction by the employer are found to be the major problems resulting in abuse of employees' right, exposing them to mind disorder and social crises.

Another is the interview made with ministry of Labor and Social Affairs. The proposed question is whether they could entertain cases regarding employees' reduction under privatized public enterprises;- However, the response is negative' she (the interviewee) responded that the Minister doesn't observe Employees matters under privatized Public Enterprises, if the location is in Regional State regional Biro of labor and social affairs are empowered to observe labor matters and if it is in Addis Ababa the Addis Ababa Labor and Social office authorized to entertain labor cases under privatized public enterprises, the minister of Labor and Social affairs is empowered to observe only employees' issues arising under public corporation in the hands of government'⁷⁶.

The researcher has tried to conduct interview with the owner of the Company Mr. Rohan Doyer, Chair Person of the Director Board of the Harar Beer, or Company's Manager, but is not successful since they are not around during my visit to the company, but to avert the bias of data collection I have opted to analysis of the company's official document related with the case. The result of document investigation Concerning work force reduction case of Harar Brewery revealed that;- Post transference the transferee Heineken Company announced workforce reduction plan in accordance with art.29 procl.377/96 and art.6(1)

⁷⁶With the legal expert of Ministry of Labor and Social affair: Ministry of Labor and Social affairs at Adis Ababa in her office: conducted on 1/12/2010 at:8:00 E.C.

of the ministers regulation⁷⁷. The notice is directly made to the basic trade union of the company. According to the notice:-

1. to resolve production problem and human power organizational problems. Accordingly more than 10% of working force (out of 963 employees,487 employees are intended to be reduced).
2. Out sourcing some service of work which has no direct relations to the production of Brewery.
3. Introduction of modern technology, are mentioned as the factors behind the alleged work force reduction.⁷⁸

After dismissal in order to reduce the adverse effect of the reduction the company has stated its' plan for; supporting workers who are on learning or desire to learn, supporting HIV/AIDS patients, arranging creativity training, arranging financial credit service and helping association of reduced workers and supporting transportation costs of reduced workers wanting to live in other places. From the document we have realized that the company has sent copy of notice to Harar Labor and Social affairs office, for privatization and supervision agency of the government economic organizations and the Ethiopian food, beverage, tobacco and similar workers union federation'⁷⁹. However, advance efforts for reducing the adverse effect of work force reduction are not materialized.

Discussion also made with randomly selected 10 out of 400 reduced employees' of the undertaking, the result revealed as the employer has dismissed almost all guards of the company suddenly following the immediate acquisition of the company by Heineken International Company.

⁷⁷*Official Letters and minutes of conciliation made between the representatives of the workers and Heineken International Share Company since 18/10/05 up to the last agreement date of 5/10/2006.*

⁷⁸ Official letter by Harar Brewery addressed to Harar Brewery Employees' trade union, ref.no.HB/011/13, date 18/10/05.

⁷⁹ibid,letter pg.2-3, under no.11

2.6 The Case of Bedele Brewery

The group discussion is also held with previous employees of Bedele Brewery on Similar question open ended question regarding the problems they face pre, during and post transference of the company from government to the Heineken International Company and the way it is resolved if any are raised to them' and the result shows that;-

The transferee/buyer of the company has violated the contract it has entered with the transferor during the sale of the company. Initially the transferee company agreed not to affect employee's right, however following the transference the transferee has first dismissed more than 50 guards suddenly without announcing the workers/their representatives, reason for dismissal and the figure of workers to dismissed and period of dismissal was not informed. All responded as the company has fired the former workers and hired another from agency'⁸⁰.

Further the result shows as the company didn't arrange any alternative for avoiding adverse effect of work reduction rather they responded as the company has dismissed former guards and replaced them by guards appointed from agent such as Edomias International who appoint employee for them'⁸¹. According to them no work force reduction procedure is followed by the company rather the company has selected the employee they want and reduced other as they wish on. No training was given for the employee, before dismissal, all responded that at the end as they have agreed for willful termination of the job due to pressure on side of the employer. They added that, though they paid from 100%- 150% of their salary times by their yearly service, the debt and taxes are deducted and majority were left with no sufficient money or job to sustain their life.

Interviewee was also held with the then representatives of the Bedele Brewery trade Union, the interviewee has explained as major employees who has served in the company since its establishment in 1985 workers having 20 years of experience were expelled from

⁸⁰Out of More than 400 employees excluded by the company ten employees are randomly selected and /discussion is made between 10 employees on 14/12/2010 E.C.

⁸¹it is an agency which agreed to appoint and provides worker for the Company at a lower salary.

their job without any notification and retirement pension which exposed majority to family disorder'⁸².

In general the result of the interview shows that; immediate to the transference of company, urgent measures was taken by the transferee to dismiss guards without any notice and without any valid ground they were replaced with another guards. Notice to the government body and to trade Union was not made in accordance with the laws. Within one years with the alleged reason of technology and organizational change of working conditions the company announced its' intention to terminate around 360 workers out of 600 workers. However, though the union brought his grievance to the Zonal and federal Labor and Social Affairs they didn't investigate the validity of the factor for the reduction, no appropriate and timely response was given for the employees. Negotiation was made with Ethiopian Labor Union's Federation and the employees were convinced to fill the form for willful termination of employment relation. Accordingly the company has made payment up to 150% their service year times monthly salary and more than 50% of workers was forced to concluded termination of work accordingly.

To reduce the adverse effect after termination Loan Opportunity was made for the organized reduced workers, however, they finally end up with shortage of money unable to pay back the debt and finally the creditor has instituted a case against them at Metu High Court'⁸³, a number of workers majority of the worker were exposed to family crises, loss of job, mind disorder and still majority of them are appealing to the government for solution.

All recommended that initially the company was established in 1986 on more than 2500 km² donated by local farmers without any compensation expecting that it could resolve unemployment problems in the location, however, the company is sold to profit making ignoring the economic benefit of the people from the company, thus, they recommended the government should intervene for rectifying the loss incurred by employees,

⁸²Mr. Gaddisa Mosisa, for representative of Bedele Brewery Trade Union, Buno Bedele Zone, Bedele Town at his home, interview made on. 14/12/2010.

⁸³Oromia Saving and Credit Share Company instituted a case against B.A.D.G. partnership for execution of repayment of the money debt, case no. 27980

establish projects having potential to hire workers so as to reduce unemployment force in the Buno Bedele Zone.

Same question is also made to person represented the company, but he responded that employees' reduction was made in accordance with the laws the proclamation no.377/96. As the company has the right to outsource some works, to reduce work forces affecting more than 10% of the employee in accordance with art.29 of the proclamation and the regulation enacted by the minister and he added that, appointment of employees from external agency was made in accordance with law establishing the agent and empowered them to appoint and provide guards for the company.

Investigation is also made to identify measures undertaken by the transferee/employer, accordingly, a search in to different letters written by the company to the labor union and other concerned organ and letter written directly to the company on the issues are inspected.⁸⁴The result shows that the company announced the reduction of 327 work forces out of total 644 workers and out sourcing of some posts. However, since trade union's committee has complained the legality of the reduction the Bedele labor and social affairs requested the involvement of Zonal Labor and social affairs office, the south west worker's association, Ethiopian Workers Confederation and other concerned organ. But no official letter response was given by these bodies, thus, general inspection of the document result shows that the company didn't informed why, when and for what reason they decided for work force reduction' ⁸⁵.

⁸⁴Letter written by the Bedele Brewery share Company to all employees of the company በ.ቢ.አማ/ቦ/293/2006 ቀን 12 ጥቅምት 2006 , the notice states as the management of the company and trade union agreed to work together on the work force reduction program as per art. 28 and 29 of the proclamation and also describes as the company decided termination of work relations with those employees who willfully applied for termination.

⁸⁵The letter written by the Bedele Brewery company to Bedele Brewery trade Union letter no.በ.ቢ.አማ/ቦ/መሠማ/149/2005 ቀን 22/10/2005, the official letter written by Bedele City Labor and Social Affairs office to Ilu A/Bora Zonal labor and social affairs: no. haw/23/07-1/2005 on 1/16/2005. The letter written by the Bedele Brewery company to Bedele Brewery trade Union letter no.በ.ቢ.አማ/ቦ/መሠማ/149/2005 ቀን 22/10/2005.

Generally the following table 1. Shows the result of interview in brief manner.

Employees' Rights matters during transference of Bedele share Company to Heineken International				
		Expected to be implemented		
	rights of employees likely to be affected	Pre- reorganization	During reorganization	Post reorganization
1	Authorized organ and employees right to be informed for what, when and whom is to be reduced	Not proposed not requested by government, no chance for employees	Not at issue	Employers direct action for work force reduction
2	Employees right to be protected from unemployment	No work force reduction	Inserted in the contract	Were massive reduction based art.29 of the proclamation
3	Right of worker to bring their grievance on matters related with their employment relations	No grievance	No grievance	There is grievance but left to unequal bargaining power, no government inspection of the validity of the alleged reason for reduction.

8.3 The Case of Limmu Coffeefarm Development enterprises

Limu Coffe farm was a public enterprise consisting around seven working stations. These are 1.the Calalaqi Coffe Farm found in Jima Zone Cora Botor District, 2. Gumar, 3.Suntu, 4.Kossa Coffee farms found in Jima Zone Limu Kossa District, 5.Gomma one , 7. Goma two found in Jima Zone Goma District, and seven in Jima City. It has been under the ownership and administration of government before five years. It was a recent phenomenon that LimuCoffee Farm was sold to Horizon Private Limited Company by Ethiopian Private Agency'⁸⁶. The agreement has provided a list of obligations of the transferor and the transferee. Concerning employees' rights it stated that the acquirer Horizon Private Limited company agreed to accept the permanent and contractual worker and to administer them in accordance with the labor proclamation no.377/96, collective agreement and to protect professional healthy and safety in accordance with the relevant international convention.⁸⁷However, the investigation of cases brought by worker against the company immediate to acquisition within six months revealed four cases out of ten cases in which employees were fired from their work by a mere fact of transference. The name of these employee were Mr.Taakkala Bayu legal head of the enterprise, Mr.Belay A/Garo Human resource manager, Mr.Ishetu Chairperson of Oditing, Mr.Melese Wa/Mariam, the manager of the Enterprise.As it is understand from the letter the company has fired them because it doesn't believe in the continuation of them in the company.⁸⁸

Interview is also made with the present attorney of the company and with vice chairperson of Jima Zone labor and social affairs office, concerning the effect of acquisition of the enterprise by private Company. The result shows that the company has not adopt new technology; massive reduction of work force has not been undertaken, however, it has taken a sudden dismissal of selected top workers and manager, because it did not want to continue with them, the post was not cancelled it has replaced them with another worker.

⁸⁶Supra note 42,on the document of contract of sale between Ethiopian public enterprise supervision agency and Horizon Private Limited Company.

⁸⁷ ibid art.7

⁸⁸ Termination letter written to Mr.Ishetu W/Maskal by Horizon Pr.L.Company no.HRZ/A-184-06/2006 On.14/8/06,a letter of termination to Mr.Balay A/Garo by Horizon Plc. no.HRZ/A-184-06/2006 written on.14/8/06, termination letter written to Mallasa W/Maariyam by Horizon Pr.L.Company no.HRZ/A-184-06/2006 On.14/8/06.on the letter the company has mentioned as it has totally received the coffee plantation enterprise from government privatization agency on.24/3/2006.

CHAPTER THREE

3 ANALYSIS OF THE LAWS AND COLLECTED DATA

Introduction

Under this chapter the pertinent provision Ethiopian laws dealing with protection of employees' rights under corporate reorganization will be analyzed, the collected data will be examined and interpreted in line of international and national laws, so that the status of Ethiopian legal frame work and the practical situation will be illuminated.

3.1. The status of Ethiopian legal frame work in light of Employment termination Convention.

3.2 The constitution;-

Employees' rights are put in general manner in the FDRE Constitution.⁸⁹The constitution has listed various elements of employees' rights. However since the constitution is the general law, it has provided the enactment of laws for the implementation of the general constitutional rights of employees.

3.3 Labor proclamation;-

Depending on the power conferred by the constitution the authorized organ has enacted Ethiopian labor proclamation which provides rights and duties of employees in detail manner. Accordingly after the adoption of FDRE Constitution the first labor proclamation was adopted in 1993⁹⁰. However, taking into account the social, economic and political policies of the government the need for the adoption of the labor law which protects fundamental rights of employees in conformity with the international convention ratified by Ethiopia is needed. The need for defining the duty and powers of organ charged with

⁸⁹Supra note 27,FDRE constitution.

⁹⁰ labor proclamation no.42/1993

inspecting labor Administration and conditions of working environment, occupational safety in accordance with laws is also the factors behind repeal of the former proclamation and adoption of the governing proclamation.⁹¹

So long as the current Labor proclamation is adopted with the objective to conform with the international labor convention then critical analysis of the conformity of the labor provision dealing with corporate reorganization in terms of international labor standard and other laws adopted by Ethiopia would be necessary to arrive at the right conclusion. For better analysis I would like to put word by word art. 15 and art. 16 of the labor proclamation.

Art. 15;- Conditions of Modification.

Conditions of contract of employment which are not determined under this proclamation may be modified by;

1. *Collective agreement.*
2. *work rules issued in accordance with this proclamation or*
3. *written agreement of the parties.*

Art. 16. Amalgamation, Division or transfer of ownership

Without prejudice to Art.15 of this proclamation amalgamation or division or transfer of ownership of undertaking shall not have the effect of modifying a contract of employment.

These two provisions are the two main provisions having nexus to the right of employees' under corporate reorganization. Article 16 its caption directly talks about corporate reorganization and it has stipulated the principles which provides non-effectiveness of corporate reorganization on the employees.

from the this provision we can notice that It has laid down an automatic transference of rights and obligations of employees' with the assets of the corporation from seller to the buyer. Here we should note that parties to the transaction are only seller and buyer,

⁹¹ Supra note 36, the preamble of labor proclamation.

employees are subjects of the contract, and they are not parties to the contract. However, the exception to these principles allows stipulations of otherwise provisions in collective agreement, work rules or written agreement of the parties. Assuming that parties did not arrive at an agreement as provided under art.15, a new employer would be held liable if it has dismissed workers by a mere fact of acquiring the company from former employer.

During the merging process it is obvious that after the completion of the transaction the merging of human power may result in redundancy or idleness which may compel the undertaking for work force reduction, however, absence of exception to art.16 based upon such reasons may seem to affect the flexibility nature of our labor laws towards economic interests of companies. In such circumstances we should have a law and procedures ordering pre-transfer investigation, prescribing advance measures for reducing adverse effect of work force reduction, ordering information for worker's representatives and authorized organ in our labor provisions.

The absence of such clear provisions have paved the way for transferee to use art.28 as an umbrella for dismissing workers. Article 28 doesn't confirm the minimum standard set under the employment termination convention for the protection of employee under corporate reorganization. This shows defective legal craft in striking the balance between the two antagonistic interests. Because, Art. 28(2) states;-

The following grounds relating to the organizational or operational requirements of the undertaking shall constitute good cause for the termination of a contract of employment with notice.

- A. Any event which entails direct or permanent cessations of the worker's activities in part or in whole resulting in the necessity of reduction of work force.*
- B. Fall in demand for the product or service of the employer resulting in reduction of volume of the work and profit of undertaking which necessitate reduction of work force.*
- C. A decision to alter work methods or introduce new technology with a view to raise productivity resulting in the reduction of the work force.*

Art. 28(3) states when cancellation of post affects a number of workers resulting in reduction of work force. Reduction of work force means reduction of at least 10% of the number of workers employed.

From the above provision it is vague what organizational or operational requirement does mean? because, organization requirement is defined broadly as it involves;- The organization's vision, goals, objectives and priorities, business and performance plans, systems, processes and requirements for quality assurance, specific change initiatives, legal requirements (occupational health and safety and anti-discrimination legislations) confidentiality and anti-discrimination requirements are all mentioned as an examples of organizational requirements⁹².

From the above sub-provision art.28 (2,C) The alleged employers reason for altering work method and introducing new technology is the main point of controversy between employer and employees.

As we have stated so far the present labor proclamation is enacted in 1996 E.C or 2003 G.C it is enacted after Ethiopia has ratified the international employment termination in 1991. As it is stated in the preamble the objective of its enactment is to amend our labor law in compliance with the international convention. However, the provision of the convention under part. III dealing with termination for economic, technological, structural or similar reasons are not appropriately accommodated in the proclamation. For better identification of points of disparity when we examine the provision of the convention;-

According to Art.13 of the convention when employer contemplates terminations for economic, technological, structural or similar nature the employer shall;-

- A. *Provide the concerned workers' representatives in good time with the relevant information including the reasons for the terminations, number and categories of the workers likely to be affected and the period over which the terminations are to be carried out.*

⁹²<http://Ird.Kangan.edu.au/toolboxx1213>, Google assessed on 16/12/2010, E.C at:4:00 A.M

B. in accordance with the national laws and procedure, as early as possible to give an opportunity for consultation on measures to be taken to avert /minimize the terminations and measures and to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.

Art. 14 of the convention states that;- when employer contemplates terminations for economic, technological, structural or similar nature the employer shall;-

Notify in accordance with national law and practices, the competent authority as early as possible, giving relevant information, written statement of the reasons for terminations, the number and categories of the workers likely to be affected and the intended period of termination.

However, when we critically observe at the labor proclamation.no.377/96 art.28 and 29 though art.28 (2) state termination due to organization requirement and introduction of technology unlike to the convention it doesn't state the structural changes. Similar to art.13 and 14 of the convention Article 28 talks termination due to organizational/operational requirement or termination due to alter of work methods or adoption of technology, however, article 28 of the labor proclamation misses the two basic obligations, the obligation of consultation of the workers' representatives and obligation of notification to the competent authority as per art.13 and 14 of the convention respectively.

in case of suspension the employer is obligated to inform within 3 days,⁹³ but in case of work force reduction duty to inform the ministry and period of time at which the ministry shall respond to the decision of work force reduction is not stated. But, logically speaking workforce reduction should be informed forthwith more than suspension.

Another defect is that when work force reduction is undertaken in accordance with art.28 (1) it is stated that employer shall consult trade union in arranging the order of dismissal.⁹⁴ However, the whole reason for dismissal provided under art.28 (1, A, B, C) doesn't contain ground of termination stated under art.13 and 14 of the international

⁹³ Supra note 36,art.19

⁹⁴ Ibid,art.29 (3)

convention. Even the employer's obligation of consultation on sequence of reduction as per art.29(3) is not similar with the duty of consultation concerning minimization of work force reduction averting adverse effect of work force reduction and similar matters as provided under art.13 of the convention.

Under art.29 of the labor proclamation, sub-art. 3 of this article states the duty of employers consultation with the workers only in case of workers reduction as per article 28(1) of the proclamation, it doesn't obligates the employer consultation in case of work force reduction under the factors stated under art.28 (2). Article 28(1) deal with reduction of work force caused by loss of capacity of the workers or situation affecting the worker. However, reduction of work force caused by organizational or operational requirement is listed under article 28(2) of the proclamation.

According to the international termination convention Consultation with the trade union is needed in case of reduction of work force caused by organizational, operational or structural requirement of the company, thus absence of the obligation of consultation under art. 28(2) show the deviation of the provision from employee's termination convention. It paves the way for the employee to terminate without consultation with trade union in case of work force reduction caused by organizational or operation requirement of the company.

Therefore we can draw that art. 28(2) do not provide an obligation of consultation on the employer, it doesn't protect the right to information of the employees, and it doesn't impose duty of employer to inform the concerned authority as per the international convention for termination of employment relation.

Another issue is; - Art.16, while merging is mainly expected to bring employees' layoff, art.16 doesn't put an exception allowing reduction of work force due to downsizing /merging of corporations. But, to the contrary art.28 (2) and 29 allows work force reduction for organizational, operational or technological adoption of employer for maximizing productivity.

3.4 Analysis of Data Collected from Bedele Brewery, Harar Brewery and The Limu Coffee Farm enterprises.

The result of the study made Harar Brewery, Bedele Brewery and Limu Coffee Farm enterprise shows that in all undertaking the contractual document ensuring the transference of employees' of the acquired companies to the acquirer company is made in conformity to art.16 of the labor proclamation during the acquisition of the undertaking by private companies. However, we could derive from study that;

1. In all undertaking before and during the sale of the enterprises to private companies, we have realized absence of investigation regarding the impact of the acquisition of the undertaking by private company. Those privatized enterprise was initially established for public purpose for creating employment opportunity to the society, however, during the transference of the undertaking, the study shows that, the transferor privatization agency didn't take care for the negative impact it could bring up on the employees, before the restructuring process the effect of transaction over the continuation of the employees in the acquiring company was not disclosed to the employees. In the absence of any participation on behalf of the employees' the dealing between acquired and acquiring undertaking ends up with immediate transference of the employees' from the former employer to the new employer. Thus, the employees had no chance to express their voice in the transferring process, and they are not informed at all. The government is not committed to requisite the acquiring company to present employee impact assessment or the list of employees likely to be affected by the new employer, and employees are not given the chance to be heard. These, affects the employees right to bring Objection and grievance which is protected under the FDRE Constitution⁹⁵.
2. The second identified problem is violation of contractual provision by the new employers. The result of the data conducted on the three organizations shows that, in Harar and Bedele Brewery the breach of contractual obligation started with firing and hiring of another guards by acquirer companies. In the Limu Coffee Farm Production also the acquiring company suddenly dismissed four top employees. In Limu Coffee Farm the new

⁹⁵Supra note 33.

employer has dismissed them, without valid reason because the company didn't want to continue with them and thus Suddenly they were dismissed from their works, in Bedele the study shows that more than 50 guards were fired overnight and replaced by other guards, thus in all the three undertaking the result of the study shows us the violation of the contractual provision guarantying employees continuation and transgression of art.16 of the labor proclamation by the employer.

3. The third problem identified by the study is massive dismissal of the employees by the new employer under the cover of introduction of new technology and organization of working structure. Here, it is obvious that the objective of privatization is to improve the efficient and effective management of human and material resources of the undertaking. Organizational and operational change or adoption of technology are mainly expected to be the result or effects of reorganization, because, the purpose of acquiring company could not achieve its goal of profit maximization and its competitiveness in the market unless idle costs are controlled and workers are efficiently organized. The introduction of some plants may also enforce the company to reduce human power replaced by the machine, however, the problem comes when the company introduce a machine such as packer and un packer, in case of Bedele and Harar Brewery which works on the loading and unloading bottles, and takes a measure against workers including workers whose post could not be replaced by the machine such as guards. In Such circumstances Good faith and Justiciable ground is questionable.
4. Absence of the obligation to inform government authority and the trade union about the contemplated work force reduction, the result of study in the three undertaking shows absence of informing within adequate time in advance about for why, when and for what reason the work force were intended to be reduced. The Sudden dismissal of guards in Brewery Company and four top workers in Horizon Plantation without any notification undertaken by the new employer following acquisition evidenced the breach of the provision of employment termination convention art. 13 and 14 which imposes duty of to inform to the trade union and to the government authority about the contemplated measures over the employer.

5. Failure of government authority to inspect the validity of work force reduction, the result of the study shows that; the Harar Brewery trade Union and the Bedele Brewery trade union has complained against the measures of the company for work force reduction to the respective labor and social affairs office, but no appropriate response is given by these authorities, they didn't involve themselves in investigating the validity of the alleged plant introduced by the companies, the authority has not deployed an expert for identifying the validity of the reason for the work force reduction, no appropriate measure was taken by the authority when the company has fired guards massively and hired another guards. Result shows that no Oromia Labor and Social Affairs office or the Federal labor and Social affairs minister or any independent organ involved in investigating the validity of the reason for work force reduction alleged by the new employees.

CHAPTER FOUR

4. Conclusion And Recommendation.

4.1 Conclusion

From the study we have noticed that since the coming to power of EPRDF the government has launched free market policy aiming at promoting the participation of economic actors such as national and Foreign Direct investors as a means for achieving the development goal of the country. Accordingly the government has established privatization agency and has engaged in selling public undertakings to private companies. Selling shares of Public Corporations which are implemented as fund raising, efficient and effective utilization of resources and effecting free market competition has created another controversial issue of employees' rights.

The result of the study revealed that during the acquisition of public enterprises by the private investors in Ethiopia the minimum threshold set under international termination convention is not respected; absence of careful articulation of the provisions of international convention in our legal system has resulted in manipulation of defective provisions against the poor employees.

The first problem lies on the absence of clear and complete provision of the termination convention in the Ethiopian labor laws. Absence of employers obligation for consultation with the trade union and absence of notification to empowered authority regarding the likelihood of work force reduction pre and during corporate acquisition by new employers, and absence of penalty provision for its violation are found to be the major legal loopholes which demand the government for modifying the laws in conformity with the stated provisions of the international convention.

The second problem which is revealed by the study is absence of any effort on behalf of the former and new employer for reducing the adverse impact of the corporate reorganization over the employees. The convention imposes duty to avert employees' lay off on the employer, on the government and on the employees also. It impose the obligation over acquiring employer to propose the probable amount, the time and the reason for work

force reduction, to work with the employees representative for avoiding or minimizing the adverse impact of the dismissal, and also it imposes over the government to investigate the soundness of the alleged reason for the work force reduction and to work with employer and employee in resolving the issues. The UDHR and the FDRE Constitution also imposes a duty over the government to protect its citizens from unemployment. In all the three undertaking the Harar, the Bedele and Limu Coffee Farm enterprises the data collected has revealed that during the negotiation for selling the companies only the government as a seller and the acquiring company as a buyer were negotiated, the probability for work force reduction was not presented by the acquiring company, no any consultation was made with the concerned employees representative, the absence of such pre-caution has resulted in the fall of employees fate in the hands of the new employer, massive and sudden employees lay off which is harming the job security the right to retain in the job.

The third major problems identified by the study are absence of appropriate resolution by labor and social affairs office for the objection of employees against the alleged reason for the dismissal of employees by the acquiring company. The constitution and UDHR has provided employees right to bring grievance against employer and to get justiciable resolution. However, while the labor and social affairs office are set there to investigate and pass appropriate measures for collective labor contentions they fail to investigate the validity of point of contention, both in Harar and in Bedele case though the representative of employees has brought employees complaint to the body, the body doesn't established investigation committees and doesn't move to the area with experts for investigating the reason for termination rather they merely participated as conciliator in Addis Ababa. The data collected and the document evidenced that labor and social affairs has failed to implement the authority given by the labor which empowers to investigate both sides and pass appropriate decisions. Good Corporate governance or corporate ethics requires the company's management organ to act in accordance with the laws and rules of the country, to consider social interests, human rights in general and employees right in particular. Western experience particularly from the German, France, Sweden we have observed the mechanisms by which they have crafted their laws for balancing the two competing interests between the shareholders and the employees. Thus, Ethiopia Should share these

experiences and should enact company laws which could permits participation of employees in board of directors for decision making particularly on matters affecting employees' rights. It is more recommendable if Ethiopia has adopt two tier of boardof management and supervisory board for balancing both side interests in accordance with the international termination convention, however, it may take long time for enacting corporate laws and changing the structure of the corporate governance, thus like the single tier countries such as Sweden it could be simple for Ethiopia to amend the Composition of Board of Directors so as to accommodate employees representative for enabling employees to participate and pass decisionon matters affecting their rights in the company and ensuring their democratic participation in decision making, if not the current law and experience in Ethiopia Favors more the fewand corruptive authorities to continue in maximizing their interests at the expense of the poor but majority societies.

RECOMENDATIONS

Ethiopian Trade Union's Federation Confederation, and also different official letters and minutes of conciliation between trade union and the Employer are examined. The result shows that; - Art. 13 and 14 of the Convention for the termination of Employment relation is not appropriately inserted in our legal system, government authority are not investigating the validity of the reason alleged by the new employer prior to employees lay off. Art. 28 and 29 are serving as a cover for dismissing work force by the investors contrary to the contractual provision entered with former employer and art.16 of the labor proclamation. Therefore in order to strike the balance it is recommended that;-

1. Art. 28(2) should be amended as an exception to encompass right and obligation of employers during and post restructuring of public corporation. Sub-article should be added to encompass;-
 - A. Obligation of the employer under the convention art.13;-the termination convention, the employer obligation to inform the contemplated work force reduction to the representatives of trade union pre or during or post transference of the corporation.
 - B. obligation of the employer under the convention art.14: to notify to the concerned labor and social affairs office in case of work force reduction caused by corporate reorganization before or during acquisition of the corporation.
 - C. Administrative measures, Penalty measure for the failure of notification to be imposed by the authoritative body.
2. If reduction of work force is justified prior to the transference of undertaking the regulation imposing an obligation over the acquired and acquiring company for training, minimizing the adverse effect of reduction should be enacted and implemented.
3. Ethiopia Should enact Co-determination laws, laws which empowers employees representative the board level enabling them to participate with employer in decision making particularly on matters affecting employees' rights should be enacted and the number of representative should be determined based on the type of corporation and number of employees.
4. Employee reduction should be taken as a last resort and if it is justified, the government should allocate another posts for them in the government office or should open another employment opportunities.

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