

**INVESTIGATING THE FRAME WORK OF  
LABOUR INSPECTION SERVICES IN  
ETHIOPIAN LAW, LAW AND PRACTICE.**

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## **CHAPTER ONE**

## **Brief Analysis of the Existing Laws on Labor Inspection Service**

### **Background**

The creation and development of labor inspection service is closely related to the political, social, technological and economic development of nations. The historical highlights in the creation of these services reveal their close relationship to industrial revolution.

Like industrialization, labor inspection started in Britain, when the parliament issues labour standards, which automatically created the need for mechanisms of control. Initially, this task was carried out by benevolent commissions composed of local persons, men of the clergy and retired industrialists. But in 1833 this task was placed in the hands of persons authorized to carry out territorial inspections, which makes birth of modern day labor inspection.<sup>1</sup>

Along with the industrialization process the European countries and United States gradually developed legislation to protect workers right and labor inspection services.<sup>2</sup>

The end of the First World war saw the creation of the ILO through Article XIII of the Treaty of Versailles, which later becomes the Constitution of the ILO.<sup>3</sup> Labor inspection was included among the general principles that inspired the Treaty of Versailles. All the states shall organize labor inspection service to ensure the application of laws and regulations related to workers protection.<sup>4</sup>

The very first international instrument in relation to labor inspection, was the recommendation No.5 on labor inspection (health services),

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<sup>1</sup> [Http://www.lapourinspection.org/site/htm](http://www.lapourinspection.org/site/htm)

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> Ibid

1919, and recommendation on labor Inspection (No 20), 1923, which contained several, basic principles of modern labor inspection, though in non binding form.<sup>5</sup>

A convention on labor inspection that would generate formal obligations to the member states was developed and planned for discussion in 1940, when the Second World War intervened.<sup>6</sup> At the end of the Second World War, the convention was discussed at the 1947 conference when the labor inspection convention, 1947 (No 81), and associated Recommendation (No.81, 82, and 85) was adopted.<sup>7</sup> This new Convention includes different principles and standards which are valid and relevant today. When we come to our legal system labor inspection service has been incorporated into our legal system since 1944. During that time, the emperor through order No 37/64 established Labor Inspection Service with its own budget and independent operation but under the overall supervision of Ministry of National community Development and social Affairs. The administrator of Labor inspection was to be appointed by the emperor and hence the office gained imperial recognition.<sup>8</sup>

Labor proclamation No 64/75 was another important piece of legislation which was adopted by after the imperial regime was overthrown. By this proclamation the ministry responsible to implement labor matters was renamed as the Ministry of Labor and social affairs instead of the ministry of National community Development and Social Affairs.

However this Proclamation had no clear provisions regulating activities of Labor inspection and or provisions governing employment injuries and

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<sup>5</sup> Id, at p.6

<sup>6</sup> Ibid

<sup>7</sup> Ibid

<sup>8</sup> Mehari Redae. Historical development of labor law in Ethiopia and the current practice: Brief overview (2007)P.7

their mode of assessment. Nevertheless, since it did not expressly repeal any of the legal instruments preceding it, it was lawful to consult the previous labor legislations in order to fill the gap. After the change of government in 1991, Labor Proclamation No 42/93 came in to being with the downfall of the military regime. Under this Proclamation Labor Inspection duties have been entrusted with the power to ensure the implementation of labor legislations and reader court decisions, pertaining to labor matters.<sup>9</sup>

Ten years after issuance of proclamation No 42/93, proclamation No 377/2003 came in to effect. Under this proclamation, which is still functional, Labor Inspection service is made one of the three principal organs of labor administration. The focus of this paper, hence is assessment of inspection service as stipulated in the proclamation.

### ***1.1. Functions and Scope of Labor Inspection***

Originally, the functions of labor inspection service were confined to supervise the implementation of labor legislations. Inspectors were regarded simply as law enforcement agencies, a kind of “auxiliary police”.<sup>10</sup> But, though supervision is still one of the major responsibilities of any labor inspection service, today the duties entrusted to labor inspectors have become complex and broader.

The functions of labor inspection service are provided under Article 3(1)(a), (b),(c) of ILO Convention 81 of 1974. and Article 177 of Labor Proclamation No. 377/2003 of Ethiopia.

The main function of labor inspection services is to serve as part of the machinery of government body to create social peace at its end.

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<sup>9</sup> Id at p.8

<sup>10</sup> ILO. Labor inspection: purpose and practice (1976)p.6

In addition to this Labor inspectors should have to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work.<sup>11</sup> Supervision is a means by which an inspector can fulfill its main task, that is securing the enforcement of legal provisions.<sup>12</sup> With this goal in mind, labor inspectors exercising public authority are empowered to supervise the over all work conditions of the laborer in the county. The activities of labor inspectors includes entry of work places and to examine create good relationship between the employee and employer (informing their reciprocal rights and obligations), serve the role as negotiator whenever there is conflict of interest between the two parties and finally impose appropriate penalties when there is a violation of labor laws provisions Among the various tasks of labor inspectors, this paper tries to address some of the following.

## ***1.2. Occupational Safety and Health***

According to Article 1(a) of Occupational Health Services Convention (No.161) and Recommendation (No.171) of 1985, the term “Occupational Health Services” is defined as the services entrusted with essentially preventive functions and responsibility for advising the employer, the workers and their representatives in enterprises on (a) the requirements for establishing and maintain a safe and healthy working environment which will facilitate optimal physical and mental health in relation to work, and (b) the adaptation of work to the capabilities of workers in light of their state of physical and mental health.

The spirit of this definition is recognized under Article (92-98) and 177 (2),(7) of Labor proclamation No.377/2003 of Ethiopia which gives

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<sup>11</sup> Labor inspection (industry and commerce) convention no.81 1947, international labor conventions and recommendations 1919-1991 (1992) art 3(1)(a)

<sup>12</sup> ILD labor inspection worker education manual (1980) p.12

emphasis to working conditions: Occupational safety, health and working environment. Further more, the reading of the last paragraph of sub Article 2 of 177 of the same proclamation talks about “working condition which is to mean the entire field of relations between workers and employers and shall also include hours of work, wage, work leave, payment due to dismissal, workers health and safety, compensation to victims of employment injuries, dismissal because of redundancy, grievance procedure and any other matters similar in nature.

Generally, the need of occupational safety and health standard as provided by law is for protection of workers against risks arising from employment. This includes, the prevention of air pollutions, ionizing radiation, benzene, presentation of occupational cancer, noise and vibration in the working environment and safety in the use of chemicals including the presentation of major industrial accidents.<sup>13</sup>

### ***1.3. Advice and information***

One of the functions of a system of labor inspection is to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions.<sup>14</sup> (Art.3, paragraph) 1(b) of convention No, 81(1974) and Article 177(2) of labor proclamation 377/2003 provide that the labor inspector has the duty to educate, make research and prepare standard of work to ensure implementation of laws. A Part from the above mentioned task the labor inspector may in the course of an inspection may discover a deficiency in the legislation. He may also discover deficiency in the course of his advisory work (while attending meetings of workers committees, health and safety committees or other specialized bodies). Finally, labor

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<sup>13</sup> International labor standards. A global approach 75<sup>th</sup> anniversary of the committee of experts on the application of conventions and recommendations. P.341.

<sup>14</sup> Von Richthofen W. labor inspection: a guide to the profession international labor office (2002) p.32.



inspectors are often associated in the work of various authorities responsible for expressing opinions or making proposals on manpower problems and conditions of employment and for examining or submitting drafts on problems of that kind. Moreover, labor inspectors devote their effort in preparing the list of occupational diseases and schedules of degrees of disablement classify dangerous trades or undertakings, conduct studies, and prepare training programs concerning the prevention of employment injures. In carrying out these tasks, labor inspection contributes to the national development in terms of reducing accidents and therefore enhancing production and economic growth. It also creates a good working environment leading to efficiently increased production reduces medical expenses and compensation expenses. This improves the standard of living of workers in the country and also effective labor inspection likely creates confidence in investors.

#### ***1.4. Collective Agreements***

Collective agreements are legal document. It means all agreements in writing regarding working conditions and terms of employment concluded between an employer, group of employers or one or more employers; Organizations, on the one hand, and one ore more representative of workers' organizations, or in the absence of such organizations, the representatives of the workers duly elected and authorized by them in accordance with national laws and Regulations, on the other's.<sup>15</sup>

The term collective agreement is incorporated under the Labor Law Proclamation 377/2003 of Ethiopia in under Article 177(1). The task of labor inspectors in this case is associated in the preparation of collective agreements. In conformity with the law of the state.

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<sup>15</sup> Collective agreement recommendation (1951) No. 91 pp. 12

In most cases, labor inspectors assist the employer and employees during their negotiations, either at their request (when the two sides have spontaneously come to the bargaining table without any kind of formal obligation) or as a member of joint committee (where the law provides that the inspector should be present). Therefore, labor inspectors have a very vital role in facilitating the grounds for making collective agreements effective and fruitful. They are but expected to observe the proper and justified implementation of collective agreements. In this regard, the inspectors have the duty to inform the parties of the legal implications of collective agreements with event of disputes on top of this when an agreement needs to be negotiated, the inspectors have to play a more active role, though one requiring less technical knowledge, by persuading the two parts to continue.

### ***1.5. Labor Administration***

Labor administration is a wide concept. It covers a wide range of issues. The main areas or fields that labor administration deals with according to the recommendation No 158 of the ILO are:-

- 1) Labor standards which is mainly concerned with working condition, wage, terms of employment, occupational safety and labor inspection;
- 2) Employment which in its turn deals with national employment policy, unemployment insurance schemes, vocational guidance, vocational training and employment service;
- 3) Labor administration deals with employers' representation, workers representation, collective bargaining and settlement of labor disputes; and
- 4) Research on labor matters.

This field is more of statistical and related to studies comprising data collection, studies, forecast analysis and information dissemination.

Prior to the coming into effect, these of international instruments state have their own style of treating the labor administration issues. But after signing of these documents, they are given higher emphasis. According to Art.1 of Convention No, 150 term labor administration designates the actives of the public administration in the area of national labor policy. The same convention states that the term labor administration system embraces all the organs of public administration-ministerial departments or public bodies, including quasi-official regional local or any other form of autonomous administration responsible for or in charge of the administration of labor as well as any institutional structure to coordinate the activities of such organs and the consolation and participation of the employers workers and their respective organizations. This article attempts to improve several ideas one of which leads to reach to a conclusion that one of the fields of action of labor administration is labor inspection. Unfortunately, because of the fact that labor inspection is dealt with under convention 81, it is not express or implicitly contemplated in convention number 150. When we come to the current Ethiopian labor law, we find a provision dealing with labor administration. This issue is well addressed under Article 177 (8) of proclamation 377/2003. it tries to incorporate labor inspection service to the area of taking administrative measures in order to implement this proclamation, regulations and directives issued in accordance with the proclamation.

### ***1.6 Minimum working condition***

Minimum working conditions are the minimum limits set by law to protect the interest, health and other earnings of an employee. These may be expressed in many ways. Our current labor proclamation has incorporated some minimum working conditions. To mention some: Art 88 of the proclamation states that an employer shall grant leave to a pregnant women worker with out deducting he earnings for medical

examination connected with her pregnancy she is but obliged to present a medical certificate of her examination. This allowed period of leave is 30 days. That means the employer shall grant the pregnant woman a minimum of 30 days of the pregnant woman, however, may exceed the 30 days minimum limit on justifiable and legal grounds for the ascertainment of these and other types of minimum labor working conditions, the existence and effectiveness of labor inspection service becomes highly essential to see how much relevant the existence and effective functioning of labor inspectors, let's have a look at a specific situation of labor exploitation.

### ***1.6.1 Child labor inspection***

Generally, labor inspection caters or large for employment issues. Employment issues are legion and complex. Though there are many issues concerning employment, all are not legal by their nature, some among these issues are illegal like for instance, child labor which is highly practiced in developing countries as it has direct link with poverty. Many children work under extremely hazardous situations and in dangerous industries such as construction, mining, quarrying and agriculture. In many countries children are used as slaves as they cannot complain and they do not belong to any union or workers. They are brought and sold across nations and commercial sexual industries of children are on the increase worldwide. In Ethiopia agriculture and domestic service sectors are the major sectors employing children. The most work in the informal sectors like newspaper vendors, shoe polishing, cloth waiving shepherds and similar areas of labor.

Causes of child labor could basically a symptom of the underlying problem of widespread poverty and inequality in society. It is also a cause of poverty. Poverty is not the only cause of child labor, there are also other factors. Some employers, very surprisingly, opt to employ

children because they are obedient, and hired at chapter rates than adults just to mention but few.

Much is expected from labor inspectors to combat child labor, since it is the inspector who has the power of access to work places freely and without hindrance.

A labor administration is an institution in the machinery of state through which society translates its will to subject human labor to rules, based on the belief that it can not be left to arbitrary factors, but must be a result of the common will of the society specifically the working society.

It in effect is designed to make effective the fundamental rights of workers. Any time of the day or night each and every inspector is expected to know that he is dealing with a complex issue which is child labor. Moreover, the labor inspectors need to know the up to date facts and figures about child labor, and problems in the areas they serve. This information should include the seeds of the problem, the nature of child labor in terms of the sector of employment relationships, and to analyze the worst forms of child labor. The Ethiopian labor Law under its article 89(2) prohibits employers from employing persons under the age of 14. The same proclamation under, 19 prohibits night work between 10 p.m. and 6 am, overtime work, on weekly rest days and public holidays.

Labor inspectors need also be familiar with the national legislation dealing with child labor. If they are expected to carry one an effective work, they also need to have some understanding of legislation on education, social protection of children, and children's' rights. They should be aware of boarder government policy on child labor, the sectors or geographical areas that have been prioritized for action, and the nature and extent of policies, priorities, ad structures of the social welfare and educational authorities. Inspectors are also supposed to know, except in situations of extreme hazard, which call for immediate action or removal of a child.

The process of removing a child from work should always be lined to some process of investigation and rehabilitation.

Labor inspectors must understand the fundamental role of organized employers and trade unions in any concerned effort to combat child labor. They must know the national plans of child labor if they exist. For example, we can raise the National Action plan on sexual abuse and exploitation of children (2006-2010) which was prepared by the Ministry of Labor and Social Affairs (MOLSA).

Thus, by having a look at the above areas of interventions and coverage, we can conclude that the areas which are covered by the labor inspectors are very wide which in turn will pressurize the labor inspectors to have an all rounded knowledge about many issues containing child labor as well as labor in general.

Since, children are the major victims of the problems which are arising in relation with the issue of employment; it is good to give emphasis as well as importance for the works done by children so that we can render a better solution to problems which arise in relation to their employment.

### ***1.7. Labor dispute***

This generally includes any controversy between employers and employees that are mostly related with working hours, wages, fringe benefits or conditions of employment. Labor inspectors are contributing immense to the peaceful relationship to exist between the employer and employee. If this is not attained attempt to solve the dispute in peaceful ways don't succeed the less desired way of solving Labor dispute by group to court of Law will follow, Labor inspectors further, ensure whether the orders and decisions given by the courts at different tribunals, are put into practice.

In this regard, Article 177(9) of proclamation No 377/2003 provide labor inspectors to seek in the courts or in the authorities responsible for deterring labor disputes appropriate of the proclamation and of such

sanctions as may be required by its decision rendered in the course of its lawful activities.

### ***1.8. Powers and duties of labor inspectors***

This section deals with power of inspectors to them to sveltely carryout their duties it also deals with the status the enjoy generally as members of the public service even more I corporately discussed powers of inspectors under international labor instrument with our law in the following way.

#### ***1.8.1. Free entry***

Under labor inspection convention (1947) i.e, No 81 labor inspectors are provided with the power to enter freely without previous notice, at any hour of the day or night to any work place which, they have reasonable cause to believe to be liable for inspection. This clearly show that international labor convention are designed in such away as to make inspection possible for inspectors, on the production of their credentials. When we see our law, labor proclamation 377/200 under Article 178(3) stares that labor specters shall have the power to enter, without prior notice during any working hours/which they may think necessary to inspect murder to examinantants or inquire to ascertain observations of the provision which are particularly provided by the law.

There are some differences between the powers of labor inspectors as international convention and our law among which time of inspection is one where they depart. Time of inspection is at any hour of the day or night in the international conventions. However our law restricts the inspection time only to working hours and fails to comply with the international instruments on this issue.

The reasons why the international document allows search during night time is based on legal and practical consideration. Legal consideration is meant that it is hardly possible to ascertain whiter staffs are being

employed unlawfully outside normal hours of work unless it is possible to visit the under taking at times when it is not supposed to be an operation.<sup>16</sup> And practical consideration in that it is often easier to inspect a machine that is not working or furnace that has cooled down, which implies inspection out side working hours.<sup>17</sup> However, would not be fair for an inspector to an employee to let him enter an undertaking at night to check the payroll. The permissible should be applied when flexibility and common sense allows it can be said that the right of entry during day time is even more expensive since it converse all the premises that the inspector might reasonable assume to be liable to inspection generally there is no problem in applying these provisions though there are few differences between international conventions and national laws. The Ethiopian labor law allows to enter to any work places which the inspector thinks that it is necessary to inspect. Thus, in this area the Ethiopian labor law is similar with other international conventions.

### ***1.8.2. Inspection without prior warning***

This power helps inspectors to properly perform their duty. The an unexpected nature of the visit is the best guarantee of effective inspection since it enables the inspector to see the actual conditions under which work is normally performed in the undertaking.<sup>18</sup> This principle is accepted by most countries of the world including Ethiopia. Our labor law under Art 178(3) states power to free entry of labor specters with out any prior notice to any work place where they want to inspect.

It is suggested that this principle should be applied strictly whenever there is reasons to think, that prior warning would allow time for irregularity to be concealed, and particularly in the case where inspection is brought about by complaint, or credited outside working

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<sup>16</sup> Supra note at 11

<sup>17</sup> Supra note at 14 p. 54

<sup>18</sup> Id. at p. 55



hours.<sup>19</sup> Otherwise should be considered as general rule that can sometimes be waived in the interest of efficiency depending on local circumstances or the nature of the inspection.<sup>20</sup> So we can logically conclude that inspection should be without prior warning due to its importance that has been stated. And inspection without prior warning has no exception under Ethiopian law.

The international conventions provide that when the inspectors reach the premises to be inspected they should notify the workers or their representative and the employer or his/her representative their presence in the premises.<sup>21</sup> This seems to ensure the balanced approach by the inspector to the persons with whom he has to deal and the fact that the person has been given notice of the inspection may make it harder to conceal or hide any irregularity before the inspection begins.

An exception may be made to the requirement that inspectors should notify the employers or workers of their presence if it is thought that such notification may detract from the effectiveness of the inspection.<sup>22</sup> Thus, the inspectors will not disclose their presence if such disclosure is detrimental to the effective performance of their duties.

When we come to Ethiopia, even though inspection is without prior warning, the labor inspectors should disclose their presences in the work place to the employer except in certain circumstances. That means, a labor inspector shall in all cases notify the employer of his presence on the premises of the undertaking unless he considers that such notification may be prejudicial to the efficient performance of his duties.<sup>23</sup> This clearly indicates that inspection should be without prior warning but this could not deny the employer the right to know the existence of the inspectors in his premises or work places without good reason.

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<sup>19</sup> Ibid

<sup>20</sup> Ibid

<sup>21</sup> Labor proclamation No. 377/2003, art. 18(4)

<sup>22</sup> Supra note at 14.p.56

<sup>23</sup> Ibid

### ***1.8.3. Interrogation, perusal (reading) of Documents and Records, and Sampling***

Labor inspectors are empowered with this power in order to insure the implementation of labor and other related laws. The conventions on labor inspection states that labor inspectors shall be empowered to carry out on examinations test or inquiry which they may consider necessary in order to justify themselves that the legal provisions are being strictly observed.<sup>24</sup>

An inspector may engage into investigation with his own free emotion or as result of complaint or after accident, that is occupational accident has happened. Once the inspector comes to the area, to have a better understanding of the situation, he/she may interview (question) the employer and any person whom he thinks relevant to him. To do so, the inspector has to decide whether the interview should take place privately or in presence of others. However, to decide in this issue, the inspector should have understanding of human nature and the ability of the person he has to deal with. In this regard our labor proclamation (377/2003) under Article 178(3)(a) entitles labor inspectors to question any person alone or in the presence of witnesses. This article indicates that the presence or otherwise of the witness will be decided by the inspector himself.

The inspector can ask the employer to see any book, records or other documents the keeping of which is a statutory obligation, to ascertain whether they have properly kept or not. The inspector can also have copies made or make extranets there from. Thus, the inspectors are entitled by law to check, copy or extract any paper, file or other documents.<sup>25</sup> Even more the law entitles them to take samples of the goods made or the substances used or handled in the undertaking, and

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<sup>24</sup> Supra note Art 12 (1)(c) and 16(1)(c)

<sup>25</sup> Proclamation No. 377/2003 Art. 178 (3)(c)

to have them analyzed. This does mean that the law entitles them to take any sample of any matter in a work place and to test it to ensure that it does not cause injury to workers.<sup>26</sup> For instance, the inspectors may have occasion to suspect that some forbidden toxic product is used or they may wish to find out exactly what a particular substance consists of when its composition has not been clearly indicated, or when no body knows whether the substance is poisonous and if so to what extent? The reason is why the law does allow them to take any sample they like to inspect.

Even though the labor inspectors have the power to take samples of any thing in the work place, the law imposes upon them the obligation to inform the employer in advance. Article 178(4) of the labor proclamation states that where a sample is taken the employer, the manager or his representative, shall be informed in advance and shall have the right to be present. Thus, the law gives the employer or his representative the right to be informed and to be present in the area before the sample be taken by the inspectors. In addition to take samples, the labor inspectors have the power to take photograph of any workers and measure, draw or test buildings, rooms, factories, car tools, goods and copy and registered document in order to ensure the safety and health of workers.<sup>27</sup> Thus, under this provision, the law gives them the power to take photograph, measure, draw or test all the materials that have relation with the work and workplaces. The labor inspectors also have the power to check whether certain relevant notices are affixed at the appropriate place of work or not (Art 178(3)(C)).

### ***1.9. Measures to be taken by Labor inspection***

It seems that this is a logical extension of the inspector's rights to enter premises and perform their duties without hindrance. The conventions

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<sup>26</sup> Id. at Art 178 (3)(d)

<sup>27</sup> Id, at Art 178(3)(c)

on labor inspections provide that labor inspectors should be empowered to take steps with a view to remedying defects observed in layout or working methods which they may have reasonable cause to believe constitute a threat to health or safety of the workers.<sup>28</sup> Thus, the inspectors must be free to decide which of two things they will do either in the light of their discoveries, demand that action be taken forthwith, or leave the employer for a specified period in which to bring himself in line with the demands of the law.

The Ethiopian labor proclamation under Art. 179(1) states that where the labor inspector observes that there is on or in the premises, plant, installations, machinery, equipment or material of any undertaking or in the working methods being followed there in any conditions which constitute a threat to the health, safety or welfare of the workers of such undertaking, shall instruct the employer to correct such condition within a given period of time. So, the labor inspectors are empowered to order the employer to correct the condition which could be detrimental to the health and safety of the workers. And upon failure of the employer to take such steps within the given time after receiving instructions in accordance with the order given to him, the labor inspector shall issue to the employer an order requiring one of the following actions.

### ***1.9.1. Request for action within a specified time***

The labor inspections can issue an order to the employer that alteration in existing conditions which may be necessary to remove the threat to the health, safety or well-being of the workers be completed within a stated period of time.<sup>29</sup> Thus, we can say, there is a general rule to the effect that whenever an inspector finds that some health or safety conditions have not been observed, he should before setting in motion a procedure which may lead to serious consequences, urge the employer to have the

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<sup>28</sup> Supra note 11, Art 13 (1) and Art 18 (1)

<sup>29</sup> Proclamation No. 377/2003 Art. 179 (2)(a)

defect repaired or to abide by the order in question. But the law does not specify exactly what the time limit shall be, as happens when the inspector gives the employer formal notice of the action required. It seems important not to mention it at all since to allow any delay would, in some systems, be regarded as formal acceptance of an irregular state of affairs during that period with the result that the employer would no longer be held fully responsible if an accident occurred before the time was up. However, even though nowhere specified period of time in our laws, the employer would be liable to any accident happened on the employees at any time when they are on duty irrespective of fault in his side.

### ***1.9.2. Action to be taken forthwith***

It seems very important that the inspector should possess statutory authority to order immediate action before taking the case to court. It can save a considerable time that may lapse before judgment is rendered and saves an accident that may happen in the meantime. So, this seems the reason why the law does empower labor inspectors to take immediate action.

Our labor law empowers inspectors under take Art 179(2)(b) that takes any measure which may be necessary to prevent imminent danger to the safety or health of the workers to be taken immediately.

Where the labor inspector is in doubt about the technical or legal danger of any particular case, he shall report thereon to the minister requesting that appropriate decision be given and orders issued accordingly.<sup>30</sup> When that is the case, the inspector has to bring the matter to the attention of the minister. He may do this himself according to the attention of the minister, considering the case, should pass appropriate decision and issue orders as the case many are. This clearly shows that the labor inspectors not only have the power to take measure immediately or of

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<sup>30</sup> Id, at 179(3)

some notice time but also a duty to bring the case into the attention of the minister in order to pass appropriate decision and order based on the circumstances of the case.

Generally these are the powers that labor inspectors have under Ethiopian labor proclamation and the law expects inspectors to move in this scope while they are performing their duties

### ***.1.10 Right to appeal***

The labor inspectorial services are not only the duties of executive branch of government but also the duties of judiciaries. This does mean that both the executive and judiciary branch have obligation under the labor law to perform labor inspection services. Thus, the authorities responsible to determine have the power to entertain certain cases which come to it by way of appeal. An employer is entitled to appeal to the court that has jurisdiction on the cases when he is dissatisfied with measures taken by the labor inspector.

The labor proclamation states under art 180 (1) that where the employer is dissatisfied with the order given in accordance with sub article (1) and (2) of art 179, he/she may appeal to the authority responsible to determine labor disputes court with in five working days. But the law provides that there shall not be stay of execution where the order is given to overt and imminent danger.<sup>31</sup>

### ***1.11 Restriction on the functions of inspectors***

The function of labor inspectors are limited by law. They should perform their duties with in the scope of their power which the law gives them. In other way the law restricts the functions of labor inspectors to some extent. Such restrictions are listed under Art 181 of labor proclamation No (377/2003) the first restricted function is that labor shall perform their functions diligently and impartially. They shall take in to account

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<sup>31</sup> Id , at 179(2) (c)

any reasonable suggestions given to them by employers and workers.<sup>32</sup> The law restricts their function not to perform arbitrarily as they like but diligently and impartially.

The 2<sup>nd</sup> restriction on their function under the law is that no labor inspector shall at any time, when their during or other he/she left his/her employment, reveal to any other person any secrets of manufacturing commercial or other working processes which may come to his attention in the course of performing his/she duties under the proclamation.<sup>33</sup> This is very important to keep the business secret which he/she would not have known if he/she had not been the labor inspector and it seems the confidentiality of the information will continue for ever. The 3<sup>rd</sup> restriction on their duty is that no labor inspector shall reveal to any person other than the concerned authority in the Ministry the sources any complaint brought to his attention concerning a defeat or breach of legal provision and, in particular, he shall not make any intimations to any employer or his representative that his inspection visit was made in response to a complaint filed with the labor inspection service.<sup>34</sup>

The 4<sup>th</sup> restriction of the law, that a labor inspector shall in all cases notify the employer of his presence on the premises of the undertaking unless he/she considers that such notification may be prejudicial to the efficient performance of his duties.<sup>35</sup> Thus, except in certain circumstances, the law puts obligation on the inspectors to inform their presence in the premises or the undertaking.

The other important restriction which should be foreseen by the inspectors is that no labor inspector shall supervise any undertaking of which he is an accuser or in which he has an interest his own

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<sup>32</sup> Id, at 181 (1)

<sup>33</sup> Id at 181 (2)

<sup>34</sup> Id at 181 (3)

<sup>35</sup> Id at 181 (4)

undertaking from which he/she has an interest.<sup>36</sup> And this seems logical and reasonable restriction. Because it could not be reasonable for a person to be a judge in his own case in the court and it could also be true for inspectors.

The final restriction on the function of labor inspectors is that labor inspector shall refrain from interference or involvement in labor disputes and collective bargaining as a conciliator or an arbitrator.<sup>37</sup>

Generally labor inspectors should refrain from doing any act contrary to all the above restrictions which are stated under Ethiopian labor proclamation.

### **1.11.1 Prohibitions**

The labor law not only restricts the functions of labor inspectors but also prohibits certain acts which can constitute obstruction of the labor inspector in the performance of his/her duties. The labor proclamation lists such acts under art 182 as follows:

1. Preventing the labor inspector from entering a work place or from staying in the premises;
2. Refusing to let the inspector examine records or documents necessary for his functions;
3. Concealing data relating to employment and accidents and the circumstance in which they occur;
4. Any other act or omission that delays or interferes with the exercise of the labor inspector's function.

So, performing any act in the above list amounts under the law obstruction of labor inspectors in the performance of their duties

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<sup>36</sup> Id at 181 (5)

<sup>37</sup> Id at 181 (6)



## **CHAPTER TWO**

### **2. Practical Application of the Existing Laws**

This chapter will mainly be dealing with areas of labour inspection services that have been performed by the concerned authorities for the proper implementation of labour and other related laws. Labour Proclamation number 377 2003, imposes on both the executive and the judiciary multifaceted obligation for the proper enforcement of labour laws. The law expects from these respective authorities that they would carry out their respective obligations properly for:- the implementation of labour and other related laws.

Even though the law has put many functions of labour inspection service to be performed by these authorities, only a few of them have been done due to various reasons. Thus, under this chapter we will take up for discussion the practices that have been performed.

The very controversial area particularly judicial practice and the other gaps between the law and the practice including their reasons will be discussed in detail in chapter three. Therefore, here it seems logical to discuss these practices as follows by dividing it into organs which are responsible for the enforcement of labour inspection service.

#### ***2.1. Executive Bodies***

Labour inspection service is one of the three principal organs of labour administration in Ethiopia. From among the three, (the other two are employment service and the labour advisory board) labour inspection has direct involvement in the enforcement of labour law. According to Art 170(2) of proclamation 377/2003, the Minister has the duty to organize,

coordinate, follow up and execute the labour administration system by establishing the labour inspection service. . . Moreover Art 178 of the same proclamation gives the power to the Minister to assign labour inspectors who are authorized to carry out the responsibility of labour inspection service.

To make the practical application of such laws feasible, the Ministry of Labour and Social Affairs (MOLSA) is established therein both at the Federal as well as Regional level. At Federal level, labour inspection has a separate office and it has established other departments in it namely; occupational safety, health and working environment and minimum working condition departments. Now let's have a look at them briefly.

### ***2.1.1. Occupational Safety, Health and Working Environment***

According to my interview with Ato Zerihun Gezahegne who is serving as the Head of this department cited occupational safety, health and working environment department is established to implement the provisions of the labor law in connection there to and also the directions issued by the Ministry in this connection. As can be recalled the Ministry is empowered to issue Directives on occupational safety, health and the protection of working environment under Art 170(1)(a) of Proclamation 377/2003. Based on this provision, the Ministry has issued a directive in the year 2003. As his view Labour Inspection Service shall have the task of preparing the list of occupational diseases and schedules of degrees of disablement. The directive came up with a list of occupational diseases as indicated on pages 148-149. But it is difficult to identify each of the diseases that have high connection with work performed by the employee. This is so because it needs a technical manpower and skill to develop the list. I raised a question saying how is it practical? Ato Matthews Meja who is now serving as occupational safety expert. He replied by explaining to me that they have made tremendous effort to

prepare the list in an objective manner though they don't have enough experts in the field which is a requisite to the task. For example, he said "at times the inspector goes to work place and observe the type of disease that both the employer and the employee (worker) encountered. Immediately they request for medical examination." In doing this, they try to prevent diseases and create a working environment which is free from diseases arising from work. The inspectors also have the task of observing the fulfillment of facilities such as water and sanitation services in work places. Regarding this, Ato Matthews Meja has made many visits to many work places' facilities of washing and sanitation and rendered several advices to employers to improve on the facilities.

The other question that I posed to Ato Mathewes is regarding the practicability of classifying dangerous trades or undertakings by labour inspection service which is provided under Art 177(3) of the labour proclamation. He responded to this question by saying that "most of the time they consider some undertakings like mining activity, construction, works related to big chemical factories etc as dangerous". Most of these activities are listed as dangerous page 153 of the occupational safety and health directive of 2003. Moreover the collapse of the overturning of or failure of any load bearing part of explosion of any closed vessel including a boiler, electrical short circuit, an explosion of fire etc are also classified as dangerous trades or undertakings. By way of conclusion Ato Mathewes said, "practically works are divided into two. These are works which are highly exposed to more risks like the case of dangerous undertakings and works with minimum risks." And here, labour inspectors are assigned to see the types of works that are performed in different undertakings. Having seen the activities, the inspectors will try to bring possible solutions and recommendations for the problems that workers as well as employers are faced with.

Ato Zerihun who is now the Head of occupational safety health and working environment at the Ministry of Labour and Social Affairs has add his view supplementing what Ato Methewos said. He said that “they have a problem of both material and human resources which makes them not to attain all the goals of labour inspection services.” He particularly admits in the field of occupation safety and health that they are not doing satisfactory work. He stated that they need additional experts in the field. If we take the inspectors which are now working at the Ministry, they are not skilled in the areas so that they are not able to identify occupational diseases. Most of them don’t have sufficient training nor the experience. Besides, their number is substantially few. Ato Zerihun emphasis on development of human resource and highly recommended to the government to employ more experts in the field that are destined for this specific task. For example, there are only nine experts who are empowered to give labour inspection at federal level which is to a greater extent unbalanced compared to the responsibility that are assigned to them.

Finally, both Ato Zerihun and Ato Mathewos are of the opinions that if occupational safety, wealth and working environment should be seen in light of the rights of workers as well as obligation employers a lot of remains to be done by the government. For instance, every worker shall as of right be informed, instructed and trained by the employer with safety measures and procedures to be followed at work place and also every worker shall make the proper use of all necessary safeguards, safety devices and appliances. In this regard, the responsibility of labour inspection service is to conduct joint training activities, other advisory services and inspections. On the other hand disseminate information and statistics that are related to occupational safety and health have been done more or less in the ministry of labour and social affairs (MOLSA)

with particular reference to labour inspection department is commendable.

The other person that I interviewed to share me his experiences on the practical application of labour inspection service is Ato Daniel Lema who is now the Head of the Advisory Board Office. He voluntarily devoted his time and tried to answer the questions that I raised to him. He started with the duties that are imposed on the advisory board pursuant to Art 171 of the labour proclamation, this Article clearly provides for the advisory board to undertake study and examine matters concerning working conditions, employment service, the safety and health of worker and related activities. Moreover, the labour inspectors are duty bound to supervise, execute educate, study and make research. Taking into account the law, Ato Daniel Lema told me that, “the labour Advisory Board is comprised of workers, employer and government authorities. It is there to hear grievance from each representatives concerning the overall work condition, to conduct research through technical committees that are established under the advisory board. These committees go to the practical or actual work place and mostly find out problems. These problems may arise from the side of workers, employers, government as well as the law itself. Having done such burdensome activity, they identify the issues carry out discussion and finally submit their report and recommendation to the Ministry so that the Ministry will have a better understanding of all the problems and come up with different rules and regulations or in the form of mostly directives.”

I asked Ato Daniel Lema another question relating to administrative measures which are taken by labour inspection service and he also willingly responded me as follows. “Art 177(8) of the labour proclamation allowed labour inspectors to take administrative measures in order to implement labour law proclamation and directives practically what is done is first there are industrial relations which mostly is comprised of

the employer and worker and settle disputes to compromise their conflict of interest among themselves without the intervention of third party.” In this respect what is mostly done is the worker tells to his employer about the discomfort he is experiencing and the employer improves what he is requested or vice versa. But when the conflict of interest is much broader and can not be solved by the industrial relations, it comes to arbitration committee which comprises of the employee, employer and one party who is empowered to reconcile the dispute. The conciliator will reach a settlement by facilitating all the grounds and finally solve their dispute. If the problem of the parties still can't get a solution they have the option to go to regular court proceedings and seek solution there. According to Ato Daniel most of the time the Ministry of Labour and social Affairs particularly in case of administrative measures is condemned by judges because of acting beyond what the law has provide for them by taking powers of regular courts. Nevertheless most of the cases which are brought to the attention of the Ministry are resolved at the Ministry where as very few cases are made to go to court of the Ministry is not given the power to settle labor despites. I am sure the regular courts could have been flood with labor cases.

### ***2.1.2.The Minimum Labour conditions Department***

These are one of the two departments in labour inspection service office. In an interview with Ato Abera Atomsa (Minimum Labour Conditions Team leader) he said that “this department has the responsibilities of follow up and supervision of inspection service on minimum labour conditions.” The minimum conditions of work are prescribed by law, and these are not derogable, parties are at liberty to stipulate conditions better than those provided in labour law, but not less. Examples of mandatory rules of labour law are found scattered throughout the proclamation. For my purpose, it may sufficient to mention Articles 61 to

86 (hours of work and leaves) Articles 87 to 91 (women and young workers); and Art, 92 to 112 (occupational safety and health rules). The labour proclamation accords more than just rights and imposes more than just an obligation upon parties. It provides for schemes of enforcement of those rights where those rights may not be enforced through the description of the parties. In today's realities of employment relations, it will be hard to expect that the parties, left to their own devices, would seek to enforce their right. Thus according to interview made with Ato Abera Atomsa this department is there to follow up and supervise inspection service on the minimum conditions of work. And practically, the department is, to some extent, inspecting some undertakings to see whether they are performing in accordance with the mandatory provisions or violating these non derogable conditions of work. Ato Zerihun Gezahign who is the Head of the two departments at the Federal level said that "similar departments too have been established in regional states and there would not be much problem in practice in relation to minimum working conditions. This does not mean that there is no problem in the area."

Both Ato Zerihun and Ato Abera Atomsa view that the major obstacles to the department (not to perform its duty properly for the implementation of the law) could be lack of sufficient and skilled manpower, lack of sufficient resources (budget) influence of unemployment and so on. In furtherance he said for the inspection service on minimum labour conditions to be performed, sufficient and skilled manpower is necessary. That means to inspect this minimum working conditions in all undertakings in the country, sufficient number of experts should be assigned and these individuals should have skill to inspect properly. To do so, having sufficient resources is very important. But, these experts believe that these could not be possible due to economic backwardness of the country and this will be improved with the improvement of economic

situation of the country. Thus, according to their view since the practical inspection existing now is the beginning of the work in this area, they hope that the work will continue in a very wide manner in the future and they also suggested that the government should show more concern for the proper implementation of their functions.

### ***2.1.3. Training Programmers***

The law under Art 177(2) of Proclamation 377/2003 states that one of the functions of labour inspection service is to prepare training programs concerning the prevention of employment injuries. I have conducted an interview with Ato Zerihun Gezahegn on this issue and he said that their department has been giving training on different aspects of the matter at different times by inviting experts including experienced instructors from the AAU, Law School, periodically.

Ato Tadese Lencho and Ato Mehari Redae (instructors at AAU, Law School) did give training on the subject at MOLSA. Ato Zerihun told me that their department is not only inviting instructors from AAU but also experts from different fields that could offer training in the prevention of employment injuries.

Therefore, the above facts show that the labour inspection service department is conducting training program to discharge its responsibilities in accordance with the law for its proper implementation relating to labor inspection.

However, according to the views of experts, it is patently clear that these training programs are not sufficient. They believe that it is unthinkable to give training to all employees and employers in all undertakings throughout the country. Ato Mehari suggested that “these training programs are insufficient and should widely be continued in the future.”



## **2.2. The Judiciary**

As I have stated earlier, working for the implementation of Labour Law is not only the duty of executive branch but also the duty of judiciaries Art 177(9) states that labour inspection service includes to seek in courts or in the authorities responsible for determining labour disputes appropriate measures for the enforcement of the provisions of the proclamation and of such sanctions as may be required by its decision rendered in the course of its lawful activities. Thus, the judiciary should work for the proper implementation of labour laws by taking appropriate measures on those who violate it.

When we directly come to the practices in Ethiopia, cases related with labour inspection are difficult to find, it may be because no body systematically collected them or very few cases are brought before the court of law. This makes all the task of diagnosis more difficult. In my interview with three judges from Menagesha First Instance court, namely Ato Sintayehu Lema who has served for one year, W/t Abeba Alemu who has served for more than three years, and Ato Abraham Tadesse who has served for one year and the other three judges from Lidata Federal High court, namely, Ato Hafiz Abajemal who has experience of more that ten years, Ato Mekasha Lema who has been working for more than two years and Ato Abraham Tadege who has a service of more than two years, I was able to gather the following information Surprisingly, non of the judges in the labour divisions of the courts have come across cases dealing with labour inspection. This doesn't mean that no cases ever went for resolution but it indicates that members of the judiciary are generally uninformed about these cases.

The judges Ato Menagesh Federal First Instance court stated that “the MOLSA took away the powers of courts by entertaining labour dispute cases without having jurisdiction.”

They added that all cases that come to MOLSA end there without going to the court. Thus according to the view of judges at Menagesha First Instance court. MOLSA is acting beyond its power which it is granted by law at least on certain cases.

Now, it seems very important to see interviews made with judges from the Federal High court in short. These three judges have the same office which they share which in turn has given us a very great opportunity to assess their knowledge as well as experience in relation to cases concerning labour inspection.

Initially, both judges consensually agreed that in most of the instances the labour relations board, which is under MOLSA, does pass its jurisdictions which are given to it by the proclamation and exercise the power of regular courts. The next point that they emphasized was that most of the cases which are concerned with labour inspection service are to coming to the Federal High Court because disputes of this nature are resolved at the (MOLSA). In relation to this matter they told me that “the cases or disputes which are arising between the employer and the labour inspector or appeal which are rising from the disputes are settled at the ministry level. The maximum where they could go as they said is to the advisory board which by itself is not established well.

One crucial point that Ato Mekasha has raised is that lack of industries which are engaged in the works which need labour inspection service. When there exists a number of industries in the country the need for labour inspection will also increase. This has direct link with the under development of the country. This however, does not mean that we need not have laws to regulate labor inspection in the country.

They have also noted about the court procedures to be followed. As they have clearly stated in the interview, both procedures of the civil and

penal are to be applied by the courts. For instance, if an employee is fined to pay 2000 birr penalty and a suit is brought for its payment, the case is treated under the civil procedure, on the other hand when an employee fails to perform his obligation, then he may be sentenced to jail for a shorter period in which this proceeding is to be seen by the criminal procedure.

The other question that I posed to these judges was whether they have entertained cases dealing with labour inspection, they told me that there is no any case which has come to their attention as their memory goes back except one which was brought by the labour union of Moha Soft Drinks Industry which has finally turned out to be a labour dispute. This case was first seen at the civil and social affairs office of Addis Ababa city. This office is the direct replica of the ministry of labour and social affairs at the federal level. Then the case came to this high court by way of appeal. When the federal high court entertained the case, it has found it to be a clear case of labour dispute rather not a dispute between a labour inspector and an industry. Thus what they have finally said is that they have not entertained cases involving labour inspection service during their stay in the Federal High Court.

Therefore we can conclude by saying that prosecution of labour inspection cases are not known in the Ethiopian regular court system. So, this is the very controversial area in labour law at present time and it becomes the point of discussion among different experts and authorities. I will briefly discuss the point of controversies and its ground in the next chapter three.

## **CHAPTER THREE**

### ***Major Gaps between the Law and Practices in Labour inspection service***

This chapter deals with the gap between the law and practice in relation with labour inspection service in Ethiopia. This is one of the most controversial and hotly disputed issues in Ethiopia. There are very wide gaps between the law and practices in Ethiopia in relation to labour inspection services. Thus, it can be concluded that the labour inspection services law is a non practiced area of law in the country.

In my research, I have contacted some offices and individuals in both executive and judiciary. In both branches of government there are a lot of gaps between the law and practice.

#### ***3.1. Gaps in the Executive part***

The major functions of labour inspection services are to ensure the implementation of the provisions of the labour law proclamation, regulations and directives as provided under Art 177(1) of 377/2003 proclamation. But due to the following practical reasons this law is not being implemented as desired.

##### ***3.1.1. Lack of Skilled Manpower***

To ensure the implementation of labour law proclamation a huge number of skilled man powers is the principal requirement. However, in practice what I observed is quite surprising. There are only three at regional and may nine labour inspectors at Federal level. They try to address all the issues that come to each inspector. In an interview with Ato Zerihun, I raised a question of how can the implementation of labour law proclamation be effective with these minimum number labour inspectors? He responded to the question by saying that though their

number is minimum, so far they have tried to accomplish their task by carrying a huge burden and striving to implement the law to the extent possible. But, recently they raised this issue to the concerned government organs and they both agreed on the problem. So the problem of skilled man power may be solved by training and employing labour inspectors in the field is large number.

### ***3.1.2. Lack of Material Resources***

This problem also takes a large part for the non attainment of the implementation of labour law proclamation. That is for the proper implementation of the law, it is obvious that a lot of finance is required. This finance may be allocated for inspector's wage, to design certain project, for preparing certain programmers etc. Ato Zerihun said, "the government allocated a very little budget fund for this big tasks. Because of this many works though planned are not yet done. On top of that problems of material resources including lack of furniture for office lack of work equipment etc are also major obstacles for the proper implementation of the law."

For these two basic reasons, labour inspectors can not properly supervise, execute, educate, research and prepare a standard of work to ensure the implementation of the labour law proclamation particularly labour inspection service which are their major task as provided in Art (177(2) of 377/2003) labour law proclamation.

The other gap which arise with the law is in connection with Article 177(3) of 377/2003 labour law proclamation, which say "one of the function of labour inspection service is to prepare the list of occupational diseases and schedules of depress of disablement." Ato Mattewos Meja shares his knowledge in this regard as follow:

First: The proclamation 377/2003 is silent above the kinds of diseases and it is too difficult to identify work diseases because, different types of work may have different diseases.

Second: “It needs a technical expert in the field to identify occupational diseases.” If there is a notifiable accidents, dangerous occurrences or industrial disease in a form of rule which consist the list in detail, it will be easy for health and safety executive to identify and give possible local remedies. However, the problem lies to the identification of list of occupational disease. It is obvious that an ordinary person can not do this. Thus, in order for labour inspection to be effected skilled man power in the field should have to be engage and do a great deal of research on the variety of works and identify the diseases found there in the work. Having conducted their research they shall come with all inclusive work diseases and shall advise the Ministry so that it will come with an exclusive list of occupational diseases, accidents dangerous occurrences. These laws final will get a proper implementation because when there is such well organized list of occupational diseases, an immediate inspection will be taken place. Ato Mattewos said, “labour inspectors encountered many practical problems related to the issue that we had at hand and inspectors devote huge of their time to identify the said problems whether it has a link with the work condition, or whether the cause is related to the working environment and this takes the inspectors time which they plan for other purposes.” As clearly mentioned above, since these task need technically skilled man power (expert) and practically they are not as such technically skilled in the field exacerbates the problem.

Recently a Directive has come up with a list of occupational diseases. The list but has not taken with consideration the different work activity disease and is not an exhaustive list.

- ❖ The labour law proclamation in Art 177(2) last paragraph set a general rule of working environment. Ato Mattewos Meja said that, “it is a very broad area. Working environment may involve temperature, ventilation, including emergency lighting, room dimension, suitability of work station etc. the law is silent in this regard as to what constitutes working environment. It has to come up with clear exhaustive list so that labour inspectors can easily have a good knowledge of the law.” Regarding this I posed the same question to Ato Zerihun and he gave a response by stating that “the law sets the rules generally like work condition, occupation safety and healthy working environment.” But said I can’t understand the above phrases by having a general knowledge of Ethiopia labour law proclamation. Thus, though the law puts them in a general manner the Ministry of Labour and Social Affairs is there to address these issues by doing a research and come up with a law that clearly addressed the issue raised.
- ❖ The other question that I posed to Ato Daniel Lema concerning the labour inspectors’ tasks of classifying dangerous trades and undertaking which is provided under Article 177(4) of the proclamation. In this case too Ato Daniel responded that “the labour law proclamation doesn’t tell us as to what activities are considered as dangerous trade or undertaking. The ministry of labour and social affairs tried to come up with some list in the directives called occupation safety and health in 2003 but these does not satisfy the community at large because, the list does not clearly shows the dangerous trades or undertaking rather it serves as an example of these.” Ato Daniel proposes the possible remedies for the classification of dangerous trades or undertaking as stated by the law under Article 177(5) of proclamation 377/2003. (Labour inspectors conduct studies on different types of undertakings and try to identify dangerous undertakings that have impair on the

employee and employer maintenance at work place. The labour inspector has not only the duty to conduct studies but also have the task to compile statistical data relating to working conditions. Ato Daniel said, “as usual, here also, due to lack of manpower and material resources so far little is done. Therefore, they presented this issue to the government so that the problem is given serious attention in the future.”

- ❖ The other question that I also posed to Ato Mathewos Meja is to share his work experience in relation to Article 177(6) as to whether there is a gap between the law and practice? For this he responded by saying the task to prepare training programmes concerning employment injuries is given to labour inspection services. But the problem now is who will give this training program? If we say the labour inspectors, they themselves need to be trained by some professional in the field so practical difficulty is labour inspectors gives these training programs concerning the presentation of employment with out acquiring the necessary knowledge. For example, the labour inspectors who are employed in ministry of labour and social affairs at Federal level have different skill or in other words they are trained with different departments while they were in college and university. But the training programs that I am talking about at hand may need a special technical professional knowledge in the field so that can give a proper knowledge or awareness of the group of people who are supposed to take the training program. Most of the time, this professionals should have the necessary prerequisite knowledge to identify employment injuries. “It may be person like medical doctors specialized in the area that can easily identify the problems and come up with sufficient reasons as to how to protect employment injuries before they disturb the peaceful enjoyment of employee and employer relations at work place.” Ato Mattewos Meja highly suggests the



Ministry to assign labour inspectors who are well trained for the said purpose.

- ❖ Finally, I asked Ato Daniel Lema to tell me if there is a gap as to the implementation of Article 177(8) of proclamation No 377/2003. He respond by saying that “the law has a vacuum in this regard I mean, the Ministry of Labour and Social Affairs has snatched the powers of courts.” Though the labour inspectors are granted the power to take administrative measures by the proclamation, it does not clearly mention administrative measures which could specifically be taken by the labour inspectors. Using these gap labour inspectors do take any administrative measure in any case they think appropriate. This I think is a clear evidence of abuse of power which the Ministry should take head to improve the situation without delay.

To sum up from the interview that I had with persons in different positions if the executive bodies, (that I named above) I have come to know that all agree on the existence of gaps and each one of them have suggested possible remedial actions that need to be taken.

Among the gaps all agree in the following as a major source of the existence of the gap. This includes:

- Absence of well prepared list of occupational disease and degree of disablement
- Non-existence of classified dangerous trades or undertakings.
- Minimum number of labour inspectors that doesn't commensurate with huge task of labour inspection services.
- Lack of both human and material resources etc

The professionals all have impressed me with their unanimous constructive remedial solution to be creating awareness about labour inspection services, their functions, powers and duties, measures which they may take etc. Moreover, employers and employees have to know

their rights and duties in relation to the powers and duties of labour inspections. They also request the government bodies to give more emphasis to see the proper implementation of labour law in general and labor inspection service in particular.

### ***3.2. Reasons for Absence of Judicial Practice Relating to Cases of Labour Inspection Service***

One of the functions of labour inspection service is ‘to seek in courts or in the authorities responsible for determining labour dispute appropriate measures for the enforcement of the provisions of this proclamation and impose sanctions as may be required in the course of its lawful activities (Art.177(9)). Even though the law says so, in Ethiopia, cases related with labour inspection are very difficult to find. This is because, according to the views of experts in the executive and judges in Federal Courts who have been interviewed, very few cases have made their way to courts. None of the judges in the Labour Division Courts reported seeing any case having to do with labour inspection. Thus, one can conclude that there is no judicial practice on labour inspection service in Ethiopia.

Lack of judicial practice on this area is current hot issue in the country. It becomes controversial why this law has not been practiced by Ethiopian courts. According to the view of some individuals who have been interviewed, absence of practice on the area is due to certain controversial questions on the prosecution of labour inspection cases. One can summarize some of the controversial questions as follow:

- What is the nature of labour law violations; are they criminal offences or civil?
- Which courts, if any, have jurisdiction over labour inspection cases: labour division courts or criminal division courts?

- Who is authorized to investigate and prosecute labour inspection cases: labour inspectors, the police or the public prosecution office?
- What procedures should courts follow to dispose of labour inspection cases: criminal procedure code or civil procedure code?

This sub-title will attempt to address these points of controversies separately.

### ***A. Whether Labour law Violations are Crimes or not***

The question “are labour violations crimes?” was posted to Ato Hafiz Abajemal, who has served for about ten years in Lideta Federal High Court in the Labour Division Bench. He started responding to the questions by defining what crime is under Ethiopian criminal law. He said that “for an act to be a crime, it should fulfill the three requirements under Art.23 of the new crime, under Art.23 of the new criminal code; such as legal, material and moral ingredients.” Thus, it is clear that the three requirements for crime: illegality, actus reus and mensrea are cumulative. He added that “our law does not recognize as a crime any act which does not fulfill all of these three elements cumulatively.” The requirement is for both ordinary offences and petty offences. \*\* Petty offences are offences which infringe the mandatory or prohibitive provisions of a law or regulations issued by a competent authority <sup>38</sup>

#### ***(Art735 criminal code of Ethiopia).***

Seen from this perspective, violation of the labour proclamations and regulations issued there under may be characterized as a ‘petty offence’ as that term is understood in our Criminal Code. It means that whoever prosecutes the violations, should establish the mental element in addition to the other two features of a crime. He also said that “proving

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<sup>38</sup> Art 735 criminal code of Ethiopia

this burden alone will be very difficult, if not impossible.” It might be possible to enforce some prosecution by establishing intention or negligence. But, the fear of Ato Hafiz is that “the burden this alone would imposed upon the resources of the government, would be colossal, Even if resources were liberally available, the requirement of ‘mental element’ for prosecution of labour law violations would be incompatible with the realities of modern industrial establishment.”

In short, according to the view of Ato Hafiz, the labour laws have struck the rigid dichotomy of civil and criminal matters. That means, labour laws of Ethiopia are not clear on the matter. Thus, as Ato Hafiz Abajemal’s views, if civil liability is opted for, it seems only victims of any wrong doing can bring a civil suit to the civil division courts. If one were to characterize violations of these laws as petty offences, the only option available in the root of criminal justice system, with all its rigors and rigmaroles.

The lack of clarity of these laws confer all kinds of administrative powers upon the executive bodies of the Ethiopian government. But when it comes to imposition of fines or penalties, they require ordinary criminal prosecution and conviction. No distinction is usually made between those provisions which impose only fines and those that prescribe imprisonment. It is common for these provisions to prescribe that the violations are punishable in accordance with the rules of criminal law.

To sum up, the interview I made with Ato Hafiz Abajemal, one reason or ground for absence of judicial practice on labour inspection service is, failure to identify whether violation of labour law is criminal or civil act. Thus, this could be one of the major controversial issues for failure of judicial practice on labour inspection service in the country.

***B. Who is authorized to investigate and prosecute labour inspection cases: labour inspectors, the police or the public prosecution office?***

This is another point of controversy for labour inspection service cases not to be practiced in Ethiopian courts. As I have stated earlier, I conducted interviews with different individuals in both executive and judicial branches of government on this issue. Some argue that violations of labour law are criminal offences and should be investigated by the police and prosecuted by the public prosecution office just like any other crime in our criminal law. Others argue that labour law violation is a civil matter (or an administrative matter) and should be prosecuted by the labour inspectors. There is a third group who believe that labour law violation should be prosecuted by the victim, like any civil liability case. Thus, the controversies about the nature of labour law violations are not so easy to settle.

In interview with Ato Zerihun raised the question who should prosecute violations in relation to labour inspection service? Ato Zerihun raised very important points concerning this issue. According to his view the problem is not really one of ignorance or perception. It is the language used in the labour proclamation. In his view, the solution is inescapably clear; the law should be amended in a clear language to settle the controversy one way or the other.

In his view, the question of whether labour inspectors should prosecute violations of the labour law is not really a question of whether the law permits them or not. The law authorizes labour inspectors to prosecute violations in no uncertain terms. It can't get any clear than that.

The question some people have been asking is whether the labour inspectors possess the necessary legal skills to prosecute cases before labour division courts.

Given the background of the parties that ordinarily appear before the labour division courts, this may sound like an unfair question. Labour division courts do not require parties to have legal competence in other cases. They are generally tolerant towards procedural irregularities, because they realize that the workers who bring cases do not possess knowledge of the law and can not hire lawyers.

Regarding prosecution by labour inspectors, I asked Ato Zerihun two questions:

1. Why should knowledge of the law suddenly become an issue when labour inspectors prosecute labour law violations?
2. Why should courts become particular about procedural requirements simply because labour inspectors appear as a party?

The response of Ato Zerihun to the above questions is that labour division courts are sensitive to procedural and substantive issue of law when labour inspectors bring cases because they think that the government has financial strength to hire lawyers, to prosecute labour violations or at least train the labour inspectors in law. The tolerance towards procedural and substantive irregularities in the case of suits brought by workers can't be carried over to labour inspectors, who are hired and assigned by the government.

According to his view the government almost invariably hires legal experts to institute its claims before courts of law. we can go to any governmental agency, find legal advisors and attorneys hired for the purpose of handling legal issues pertaining to that government agency. However, this is not case when we come to labour law violations. Thus, lack of knowledge of law is the greatest problem and the greatest obstacle on labour law violations to come to the court by labour inspectors.

Ato Zerihun added that, I should not ask labour division courts to be tolerant toward labour inspectors who do not possess the knowledge of the law. There is no reason for that. In his view, the government can do either of two things: train labour inspectors who possess the requisite legal knowledge or hire lawyers to prosecute labour law violations. From economic and efficiency point of view, he thought the latter option would be better; i.e. hire lawyers to prosecute labour law violations.

Ato Zerihun suggested that I should not expect labour inspectors to have a mastery of both technical aspects of labour inspection and the niceties of the law. These are two separate professions and are rarely found combined in the person of a labour inspector. According to Ato Zerihun if we require labour inspectors to both inspect and prosecute labour law violations; one part of the job is going to be sacrificed. Thus, we should let labour inspectors to concentrate on what they should know and do best inspect, and leave the out of the concern of prosecutions of violation. That should be the task of lawyers. Then all parties hold be happy. The labour inspectors will concentrate on inspections, the lawyers of government on prosecution and the courts will be able to solve these disputes swiftly. "Efficiency demands that such a division of labour be adopted. said Ato Zerihun.

Therefore, I can conclude that the question who is authorized to investigate and prosecute labour inspection cases? Can not be a ground of controversy. But, the practical problem originates from lack of knowledge of law by labour inspectors and the need to have separate individuals for inspection and for prosecution of labour law violations. And these are the other grounds for lack of judicial practice on labour inspection cases in the country.

### ***C. Which court has jurisdiction on labour inspection cases?***

This question has been posed to judges working at Menagesha Federal First instance court, namely, Ato Sintayehu Lema (who has served for one year), W/o Abeba Alemu (who has served for three years) and Ato Abreham Tadesse (who also served for one year in the same court). They all agreed on one point. That is failure to understand whether labour law violation is criminal or civil. It is a problem in relation with the nature of labour law violations.

According to the view of judges, there are different arguments concerning this issue. Thus, some of them criminalize labour law violations by raising different provisions in the proclamation (377/2003) and interpreting language of the law the way they like to support their arguments. In contrast, the other group wishes to characterize labour law violations as leading to civil liabilities. The next groups also raise some provisions in the proclamation and language of law to support their argument.

But, according to the view of the judges, these controversies should not have been created to find the jurisdiction of the court on labour law disputes. Because, according to their view, the law is clear on the question on jurisdiction over labour law violations. It is the first instance labour division courts. The courts and all other parties involved in the enforcement of labour law should be clear on this. When the law is clear, there is no need for interpretation.

Therefore, I can conclude that the problem in this area is nothing but ignorance of labour law or a deliberate act by the Ministry to play down the importance labour inspection services.



### ***D. Procedure in labour division courts***

As it has been mentioned earlier, the procedure to be followed in labor inspection service cases is another point of controversy in Ethiopian labour courts. I posed the question, ‘what procedures should courts follow to dispose of labour inspection cases: criminal procedure or civil procedure code’ to Ato Mekasha Lema who has served for about two years in Lideta Federal High Court on labour bench.

He responded that “in general when the labour courts solve disputed cases, they apply the rules of the civil procedure code, with some modification (necessitated by the special nature of labour disputes and the parties to labour disputes.)” Ato Mekasha added there are no labour division courts well established. As a result civil division courts hear and settle labour disputes like all other forms of suits. He said that “it is only in the areas where special labour division courts are established that something resembling a specialized courts practice has developed. In these courts, particularly in Addis Ababa, the courts handle labour disputes differently from other civil cases, although they hardly have occasion to entertain other civil cases.” What I gathered from the interview is that labour division judge’s accord special treatment to labour cases for two important reasons:

1. They are conscious of the time limit for disposal of labour disputes, hence conduct the proceeding with that time limit in mind (although many of them admit to not meeting the deadline in many of the cases).
2. They are generally tolerant towards procedural irregularities, because most of the time the parties that appear before labour division courts are uninformed about the law and unrepresented by lawyers.

In my interview concerning this issue, Ato Abreham Tadesse who has served for about two years in Lideta Federal High Court on labour bench mentioned that the relaxation of procedural rules in the disposal of labour disputes should be encouraged for to him, labour division courts have not gone far enough in this direction. Thus, the judges themselves admit that attending to procedural niceties often gets in the way of resolving labour disputes: as amicably and informally as possible. The judges are for instance tied by their roles as judges in regular court rooms and often prevented from performing other roles such as that of a mediator for fear of partiality to either of the parties.

Should the courts adopt a relaxed attitude towards violation of labour laws, assuming that these are criminal offences?’ This question was forwarded to Ato Abreham Tadesse and he said, “the preamble of the labour proclamations cite non strict following of procedures as one of the advantages of a comprehensive labour legislations, the proclamations make only a spare reference to matters of procedure, and having gone through the whole proclamation, we are at a loss as to what rules of the proclamation qualify as procedural. In Art 148 of labour proclamation 377/2003, it is stated that the permanent and ad hoc boards may issue their own rules of evidence and procedure, and in Art 149(5) of the same proclamation, we find a provision that authorizes the permanent and ad hoc board to deviate from the rules of evidence and procedure followed by courts of law.” But from the point of view of Ato Abreham Tadesse, these courts have in practice relaxed the rules of procedure, not for reasons of law but in appreciation of the special conditions under which labour disputes are litigated in our courts. Again according to Ato Abreham, since the jurisdiction over labour law violations falls under the labour division courts, we can assume that the labour division courts should ordinarily follow the rules of evidence and procedure that other civil courts apply. With the exception of few rules of evidence and

procedure in the labour proclamation itself, we do not have a special body of evidence and procedural law applicable solely to labour disputes. He mentioned that “our labour division courts are not authorized (unlike the labour boards) to issue their own rules of evidence and procedure.” Thus, the logical assumption is that these courts follow the general rules of evidence and procedural ground elsewhere. That is a fair assumption because the judges in the labour division courts are knowledgeable in law. Indeed, that is what the labour division courts do in practice with few exceptions as mentioned above.

The question then is whether the labour division courts, which have jurisdiction over labour law violations, should deviate from their normal practice of applying civil procedure and apply the rules of criminal procedure? The answer to this question turns on a very important question of whether labour law violations constitute a criminal offence, punishable according to the rules of criminal procedure.

To sum up, in my view, the questions which have been raised under this sub title can be the major grounds for lack of judicial practices on labour inspection service cases in Ethiopian courts. And this is the major gap I can find between the law and practice on labour laws in the country.

## Chapter Four

### Conclusion and Recommendation

#### 4.1. Conclusion

Labour inspection service is one part of labour law administration system. The main functions of labour inspection services are observing the proper implementation of labour laws, setting standards, observing working conditions and environment, giving advices and information and resolving labour disputes.

Labour inspectors have the power to enter freely any undertaking at any hours of the day or night and to carryout any investigation they think it:

Labour inspectors can take necessary measures based on the types of threat to the health, safety or welfare of the workers forth with or after certain specified period of time.

The law imposes can take necessary measures based on the types of threat to the health, safety or welfare of the workers forth with or after certain specified period of time.

The law imposes some restrictions on the function of labour inspections. The labour inspections should perform their functions diligently and impartially. They could not disclose any secret or information about what they may inspect except to the concerned authority.

The law prohibits certain acts to be performed since they constitute obstruction of the labour inspectors in the performance of the their duties.

## 4.2. Recommendation

- ❖ With regard to the powers of labour inspectors, the right to enter freely any undertaking is provided for in labour proclamation 377/2003 although there is a restrictive clause that is not in accord with the convention. Thus, pursuant to Article 178(3), the power of free entry at any hours of day and night (under convention No 81) seems to have been restricted to inspection visit only to working hours. I would say this restrictive clause would jeopardize the whole purpose and efficacy of inspection visits, as the unrestricted power of free entry is an essential prerequisite for the effectiveness of inspection. Therefore, by way of recommendation, I would say Art. 178(3) should be amended like this: The labour inspectors shall have the power to enter freely and without prior notice at any hours of the day or night, any work place which they may think necessary to inspect.
- ❖ With regard to the labour inspector's power to carry out any investigation they think fit, the methods of investigation that inspectors may use (recognized under article 12 Para. 1© of convention No 81) are also enshrined under our labour proclamation, although there are ambiguous provisions. To mention, there have been many controversies as to whether inspector's power of checking and copying documents includes 'accounting records' so that access to such records by inspectors is possible. Employers are usually very uncomfortable with this provision; accordingly, they keep questioning the constitutionality of the provision under discussion. Moreover, they tend to argue that such accounts have nothing to do with conditions of work and occupational health and safety (subjects covered by labour inspections service). But, in reality, such record have a kind of relevance with regard to wages and to know exactly the financial

resource of the undertaking in order to determine the financial problem of the undertaking in a case of suspension. Therefore, the author could not find any satisfactory reason why an inspector, who is under obligation to treat information communicated to him in his official capacity as confidential, is refused access to accounting records.

- ❖ Inspector's power of injunction is also provided for in article 179 of labour proclamation No 377/2003, but suffers restrictions. That is to say, inspectors under labour proclamation No 377/2003 are not empowered to make orders with immediate action in the event of imminent danger (like to halt work). By way of recommendation, I would say, this exceedingly important power of inspection should be incorporated in our labour proclamation. Because, if an inspector may only make a request for action within specified time limit, given the infringement constitutes an imminent danger to the life or health of workers, an accident might happen in the mean time.
- ❖ Obligations of labour inspectors are laid down in Article 5 Convention No 81 and in article 181 of proclamation No 377/2003, and almost identical language is used in both instruments. Thus, under both instruments labour inspectors are prohibited from having any interest in the enterprise and from revealing even after leaving the service any manufacturing or commercial secrets or working process, which may come to their knowledge in the course of their duties. They must treat as absolutely confidential the source of any complaints bringing to their notice. What constitutes "having an interest" in the undertaking under art 181(5) is a point of controversy; but a blanket prohibition like this seems preferable because otherwise it might be possible for an inspector to possess an interest in an undertaking in a way not provided in the legislation and thus to lose his impartial position.

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