A Comparative View of “A Third Labour Dispute Management System” of China with Ethiopia: Some Cases as Evidence and Recent Labor Issues of Both Jurisdictions

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Abstract. The history and political economy transition of China and Ethiopia are quite similar in many aspects. Long history, socialist transition, and legal reform can be mentioned as points of comparison. Among the legal reforms of the two countries, the labor law reform and the determination of working forces (labour forces) was quite critical in both countries that stayed in socialist sentiments though the Chinese model is still “socialism with Chinese characteristics.” The opening up and reform of the two countries, the 1978 reform and opening of China and the 1991 market economy declaration of Ethiopia paved the way to shape the labour law legal regime of the two countries. Especially, the labour dispute management system of the two countries share unique commonalities. The involvement of arbitration in labour dispute system in each jurisdiction has its own unique features. Thus, the paper tried to compare the labour law legal regime, the labour law dispute management system, and the current labour issues of China and Ethiopia. The findings indicate that there are many similarities that the two countries share and can benefit from mutual experience sharing. But, in cases of China, the issues of collective bargaining and labour union-related rights are at their early stage of development. And the treatment of migrant workers and the law, as well as practice of triangular relationship among the worker, the forwarding unit and receiving unit, is very crucial that experience can be taken from it.

Keywords. Labour law reform; Labour dispute management; Labour arbitration; Ethiopia; China

I. Introduction

The reform and opening up of 1978 of the People’s Republic of China (PRC) is the beginning for the today’s second globalized economy of the world after 40 years of successive reform and economic growth.1 China’s transition from command economy to market economy since the opening up and reform of 1978, China has become the manufacturing hub of the world. In these 40 years of continuous economic growth and industrial development, the role of China’s labor

1 Concerning Chinese’s Reform and Opening up and its reform, see Garnaut, Ross (Ed.); Song, Ligang (Ed.); Fang, Cai (Ed) (2018): China’s 40 Years of Reform and Development: 1978-2018, China Update Book Series, ISBN 978-1-76046-225-3, Australian National University Press, Acton,1-709, available at http://hdl.handle.net/10419/193977.
market that consisted of about 900 (among the total labour market force 200 million workers) plays a significant role. The reform and opening of China has also devoted to the governance of the country by law. Since, “…. every reform will have great impact on other reforms, and all reforms support each other …,” the economic reform opening up of the last 40 years helps in legal system development and modernization of the country. Therefore, the establishment of strong socialist market economy of China accelerated its legal system building, and thus a series of laws and regulations promulgated in the country that enabled the successful advancement of the reform. The legal system development in the area of labor and social security is one of the achievements of the last decades since 1994 following the promulgation of the Labor Law of the People’s Republic of China. The advancement of labour law regime continued until the present time of Labour Contract Law and other legal regimes that govern the labour market. Thus, as every jurisdiction has set up its own basic labour standards and laws of safeguarding the legitimate rights of workers and employing units, the Chinese Labour Law System adopted detailed labour legislations as a common practice of international labour legislations and its own labour dispute settlement system. That will be discussed in the coming sections in detail.

The Federal Democratic Republic of Ethiopia (FDRE) has many things in common with that of the People’s Republic of China. Besides a long and millennium years of history, culture and independence like that of China, Ethiopia also declared a market economy in 1991 after decades of command economy. Ethiopia also registered a double digit economic growth for the last thirteen years by a developmental state model. Ethiopia also tried to reform its legal regime including the labour law regime. Thus, in my opinion, there are reciprocal lesson that can be taken in comparative view of the labour legal regimes of Ethiopia and China by giving emphasis to the labour dispute system and some selected case laws.

Therefore, this essay is organized into four concise parts. The first part focuses on presenting the labour legal regimes of the People’s Republic of China and the Federal Democratic Republic of Ethiopia. Focusing mainly on the substantive legal regimes of the two jurisdictions, some review summaries will follow in comparative perspective. The second part organizes the labour dispute management system and competent jurisdictions of China and Ethiopia in light of “a third labour dispute management system” of China and similarly some concise comparative perspective will follow. The third part of this essay is a selected case law presentation as evidence in labour law dispensations and dispute settlement mechanism of the two countries. The cases can serve as mirrors of the law and the practice in the area of labour legal regime. The fourth part focuses on the recent labour issues of the two jurisdictions that seek attention and even further revisions if accepted by the legislators of each jurisdiction. Last but not least, precise concluding remarks will follow.

1. The Labour Law Legal Regime of China and Ethiopia

1.1. Chinese Basic Labour Law Regimes: From the oldest to the Recent

There were rules and regulations that mentioned in the Chinese legal system and “labour market” that entertained social insurance and labour dispute systems since the beginning of the

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2 For the history, policy and protection of migrant workers in China, see Li Jing, “China’s New Labor Contract Law and Protection of Workers” 32 Fordham International Law Journal 3(2008), 1083-1131.

3 Regarding the importance of “reform in all facets”, see Xi Jinping, The Governance of China, Foreign Languages Press Co. Ltd, 2014, 73-120.

4 The China’s landmark labour legislation of 1994, Labour Law of the People’s Republic of China, adopted at the Eighth Meeting of the Standing Committee of the Eighth National People’s Congress on July 5, 1994 and promulgated by Order No. 28 of the President of the People’s Republic of China.
People’s Republic of China mainly since 1950s. Thus, before China’s foundational law of labour adopted, there were various provisional instruments regulating the labour market. Thus, China’s foundational; the oldest and most important law regulating the labour market is the Labour Law of 1994. Thus, this effort of modernizing the labour law regime of the People’s Republic of China today enables the state of having a comprehensive labour law system. Though the labour law regime of the People’s Republic of China is not codified as a single labour law, it includes constitutional and international labour law commitments. Let I highlight the labour law regime of the People’s Republic of China precisely, some of the reasons behind the reform to the law of the employment relations and some fundamental provisions of basic labour laws.

The Constitution of the People’s Republic of China under its Fundamental Rights and Duties of Citizen’s chapter, Articles 42-44 of the Constitution are dedicated to the right as well as the duty to work for citizens. The basic rights, duties, employment relationship principles and minimum standards for the protection of the right of the workers as well as their duties are recognized and protected by the Constitution of the People’s Republic of China. The labour legislations of the People’s Republic of China thus have to comply with the constitutional labour rights as well as duties of workers and employing units. The People’s Republic of China has also international labour obligations owing to its ratifications of International Labour Organization conventions. According to the updates of ILO, the People’s Republic of China has ratified 26 ILO Conventions, of which 20 are in force. Among the ratified conventions, four of the eight fundamental conventions are the Equal Remuneration Convention No.100/1951, the Discrimination (Employment and Occupation) Convention No. 111/1958, the Minimum Age Convention No.138/1973, and the Worst Forma of Child Labour Convention No. 182/1999. Thus, the labour law legal regime of the People’s Republic of China adopted the international labour legislations as part of its law and took best practices in drafting and adopting its labour legislations.

The 1994 Labour Law was an important breakthrough as the first national law of its kind that formally established labour contracts as a primary means for regulating employment relationships, covered a wide range of matters, including the conclusion, variation and termination of labour contracts, a frame work for collective consultation, reasonable working hours, paid leave, anti-discrimination, equal pay and a dispute resolution framework among others. The 1994 Labour Law of the People’s Republic of China had a number of serious shortcomings that motivated further reform. Among the short comings of the 1994 Labour Law; the provisions in the Labour Law dealing with contracts focus almost entirely on termination

5 Sean Cooney & Sarah Biddulph et al, “China’s New Labour Contract Law: Responding to the Growing Complexity of Labour Relations in the PRC” 30 UNSW Law Journal 3(2007) at 789, available at http://ssrn.com/abstract=1115550.

6 Ibid. As mentioned in supra note 5 above, Labour Law of the People’s Republic of China, (“Labour Law”), passed by the National People’s Congress on 5 July 1994 entered into effect from 1 January 1995.

7 The Constitution of the People’s Republic of China, adopted at the Fifth Session of the Fifth National People’s Congress and promulgated for implementation by the Announcement of the National People’s Congress on December 4, 1982. Amended in accordance with the Amendments to the Constitution of the People’s Republic of China adopted respectively at the First Session of the Seventh National People’s Congress on April 12, 1988, the First Session of the Eighth National People’s Congress on March 29, 1993, the Second Session of the Ninth National People’s Congress on March 15, 1999 and the Second Session of the Tenth National People’s Congress on March 14, 2004.

8 ILO, The ILO in China, 2019, available at www.ilo.org/China. Accessed on 13 January 2020.

9 Mimi Zou et al, Regulating Collective Labour Disputes in China: A Tale of Two Actors”, 10 UHK Law Journal, 2(2016) at 277-278, available at http://ssrn.com/abstract=2838223.

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rather than presenting contract formation in detail, the Labour Law does not inhibit a range of emerging contracting practices which can lead to abuse by employers such as the insertion of restraint of trade (non-compete clauses), and the Labour Law does not set out principles governing proliferating forms of non-standard employment such as labour hire and causal work.\textsuperscript{10} Therefore, on January 1, 2008, the Labour Contract Law of the People’s Republic of China (LCL) entered into effect.\textsuperscript{11}

The Labour Contract Law (LCL) of the People’s Republic of China introduced many significant changes after an unprecedented debate on the legislation. According to Article 10 of the Labour Contract Law for instance, it mandated written contracts for all workers – any employer that did not sign a contract with an employee was required to pay that employee double his or her wages for each month worked without a contract, starting with the second such month. On the other hand, pursuant to Article 14 of the Labour Contract Law, it required a non-fixed-term contract for any employee who had worked for an employer more than ten years who had already signed two successive fixed term contracts. Thirdly, the Labour Contract Law further clarified the responsibilities of employers to workers acquired through labour dispatch agencies, and the role of unions and collective bargaining.\textsuperscript{12} Besides, pursuant to Article 17 and other related provisions of the Labour Contract Law, the law re-affirmed existing work injury, social insurance, and wage and hour provisions. In general the Chinese new Labour Contract Law is the most significant reform in the law of employment relations and with its substantive improvements in the Labour Law Legal framework.

There are also other legislations as main sources of the employment law of the People’s Republic of China. The Employment Promotion Law of the People’s Republic of China (EPL)\textsuperscript{13}, the Trade Union Law of the People’s Republic of China (TUL)\textsuperscript{14}, Law on Safety in Mines of the People’s Republic of China\textsuperscript{15}, Vocational Education Law of the People’s Republic of China\textsuperscript{16}, Law on Prevention and Control of Occupational Diseases of the People’s Republic

\textsuperscript{10} Sean Cooney & Sarah Biddulph et al supra note 6 at 789-790.
\textsuperscript{11} The Labour Contract Law of the People’s Republic of China, adopted at the 28\textsuperscript{th} Meeting of the Standing Committee of the Tenth National People’s Congress of the People’s Republic of China on June 29, 2007, is by promulgated and entered into effect as of January 1, 2008.
\textsuperscript{12} Labour Contract Law, Articles 4, 43, 51, 53-54, 58, 67 & 92.
\textsuperscript{13} The Employment Promotion Law of the People’s Republic of China adopted at the 29\textsuperscript{th} Session of the Standing Committee of the Tenth National People’s Congress on August 30, 2007.
\textsuperscript{14} The Trade Union Law of the People’s Republic of China (TUL), adopted on April 3, 1992 at the Fifth Session of the Seventh National People’s Congress; promulgated by Order No 57 of the President of the People’s Republic of China on April 3, 1992; amended according to the decision on amending the Trade Union Law of the People’s Republic of China at the twenty fourth Session of the Standing Committee of the 9\textsuperscript{th} National People’s Congress on October 27, 2001; amended according to the decision on amending some laws issued by Order No. 18 of the President of the People’s Republic of China adopted at the 10\textsuperscript{th} Session of the 11\textsuperscript{th} Standing Committee of the National People’s Congress on August 27, 2009.
\textsuperscript{15} The Law of the People’s Republic of China on Safety in Mines, adopted at 28\textsuperscript{th} meeting of the Standing Committee of the 7\textsuperscript{th} National People’s Congress on November 7, 1992, and amended in accordance with the Decision on amending some laws adopted at the 10\textsuperscript{th} meeting of the Standing Committee of the 11\textsuperscript{th} National People’s Congress on August 27, 2009.
\textsuperscript{16} Vocational Education Law of the People’s Republic of China, adopted at the 19\textsuperscript{th} meeting of the Standing Committee of the Eighth National People’s Congress on May 15, 1996 and promulgated by Order No.69 of the President of the People’s Republic of China on May 15, 1996.
of China\textsuperscript{17}, and Mediation and Arbitration Law of the People’s Republic of China.\textsuperscript{18} Regulations and judicial interpretations in connection with employment law, though judicial precedent is not applicable in the People’s Republic of China, forms as additional Sources of the Employment Law of the People’s Republic of China.\textsuperscript{19} The Mediation and Arbitration Law of the People’s Republic of China shaped the labour dispute settlement system of China. The major purposes of the Labour Dispute Mediation and Arbitration Law of the People’s Republic of China are to achieve labour settlements fairly and in a timely manner, to lower the burden on employees when safeguarding their legal right, and to simplify the settlement process for labour disputes. The evolution of the labour dispute settlement system by itself experienced different stages of development.\textsuperscript{20} Though the labour dispute settlement system is discussed in the next section in some details, the basic principle that underlines the nature of the labour dispute settlement system lies under Article 5 of the Mediation and Arbitration Law of the People’s Republic of China that “[W]here a labour dispute arises, any party is entitled mediation or arbitration if the parties fail to reach a settlement agreement.” Wenjia Zhuang and Feng Chen coined the labour dispute resolution system as “Mediate First.”\textsuperscript{21}

Judicial interpretations of the People’s Supreme Court of the People’s Republic of China took as one source of the law in each respective areas of law. Thus, in the areas of Labour Law of China for instance, the People’s Supreme Court of China and some High Courts of provinces gave some judicial explanations. The Supreme People’s Court of the People’s Republic of China on its 1,489\textsuperscript{th} session of the judicial committee, on July 12, 2010 announced several issues on the application of law in the trial of labour disputed cases that came into force on September 14, 2010 as Interpretation No.12 of the Supreme People’s Court.\textsuperscript{22} Interpretation No.12 of the SPC issued with the purpose to correctly try labour dispute cases, that is made in accordance with the Labour Law of the People’s Republic of China, the Labour Contract Law of the People’s Republic of China, the Law of the People’s Republic of China on Labour Dispute Mediation and Arbitration, the Civil Procedure Law of the People’s Republic of China and other relevant laws and in light of the civil trial practice.\textsuperscript{23} This interpretation No.12 of the Supreme People’s Court has 18 basic procedural provisions as to the claims by the employee, the approach and decisions followed by courts and the relationship between an arbitral award rendered by labour arbitration committee and the court. Under Interpretation No.12 of the Supreme People’s Court for instance, Articles 1, 2, & 3 of the interpretation guides courts to accept employee’s request as a labour dispute in situations where by an employee requires his employer to compensate him for loses on the ground that he

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\item[17] Law of the People’s Republic of China on Prevention and Control of Occupational Diseases, adopted at the 24\textsuperscript{th} meeting of the Standing Committee of the Ninth National People’s Congress on October 27, 2001 and Promulgated by Order No. 60 of the President of the People’s Republic of China on October 27, 2001.
\item[18] The Law of the People’s Republic of China on Labour-Dispute Mediation and Arbitration, adopted at the 31\textsuperscript{st} meeting of the Standing Committee of the Tenth National People’s Congress of the People’s Republic of China on December 29, 2007, is promulgated and entered into force as of May 1, 2008.
\item[19] ICLG, The International Comparative Legal Guide to: Employment & Labour Law 2018, 8\textsuperscript{th} ed, Chapter 7, China at 43, available at www.iclg.com .
\item[20] Wang Zhenqi and Wang Changshuo \textit{et al}, “Labour Dispute Settlement System in China: Past and Perspective”, IDE Asian Law Series No.22, IDE-JETRO, 2003 at 10.
\item[21] Wenjia Zhuang and Feng Chen, “Mediate First: The Revival of Mediation in Labour Dispute Resolution in China”, The China Quarterly 222, 2015, pp 386-402.
\item[22] The Interpretation (III) of the SPC of several issues on the Application of Law in the Trial of Labour Dispute Cases, 2010, available at http://www.procedurallaw.ca/english/law/2010101/a20101030_460389.html .
\item[23] Ibid.
\end{footnotes}
cannot enjoy social insurance treatments because his employer fails to conduct the social insurance formalities for him and the social insurance agency cannot make up such formalities, any dispute arising from the self-restructuring of an enterprise, and when an employee brings an action in the people’s court according to Article 85 of the Labour Contract Law to claim compensation or additional compensation from his employer. On the other hand, Articles 7 & 8 of the interpretation tried to differentiate between a service dispute and a labour dispute in certain situations. Pursuant to Article 7 of the interpretation, “[W]here any employment dispute arises between an employer and an employee who has already enjoyed pension insurance treatments or received pensions pursuant to law when he is employed by the employer, and either party brings an action in the People’s Court, the People’s Court shall deal with it as a service dispute.” On the other hand, Article 8 of the interpretation provided, “[W]here an employee of an enterprise who is on leave with pay suspension, has retired under the statutory age of retirement, is removed from post or waiting for a post or is on a long leave due to the enterprise’s operational cessation of production brings an action in the people’s court pursuant to law for a dispute with his new employer, the people’s court shall deal with it as a labour dispute.” The other point that worth discussion in the above interpretation is the distinction provided for a final and an interlocutory award. Pursuant to Article 13 of the courts’ interpretation, “[W]here an employee requests labour remuneration, medical expenses for a work-related injury or economic indemnity or compensation according to sub-paragraph (1) of Article 47 of the Mediation and Arbitration Law, and the arbitral award involves several of them with the determined amount of each of them not exceeding 12 months’ local minimum monthly age, it shall dealt with as a final award.” On the other hand, according to Article 14 of the same interpretation, “[W]here an arbitral award rendered by the labour and personnel dispute arbitration committee contains both matters on which final determinations are made and matters on which no final determinations are made, any party concerned brings an action in the people’s court against such an arbitral award, it shall be dealt with an interlocutory award.”

Some provincial High courts also issued guidance that serve almost as judicial explanations. The Beijing High Court and Beijing Municipal Labour Arbitration Commission for instance, on April 24, 2017 issued New Guidance to clarify and reducing the scope of “major change” as a termination ground. Pursuant to the Labour Contract Law of the People’s Republic of China, if there is a “major change” in the objective circumstances upon which the employment contract was originally agreed, rendering the employment contract unenforceable, and the company and the employee cannot reach an agreement on the amendment of the employment contract through consultation, the company can unilaterally terminate the employee in restructuring situations. Thus, the New Guidance defines “major change” to include three types of changes such as, force majeure caused by natural disasters (earth quakes, flood), force majeure caused by the change of the laws, regulations and policies and change of business scope of companies which are subject to special approval.

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24 Ibid.  
25 Ibid.  
26 Ibid.  
27 Ibid.  
28 Baker Mckenzie, China Employment Law updates, June 2017, available at www.bakermckenzie.com, Accessed on 15 January 2020.  
29 Ibid.
1.2. Ethiopian Basic Labour Law Regimes: From 1960s to the Recent

The development of legally regulated labour relations in Ethiopia is only a few decades old, since the 1960 Civil Code of Ethiopia regulated legal issues of individual labour relations as a service contract.\(^{30}\) Until the adoption of the Federal Democratic Republic of Ethiopian Constitution in 1995, there were different labour law legal regimes through the ups and downs of their suspension were vivid owing to regime changes in different times. Thus, the first formal labour law collective a labour relation was established with “Labour Relations Proclamation No. 210/1963” and the proclamation recognized the rights of associations of employers and workers as well as a system of collective bargaining that set up machinery for the settlement of trade disputes, the Labour Relations Board.\(^{31}\) In 1974 a regime change happened in Ethiopia with socialist orientation. Following the coming into power of the Dergue regime in Ethiopia as part of the socialist order of state and society, labour law was based on the public ownership of means of production and the then labour relations proclamation No.64/1975 superseded the Imperial Labour relations proclamation and contained almost all provisions of a socialist labour law that in effect there was no autonomy with regard to the conclusion of collective agreements as a form of independent control over working life exercised by freely constituted trade unions, there were no employers organizations, and no contractual freedom between employer and employee.\(^{32}\) Consequently after the charge of government in 1991, proclamation No.42/1993 was adopted as a new set of labour laws which repealed socialist law. Thus, Labour Law of proclamation No.42/1993 was the first labour of Ethiopia after the adoption of market economy in the country. But Labour Law proclamation No.42/1993 was criticized by the ILO Committee of experts that there were serious discrepancies between the national legislations and the freedom of association and protection of the right to organize convention No. 87 of 1948.\(^{33}\) Thus, Ethiopia adopted an amended Labor Law of Proclamation No. 377/2003 that amended the previous labour proclamation that defined for instance “managerial employee” in its Article 3(2) (c), introduced an obligation of employers to maintain records, introduced a clear ban for compulsory HIV/AIDS testing in its Article 14(2) (d), strengthened the workers position in case of termination under Article 27(2) and (3), clarified regulations on severance pay and compensation, disablement payment and dependents benefits under its Articles 39, 40, 109 and 110, abolished trade union monopoly and introduced a full guarantee of freedom of association in its Article 114, and tend to improve the efficiency of Labour Relations Board under its Articles 145, 147(2), 149(6), 150, 153 and 154.\(^{34}\) The recent Labor Law of Ethiopia that in turn amended proclamation No. 377/2003 is Labour Proclamation No. 1156/2019 which is a very recent amendment. Besides, there are additional legislations that directly or indirectly govern the labour relations in Ethiopia such as, Ethiopia’s Overseas Employment Proclamation No. 923/2016 and Public Servants Pension Proclamation No.345/2003.

The labour rights in Ethiopia have also a constitutional law backed rights and dispensations. Thus, among the fundamental rights guaranteed and respected under the 1995 Constitution of the Federal Democratic Rights of Ethiopia, the general principles of labour rights are firmly anchored in the Constitution.\(^{35}\) Article 16 of the FDRE Constitution provides for principles such as the right of the security of the person, prohibition against inhuman treatment and the abolition

\(^{30}\) The 1960 Civil Code of Ethiopia, Articles 2512-2697.

\(^{31}\) ILO, National Labour Law Profile: Federal Democratic Republic of Ethiopia Accessed on 16 January 2020.

\(^{32}\) Ibid.

\(^{33}\) Ibid.

\(^{34}\) Ibid.

\(^{35}\) Ibid.
of slavery, servitude and forced and compulsory labour under Articles 18(2), (3) and (4) of the FDRE Constitution, the right to freedom of association as laid down under Article 31 of the FDRE Constitution “for any cause or purpose”, and more specifically under Article 42 of the rights of labour that reads: “[F]actory and service sector employees, peasants, agricultural workers, other rural workers, government employees below a certain level of responsibility and the nature of whose employment so requires, shall have the right to form trade unions and other associations, and to negotiate with their employers and other organizations affecting their interests.” The right to strike explicitly mentioned in Article 42(1) (d) of the FDRE Constitution, paragraph 2 of Article 42(1) (d) of the FDRE Constitution also lays down the right to reasonable limitations of working hours, to rest, to paid leave and to healthy and safe working environment. Ethiopia is also ratified 23 ILO conventions of which 21 are in force, and all of the eight fundamental conventions

Judicial interpretation of the Cassation Division of the Federal Supreme Court of Ethiopia can also as one source of law and precedent for similar cases and obligatory to lower courts to adhere the obiter dicta. Proclamation No. 454/2005 Federal Courts proclamation re-amendment proclamation that amended proclamation 25/1996 and added Article 10(4) as:

“[I]nterpretation of a law by the Federal Supreme Court rendered by the Cassation Division with no less than five judges shall be binding on Federal as well as Regional Councils at all levels. The Cassation Division may however render a different legal interpretation of laws to all levels of courts and other relevant bodies.”

Besides, Proclamation No.454/2005 under Article 10(5) provided: “The Federal Supreme Court shall publish and distribute decisions of the Cassation Division that contain binding interpretation of laws at all levels of courts and other relevant bodies.” Following this precedent approach in the continental legal dispensations of Ethiopia, the first case of a labour dispute decided by the Federal Supreme Court Cassation Division was KK Textile Workers’ Association vs. KK Textile Industry of 2005. This case was the first land mark case that set the first standards in differentiating individual and collective labour disputes in Ethiopian labour law. I will discuss some of the important contributions by the cassation division decisions on the case as to the standards taken to differentiate individual and collective labour disputes in the next sections.

1.3. Some points of discussion between the Labour Legal Regimes of China and Ethiopia

From the above discussions of the Labour Law Legal Regimes of Ethiopia and China, modern labour contract law is a recent phenomenon for both countries. The 1978 opening up and reform of the People’s Republic of China and the 1991 transition to market economy of Ethiopia are critical times of juncture that shape the present labour legal regimes of the two countries. Thus, in terms of time of adoption of their legal regimes, China and Ethiopia are almost in similar

36 Ibid.
37 The eight fundamental conventions of ILO are, Forced Labour Convention (Convention No.29 of 1930), Freedom of Association and Protection of the Right to organize Convention (Convention No.87 of 1948), Right to Organize and Collective Bargaining (Convention No.98 of 1949), Equal Remuneration Convention (Convention No. 100 of 1951), Discrimination (Employment and Occupation) Convention (Convention No. 111/1958), Minimum Age Convention (Convention No. 138/1973), and Worst Forms of Child Labour Convention (Convention No. 182 of 1999). Available at https://www.ilo.org/ratifications-of-il0-conventions.html , accessed on 16 January 2020.
38 KK Textile Workers’ Association vs. KK Textile Industry, Cassation Division, File Number 18180, Hamle (July) 29, 2005, published in Decisions of the Cassation Division, Volume 1, Page 1.
chronology. With respect to the style of legislations, being the two countries are continental legal system countries and their source of law is mainly legislations, the Chinese Labour Law legal regimes are not codified in a single law, rather there are about more than three distinct labour law regimes that demands codification as one single law. In the case of Ethiopia, the basic labour law of the country, that is, Proclamation No. 1156/2019 contains the Labour Contract Law, the Trade Union and Employers’ Association Law and the Labour Dispute Resolution Law as one codified law. For legal predictability and easily accessibility of laws, codification of laws might be preferable in most continental legal systems. Thus the Chinese labour laws might seek a codification as one law. With regard to the source of labour law, in addition to constitutional guarantee and international labour law best practices, in Ethiopia judicial interpretations is a mandatory source of labour law and other areas of law, but in the case of China judicial explanations and guidelines have no an obligatory effect.

In terms of the content of the labour laws of Ethiopia and China, the basic general parameters such as, how the labour laws are workers’ affiliated and in fact how far the laws strike a balance between the rights of employee and the employing unit (the employer), how the labour law creates a peaceful industrial relations and warrants social security situations, and how the labour laws of the two countries are in line with the international labour legislations and practice. In relation to a labour contract, both laws of China and Ethiopia shares the fundamentals that labour relations must stems from a labour contract which is in light of the basic principles of freedom of contract and in a binding way. Thus, the labour contract in turn clearly stipulated and defines the rights and obligations of both the worker and the employer (the employing unit). A labour contract must be concluded in writing. Here we can appreciate that in terms of terminology; there is a difference between the Chinese usages of the term “employing unit” instead of using the term “employer”. In fact, the context of “employer” and “employing unit” is one and the same. The labour laws of China and Ethiopia are both worker-sensitive in the context that the default usage and interpretation of the law in most of the times favors the worker. I will explain some of the evidences in this regard while discussing some cases of the two jurisdictions in the upcoming sections.

The types of labour contracts recognized by the labour laws of China and Ethiopia seem different. According to the Labour Contract Law of China, labour contracts consisted of fixed-term labour contracts, open-ended labour contracts and labour contracts that expire upon completion of given jobs. In the case of Ethiopian labour law, employment contracts are generally of two types; definite and indefinite period labour contracts. The other difference between the Labour Contract Law of Ethiopia and China is as to their stipulations of a probation period. The Ethiopian Labour Contract Law stipulated a fixed and constant probation period for employment contract. But in the case of the Labour Contract Law of China, different types of probation periods are stipulated, such as a probation period of not exceeding one month if the term of the labour contract is more than three months but less than one year; a probation period of not exceeding two months if the term of the labour contract is more than one year but less than three years, and a probation period of not exceeding six months if the term is fixed for three more years or open ended. The other special contribution of the Chinese Labour Contract Law is the governance of the “triangular” labour relations among the labour dispatching unit, labour receiving unit and a worker that is governed under section 2 of the Labour Contract Law from Articles 57-67 of the same law. In Ethiopia, though the practice of such type of “triangular” worker and employer

39 Labour Contract Law of China, Article 12.
40 Id, Article 19.
relationship is common, there is no enough legal regime that governs such type labour relationships. The first requirement according to Article 57 of the Chinese Labour Contract law is the establishment of the dispatching unit as independent legal person with a minimum capital registration of 500,000 Yuan according to the requirements of the company law of China. This is a special minimum capital requirement unlike the company law of China that abolished a minimum capital registration system for other ordinary business companies. While looking at the details under the above provisions of the “triangular” labour relationships among the dispatching unit, the receiving unit and the worker, the Ethiopian Labour Law should took lesson from such types of laws because the Ethiopian Labour Law has no such type of legal regime though the practice demands. The Chinese Employment Promotion Law seems unique of its type that the Ethiopian Labour lacks but such type of stipulations that obliges government to create suitable situations of job creations are only at policy level. The dispute settlement system will be discussed in the next section by its own.

2. A Third Labour Dispute Management System of China: A preview of Ethiopia

2.1 A Third Labour Dispute Management System of China: Conception

The opening up and reform of China’s transformation fundamentally changed the way that China conducts its industrial relations. Among the changes witnessed, the labour dispute management system of Chinese characteristics that substitute the old system of resolving labour disputes (that is resolving labour disputes via state administration, and collective bargaining) by reliance on labour arbitration and judicial channels for resolving labour disputes. Wang Zhenqi and Wang Changshuo et al coined the evolution of labour disputes settlement system as a system that experienced the three stages of development: establishment, interruption and restoration. The first development stage was following the founding of the People’s Republic of China and strengthened at the beginning of the reform and opening up, government attached great importance to the building of labour dispute settlement legal system and mediation was promoted as the principal method of resolving labour conflicts. Thus, in the early days after the founding of the People’s Republic of China, All-China Federation of Trade Unions issued measures for conclusion of collective labour contract in private industrial and commercial enterprises in November 1949, and the Ministry of Labour promulgated Directions on Setting up Employee-Employer Consultation meeting in private enterprises that helped in preventing and setting labour disputes through consultation. The Ministry of Labour, on June 15, 1950, enacted rule on organizational structure and working procedure of Municipal Labour Dispute Arbitration Committee, and this Division of Labour Dispute Settlement and any party to the dispute had right to refer the dispute to arbitration committee for arbitration. On November 11, 1950, with the approval of the State Administrative Council the Ministry of Labour promulgated Regulations on Labour Dispute Settlement Procedure that appointed labour administrative departments at all levels to handle labour disputes in state enterprises, public enterprises, public-private jointly operated enterprises and enterprises affiliated to cooperatives and according to Regulations on Labour Dispute Settlement Procedure, the labour dispute resolution process consisted of four stages: Negotiation within enterprise, mediation,

41 Di Jie Shen, “Labour Conflict and its Management in China: A systematic literature review”, Collana ADAPT – Working Paper, 2006 at 1, available at www.csmb.unimo.it.
42 Wang Zhenqi and Wang Changshuo supra note 21 above at 10.
43 Wenjia Zhuang and Feng Chen supra note 22 at 384.
44 Wang Zhenqi and Wang Changshuo supra note 21 at 11.
45 Ibid.
arbitration and litigation.\textsuperscript{46} But such settlement process of labour disputes that secured equal negotiation of the parties to a dispute declined and interrupted owing to the revival of socialist economies.

The decline stage of the labour dispute system that waited from 1956 to 1980s was almost era of misconceptions in relation to labour dispute system of China. The thought was that “socialism revolution has been basically completed and major task of the state turns out from liberation of labour force to protection and development of labour force. The state must gradually and systematically build a perfect legal system. Thus, in misconception, instead of utilizing the accumulated experience of regulations on labour dispute settlement procedure in order to keep it a breast of new social development, mediation divisions and arbitration committees were disbanded, and People’s courts ceased to handle labour disputes.”\textsuperscript{47} Therefore, the period from 1956-1980s was really an interruption period of labour dispute settlement system in China.

The restoration of the labour dispute settlement system started and further strengthened following the reform and advancement of the legal system of China owing to the 1978 opening up and reform. Thus, until the third labour dispute management system was legally restored by the 1994 Labor Law of the People’s Republic of China, there were restoration measures like the 1980 State Council’s Regulations on Labour Management in Sino-Foreign Joint Venture Enterprises, the 1986 State Council’s Circular on reforming four components of the labour system, the 1987 State Council’s Provisional Regulations on Settlement of labour disputes in state-run enterprises that re-instated the labour dispute settlement system which had been interrupted for 30 years.\textsuperscript{48} Thus, the current labour dispute settlement system consisted of Mediation by Enterprise Labour Dispute Mediation Committee, manadatory arbitration by Local Labour Dispute Arbitration Committee, and Litigation by People’s Court of First Instance and Second Instance.

In conception of Di Jie Shen therefore, ‘a Third Labour Management System with Chinese Characteristics’ means “resolving labour disputes through labour arbitration and judicial channels and management-state bipartism for resolving labour disputes.”\textsuperscript{49} The law of the People’s Republic of China on Labour-Dispute Mediation and Arbitrations regulated the procedure of handling a labour dispute management system and listed out the institutions with competent jurisdiction under Articles 4 and 5 of the law. Article 4 of the Labour-Dispute Mediation and Arbitrations provides:

“\textit{When a labour dispute arises; the worker concerned may have a consultation with the employing unit or invite the trade union or a third party to join in the consultation with the employing unit, in order to reach a settlement agreement.}”

Thus settling any aspect of labour dispute with consultation between a worker and an employing unit is the first priority recognized by law. Article 5 of the same law provides the following in cases where by the way out by Article 4 of the same law is not successful:

“\textit{When a labour dispute arises and the parties are not willing to have a consultation, or the consultation fails, or the settlement agreement reached is not performed, they may apply to a mediation institution for mediation. Where the parties are not willing to have mediation, or the mediation fails, or the mediation agreement reached is not performed, they may apply to a labour dispute arbitration commission for arbitration.}”

\textsuperscript{46} Ibid.
\textsuperscript{47} Ibid.
\textsuperscript{48} Id at 14-15.
\textsuperscript{49} Di Jie Shen supra note 42 above.
Where they are dissatisfied with the arbitral award, they may initiate litigation to a people’s Court, unless otherwise provided for in this law.”

From the above two basic provisions, one can easily deduced that settling a labour dispute with consultation and mediation depends on the autonomy of the parties to opt for consultation and mediation. On the other hand, the jurisdiction of a labour dispute arbitration commission and the People’s Court is mandatory and presenting the case before labour dispute arbitration seems a condition and a local remedy that should be exhausted first before appearing to a People’s Court.

2.2. The Labour Dispute Management Procedure and Competent Jurisdictions of Ethiopia

Issues of labour dispute in Ethiopia are governed by the recent labour law of Proclamation No.1156/2019 that codified most laws of Labour issues as one and the labour dispute laws are from Articles 137-161 of the Labour Proclamation. The Labour law defined ‘a labour dispute’ under Article 137(3) of the same law as:

“[Labour dispute] means any dispute between a worker and an employer or trade union and employers’ association in respect of the application of law, collective agreement, work rules, employment contract and also any disagreement arising during collective bargaining or in connection with collective agreement.”

With regard to the competent jurisdictions that entertained labour disputes in Ethiopia, the law established regular courts of labour divisions under Article 138(1) of the Ethiopian Labour law that says: “Labour Divisions shall be established courts, at Federal and Regional level.” The labour division regular courts have a first instance and appellate jurisdictions. Pursuant to Article 139(1) of the labour law, the labour division first instance court has the following jurisdictions as stipulated by law. Article 139(1) of the labour law provides:

“The labour divisions of a Federal and Regional First Instance court shall have jurisdictions to settle and determine the following and other similar individual labour disputes;

(a). disciplinary measures including dismissal;
(b). claims related to the termination of employment contracts;
(c). claims related to hours of work, remuneration, leaves and rest day;
(d). claims related to the issuance of certificate of service and clearance;
(e). claims pertaining to employment injury, transfer, promotion, training and other similar issues;
(f). unless otherwise provided in this proclamation, suits pertaining to violations provisions of this proclamation.”

On the other hand, Pursuant to Article 140(1) of the same law, the Labour Division of the Appellate Court has the following jurisdiction:

“The Labour Division of Appellate the First Instance Court shall have jurisdiction to hear and decide on the following matters:

(a). appeals submitted from the labour division of the first instance courts in accordance with Article 139 of this proclamation;
(b). objections on questions of jurisdictions;
(c). appeals submitted against the refusal of the registration of an organization by the ministry [Ministry of Labour and Social Affairs] or appropriate authority in accordance with Article 123 of this proclamation;
(d). appeals submitted by an employer who is affected by the order of labour inspector in accordance with Article 180(1) of this proclamation;
(e). appeals submitted against the decision of the Ministry or appropriate authority in accordance with Article 20(3) of this proclamation;
(f). request submitted by Minister or appropriate authority for the cancellation of the registration of an organization in accordance with Article 122(2) of this proclamation;
(g). appeals against the decision of the board on questions of law in accordance with Article 155 of this proclamation.

The Ethiopian Labour Law also established the Labour Relations Board pursuant to Article 145 of the labour law and recognized alternative dispute settlement mechanisms (conciliation and arbitration) in order to prevent or resolve labour disputes amicably. Thus, what jurisdictions the Labour Relations Board have in entertaining labour disputes? What is the role of conciliation and arbitration in settling labour dispute cases in Ethiopia? Pursuant to Article 148(1) of the Labour Law of Ethiopia (permanent or ad Hoc) has the following jurisdiction.

“A permanent Board shall have the following powers;
(a). to entertain collective labour disputes except those in sub-article (1) (a) of Article 143; conciliate the parties; issue orders and render decisions;
(b). to entertain and decide cases submitted to it by one of the disputing parties after the parties fail to reach an agreement in accordance with sub-article (3) of Article 143 of this proclamation except on matters specified in sub-article (1) (a) Article 143 of this proclamation;
(c). to hear cases on prohibited actions referred to in Article 161 of this proclamation;
(d). to require any person or organization to submit information and documents required by it for the carrying out of its duties;
(e). to require parties and witnesses to appear at its hearings;
(f). to administer oaths or take affirmations of persons appearing before it and examine any such person after such an oath or affirmation;
(g). to enter the premises of any working place or undertaking during working hours in order to obtain relevant information, hear witnesses or to require the submission of documents or other articles for inspection from any person in the premises.

The other most important aspect of the labour dispute system is the role of conciliation and arbitration. The principle lies at Article 141 of the labour law that “[E]mployers and workers or their respective associations may introduce social dialogue in order to prevent and resolve labour disputes amicably.” Besides, Article 144 of the labour law provided the following two sub-articles about conciliation and arbitration. The Article reads:

(1). Notwithstanding the provisions of Article 142 of this proclamation, parties to a dispute may agree to submit their case to arbitrators or conciliators, of their own choice for settlement in accordance with the appropriate law.
(2). If the parties fail to reach an agreement on the case submitted to conciliation under sub-article (1) of this Article or the party aggrieved by the decision of the arbitration may take the case to the Board or to the appropriate court, as the case may be.

Therefore, in Ethiopian context, conciliation and arbitration has a role of resolving labour dispute issues and the law clearly pin point the pertinent powers and jurisdictions each institution has to prevent as well resolve labour conflict issues in industrial relations. Some of the issues of discussion between the Ethiopian and Chinese Labour Law Regimes will be precisely touched.
2.3. Some points of discussions between the labour dispute system of China and Ethiopia

We can precisely analyze the labour dispute system of China and Ethiopia by taking the role of alternative dispute settlement mechanisms (conciliation, mediation and arbitration) in preventing and settling labour disputes as well as in shaping the nature of the dispute resolving management system, and in assessing the competent institutions having a power to arbitrate or litigate labour dispute issues. From the discussions of the labour dispute settlement system of Ethiopia and China, it is clear that conciliation, mediation and arbitration are recognized as a means of resolving labour disputes. But, the recognition as well as the nature of shaping the labour dispute system in China and Ethiopia has some appreciable differences. In the case of China, the labour dispute settlement process is a one-track process by which parties are obliged to pass through the stages of mediation by Enterprise Labour Dispute Mediation Committee, mandatory arbitration by local Labour Dispute Arbitration Committee, and litigation by People’s Court of First Instance and Second Instance. Therefore, there is no a double-track system of involving free choice of arbitration or litigation. But in the case of Ethiopia, the alternative dispute resolution mechanisms stands by their own as alternative for free choice of the parties and conciliation, mediation and arbitrations are not pre-conditions or local remedy exhaustion requirements to present a labour dispute case for the competent jurisdiction. There are some commentators that criticized the single track-arbitration system of China as time consuming less efficient and recommends a double track system of labour dispute settlement mechanism.

In relation to the competent institutions with a power to arbitrate or litigate labour disputes, there is a clear difference between the Ethiopian and Chinese Labour Laws. In the case of Ethiopian Labour Law, Regular Courts have first instance jurisdiction of litigating only “individual labour disputes”, while the first instance jurisdiction to entertain “collective labour disputes” is the power of the Labour Relations Board. The question here is what is the difference between “individual labour dispute and collective labour dispute?” The first explanation and hint is directly from the labour law of Ethiopia. In other words, the labour law of Ethiopia proclaimed labour dispute claims under Article 139(1) which are the first instance jurisdiction of a labour division regular court as “individual labour dispute”, whereas labour dispute claims under Article 148(1) of the labour law as “collective labour disputes” and that are the first instance jurisdiction of Labour Relations Board. Such type of distinction and explanation is also pronounced by case law and the area seeks the concern of academics. For the first time in Ethiopia, the prominent case of Federal Supreme Court Cassation Division in appreciating the difference between “individual labour dispute” and “collective labour dispute” is KK Textile Workers’ Association vs. KK Textile Industry of 2005. Under this land mark case of labour dispute in Ethiopia underlined that the criteria for differentiating individual and collective labour dispute is not the number of workers involved in the dispute, rather the critical underlying parameter is ‘whether a given dispute affects the workers’ collective interest.” A labour dispute on collective interest of workers refers to ‘situations when an employer and a worker or trade unions do not reach an agreement on the need and the scope of application of a certain interest which is not detailed in the employment contract nor in a relevant legislation, and the critical matter that affects most in determining the collective or individual nature a labour dispute is whether the issue at hand affects only an individual or a number of workers.

50 For the Case commentary and some academic explanation of “individual” and “collective” labour dispute issues see, Hiruy Wubie, “The Settlement of Individual and Collective Labour Disputes under Ethiopian Labour Law”, E-Journal of International and Comparative LABOUR STUDIES, 2 ADAPT University Press 1(2013), 39-63, available at www.adaptinternational.it.
51 Id at 46–48.
not the number of workers submitting the case.\textsuperscript{52} But, in the case of the Labour-dispute Mediation and Arbitration Law of China, under Article 7, the number of workers is determinant factor only for having a right of substituting a class action. Article 7 of the Labour-dispute Mediation and Arbitration Law of China provides:

"[W]here the party in a labour dispute consists of 10 workers or more, and they have a common request, they may choose one worker to represent them in mediation, arbitration or litigation."

Therefore, one significant difference between the Chinese and the Ethiopian labour dispute system is the manner in which jurisdictions are allotted to competent institutions and in the case of Ethiopia, the labour law tried to clearly demarcate regular courts from the Labour Relation Board and the alternative dispute settlement mechanisms follow their own path and they have their own track system which is recommended by scholars for reforming a double-track system of labour dispute management system.

3. Some selected Labour Dispute cases of China and Ethiopia: Practices as Evidences

There are plenty of cases entertained before both countries Regular Courts and Labour-Arbitration Commissions or Labour Relations Board. It is impossible to assess or analyze significant portion of the cases of each state. Therefore, in this short essay of limited scope and limited access of cases, I opt to present only available cases (some important facts and rulings and implications) of both or either states on important aspects of labour issues.

3.1. Cases evidencing Labour Law as “Merciful law to the workers”

The genesis as well as development of a labour law is basically on the one hand to protect the interest of workers from a capital driven motive and on the other hand to strike the balance between the interests of workers and employing units. Thus, merciful labour law for workers is not a onetime struggle achievement but it is an achievement of hundreds of years sacrifice. In effect, most labour laws of ILO member states tried to be merciful to the workers. In this regard, the labour laws of both China and Ethiopia can also be regarded as “merciful laws to workers.”

But it does not mean that the two laws do not balance the rights and interests of the employing unit.

What provisions of the labour law can be regarded as evidences for the labour law is “merciful” to workers? Some of the labour law provisions that can be taken as merciful to the workers are those presumed to favor to the worker while interpretation if there is a lacunae between the employment contract and the labour law. For instance, in relation with the form of an employment contract the Ethiopian Labour Law Proclamation No. 1156/2019 from Articles 5-8 governs the form of employment contract. What is the legal requirement of employment contract as to form? Article 5 of the Ethiopian Labour Law puts the principle as “unless otherwise provided by law, a contract of employment shall not be subject to any special form.”

Article 6 of the same law underlined the specifications mentioned in employment contract if the contract of employment is in writing. In cases where by the employment of contract is not made in writing, Article 7 of the same law puts an obligation to the employer to fulfill the contract of employment in writing. But according to Article 8 of the same labour law, failure to comply the written requirements of an employment contract shall not deprive the worker his right under the Ethiopian Labour Law. This is one of the clear situations where by the labour law gives a merciful interpretation for the worker. Such type of merciful approach as to the

\textsuperscript{52} Id at 48-49.
form of the contract of employment is also adopted by Chinese legislators as well as the practice is also available during arbitration as well as litigation of labour dispute cases. The other instance from the Ethiopian Labour Law is the duration of the contract of employment. Article 9 of the same law provides: “[A]ny contract of employment shall be deemed to have been concluded for an indefinite period except for those provided for under Article 10 here under.” Article 10 is lists of definite period of contract of employment. Thus, the motive of the law here is to benefit the workers in cases of doubt if the contract of employment failed to express the duration of the contract of employment or the list inclusion of Article 10 is not fulfilled, the contract of employment is presumed to be for indefinite period of time. There are also other situations where by the Labour Laws of China and Ethiopia actually favors the interests of workers. What type of cases can be mentioned here as evidences of such type of interpretations? With regard to probation period there are Federal Supreme Court Cassation Division decisions that protect the unlawful dismissal of workers under the guise of “the end of probation period.” In the case Berhe Hagos General Contractor vs. Gemechu Adugna of 201453, Berhe Hagos General Contractor is an employer of the legal clerk Gemechu Adugna. The labour dispute before the Federal Supreme Court (the case started at Federal First Instance Labour Division Court and the lower court decided in favor of the worker and this decision is concurred by the Appellate Labour Division of the Federal High Court) Cassation Division that litigated before the court was whether in the absence of a probation period of contract of employment, dismissing a worker without notice after 45 days was lawful or unlawful? In this case the claimant (the employer) who loses the case at the lower courts alleged that “Gemechu Adugna is my worker with a contract of employment of probation for 45 days and the date is lapsed”, besides, “the worker is under performance for the last 45 days and he is not properly in his work place in most of the times thus my termination of the contract of employment is lawful.” But the allegations of the employer proved non-existent that there was no clear written probation period of contract of employment signed by both parties, and thus the Cassation Division of the Federal Supreme Court decided that according to Article 11(5) of the Labour Proclamation No.377/2003 that the law obliges a clear written and signed probation contract of employment and in the absence of a written and signed probation contract, termination and dismissal without notice is unlawful. Thus, the Cassation Division of the Federal Supreme Court decided in favor of the worker. Such type of decisions aimed at protecting the interests of the workers from unlawful termination by taking the period of probation as a cover. This is one of the practices by Ethiopian Courts of implementing the “merciful of the labour law” to workers.

3.2. The scope of application of the labour law: Which category of “worker” governed by the labour law? What types of employment relationships are governed by the Labour Law? Who is worker? Who is an employing unit or an employer? Are religious and spiritual leaders or spiritual service givers of religious institutions governed by the labour law? What about an accountant of religious institutions? Deciding the scope of the applicability of the labour law is a very critical legal issue in order to protect the rights as well as responsibilities of the worker and employers. For instance, Article 3 of Ethiopian Labour Proclamation No. 1156/2019 provides: “[W]ithout prejudice to sub-article (2) of this Article, this proclamation shall be applicable to employment relations based on a contract of employment that exist between a worker and an employer

53 Berhe Hagos General Contractor vs. Gemechu Adugna, Cassation Division, File Number 98052, Hamle (July) 21, 2014, published in Decisions of the Cassation Division, Vol.16, at 85-87.
including recruitment process.” Article 3(2) of the same proclamation listed down employment relations excluded from the scope of the labour law such as, managerial employees and others. Besides, Article 3(3) (b) of the same law provides: “[T]he Council of Ministers may, by Regulation, determine the inapplicability of this proclamation to employment relations established by religious or charitable organizations.” In practice for instance, there is no clear Regulation issued by the Council of Ministers that excluded the application of the labour law for religious institutions and the practice is that the labour law partially applicable to non-spiritual workers and partially inapplicable for spiritual leaders as well as spiritual service givers. There is similar practice in China that differentiates monks of a monastery from non-religious workers of a monastery.

In Ethiopian Federal Supreme Court Cassation Division, there are evidences of decisions that confirmed an employee of religious institutions for spiritual and religious service did not governed by the Labour Law. In *Hamerework Saint Mary Orthodox Church vs. Diakon Mihret Birhan and others (5 others)* Case of 2006, the claimants (Diakon Mihret Birhan and others) started their labour dispute at Federal First Instance Court of Labour Division and alleged that “we are spiritual employee of the church but our contractual relationship is unlawfully terminated by the church, thus let the court decided the termination unlawful and return us to our spiritual job.” The issue before the court was whether the contractual employment relationship governed by the labour law of Ethiopia or not? If yes, what remedies are available for the claimants? During the employment contract of the claimants, the enforced labour law was Labour Law Proclamation 42/93 and during the litigation of the claimants, Labour Law 42/1993 was amended by Labour law 377/2003. But the scope of application of the two laws regarding the applicability of the law for religious institutions was similar. Thus, the Federal First Instance Court tried to interpret and decided that Article 3 of Labour Law 42/1993 that since the Council of Ministers did not issued regulations to exclude religious institutions governed by this Labour Law, the law is applicable and the claimants’ employment relationship is terminated unlawfully by the Church, let they return to their job. The Church dissatisfied by the decision of the lower court filed an appeal to the Federal High Court and the Federal High Court re-affirmed the decision of the lower court. Thus the Church filed a cassation claim to the Federal Supreme Court.

The Federal Supreme Court corrected the “fundamental error of law” allegedly done by lower courts by saying that the absence of a Council of Ministers Regulation that excluded the application of the Labour Law does not mean that the Labour law is fully applicable to religious institutions. It is a fundamental error of law that the lower courts misinterpreted the labour law. The Cassation Division in its decision strengthened the decision by citing Article 11 of the Federal Democratic Republic of Ethiopian Constitution that “State and Religion are separate, thus we should clearly distinguish religious service and secular service in the church.” Therefore, in religious institutions, there are clearly secular service provider workers such as, accountant, cashier, etc… that their employment relationship should be governed by the labour law. But, those spiritual service givers and leaders like the Pope, Priest, Monk, and Diakon etc… are not governed by the labour law. Therefore in the case at hand, the claimants did not deny that they are spiritual employee of the church and thus the labour law did not apply in this case, the Federal Supreme Court Cassation Division in effect reversed the decisions rendered by the lower courts and excluded the applicability of the labour law in such type of situations.

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54 *Hamerework Saint Mary Orthodox Church vs. Diakon Mihret Birhan and others*, Cassation Division, File Number 18419, Ginbot (May) 14, 2006, published in Decesions of the Cassation Division, Vol.8 at 229-231.
The same exclusion of the applicability of the labour law on managerial employees is decided by the Cassation Division of the Federal Supreme Court in Different times. For instance, in Ethiopian Telecommunication Corporation vs. Bekele Kumsa and Others (2 other managerial employees) Case of 200855, and Commercial Bank of Ethiopia vs. Asebework Zegeye Case of 200856, the Federal Supreme Court Cassation Division decided that managerial employees are not governed by the Labour Law of Ethiopia, rather they would govern under the law that regulated service contract, that is in another civil law.

3.3. Statutory worker’s retirement age and its effect of re-employment

The Labour Laws of both China and Ethiopia proclaimed the mandatory statutory age of workers for retirement. Now the issues here are, is it possible to re-employ again after retirement? If yes, what effect that the re-employment will have on pensions and other benefits? Can the re-employed retired worker benefit from the protection of the labour law in cases of infringement of his/her labour rights? Let we see some discussions and cases as evidences. The retirement statutory age for Chinese workers is 60 for men and 50 for women and in Ethiopia it is 60 for both men and women.

While looking at the labour dispute cases of both China and Ethiopia, the decisions by the competent authorities to settle labour disputes show us that there is any prohibition for the re-employment of a retired worker but the issue is, can we say that there is a labour contract relationship between the employer and the re-employed retired worker? While looking at the case laws, the decisions give as clues. In Ethiopian Insurance Agency vs. Constable Syum Kassa Case of 200857, the Federal Supreme Court Cassation Division after being convinced by the fact that Constable Syum Kassa is found to be an employee after his retirement and took his pension at the same time decided that pursuant to Article 46(1) and (2) of the Ethiopian Pension Law Proclamation No. 345/2003, a retired pension beneficiary will no longer entitled to receive pension allowances if he/she is found to be re-employed in a job that has salary to it. Therefore, the court decided to stop the pension allowance. In another case of Ethiopian Higher Transport Buss Association Ltd. vs. Ayalew Yirgu Case of 200858, the claim of a retired more than 60 years worker to the court to reverse his unlawful termination from his employer did not accepted by the court on the ground that there is no any legal ground to return a retired worker to work. From these two case laws we can deduced that though there is no prohibition of re-employment of retired workers, the protection of the labour law for such type of workers becomes minimal and such group of workers face difficulties if there is/are situations of right infringement.

In China, re-employment of a retired worker and his benefit is opened to different interpretations in different provinces of China. For instance in Guangdong Province, there is opinion of the courts that a retired person cannot be re-employed again and there is no a worker employing unit relationship between. Thus no Labour Contract Law is applicable in such situations. Such stand of Guangdong Province High People’s Court is concurred by Chongqing High People’s Court in a recent case that the main issue in this case was whether the parties had an employment relationship after the employee reached the statutory retirement age of 60. The court cited Article 21 of the Regulation on the Implementation of the Employment Contract

55 Ethiopian Telecommunication Corporation vs. Bekele Kumsa and Others, Cassation Division, File Number 21329, Tikmet (October) 28, 2008, Published in Decisions of the Cassation Division, Vol.6, at 299-304.
56 Commercial Bank of Ethiopia vs. Asebework Zegeye Case of 2008, Cassation Division, File Number 23609, Tstanbul (November) 17, 2008, Vol.7, at 21-25.
57 Ethiopian Insurance Agency vs. Constable Syum Kassa, Cassation Division, File Number 25889, Sene (July) 5, 2008, published in decisions of the Cassation Division, Vol.5, at 369-371.
58 Ethiopian Higher Transport Buss Association Ltd. vs. Ayalew Yirgu, Cassation Division, File Number 31402, Ginbot (May) 10, 2008, published in decisions of the Cassation Division, Vol.6, at 348-350.
Law of the PRC which provides that an employment contract ends when an employee reaches the statutory retirement age. The court then went on to say that after the employee reached the statutory retirement age, the employment relationship no longer existed between the parties and the employee’s post age 60 relationship with the employer was pursuant to a labor relationship. Because an employer’s obligation to pay statutory severance to an employee is generally only applicable in an employment relationship and because at the time of termination the parties did not have an employment relationship, the employer did not owe statutory severance to the employee. The Sanchong District of the Republic of China on the other hand accepts the re-employment of a retired person and a contract of employment is presumed to be existent as long as the re-employed worker quit benefiting from the pension allowance. Thus stand seems the stand taken by the Ethiopian Federal Supreme Court Cassation Division. The Jiangsu Province on its way also adopted a semi-relationship approach of the re-employed retired worker with the Labour Contract Law. The Jiangsu Province never prohibited re-employment but prohibited pension and other financial compensations. But most provinces of China adopted the Guangdong Province’s approach and the issue of statutory retirement age continued to be a hot agenda in China. I will deal with additional issues in Chinese’s recent labour issues in the coming section.

3.4. Summary dismissal and situations of “Change of circumstances” that are not enough causes for lawful termination by worker and employing unit

3.4.1. Cases of Summary dismissal
Summary dismissal is the power of the employing unit to dismiss the worker or terminate the contract of employment without giving notice to the worker. What are the situations prescribed by law that empowered the employing unit to terminate the contract of employment without giving notice to the worker in Labour Contract Laws of China and Ethiopia? Pursuant to Article 39 of the Chinese Labour Contract Law, the employing unit may have the labour contract revoked if a worker is found to be in any of the following circumstances:

1. being proved unqualified for recruitment during the probation period;
2. seriously violating the rules and regulations of the employing unit;
3. causing major losses to the employing unit due to serious dereliction of duty or engagement in malpractices for personal gain;
4. concurrently establishing a labour relationship with another employing unit, which seriously affects the accomplishment of the task of the original employing unit, or refusing to rectify after the original employing unit brings the matter to his attention;
5. invalidating the labour contract as a result of the circumstance specified in subparagraph (1) of the first paragraph of Article 26 of this law; or
6. being investigated for criminal responsibilities in accordance with law.

The Ethiopian Labour Law of Proclamation No. 1156/2019 on the other hand under Article 27(1) provides: Unless and otherwise determined by a collective agreement, a contract of employment shall be terminated without prior notice only on the following grounds:

(a). unless the reason for being late is justified by the collective agreement, work rule or contract of employment, being late for duty eight times in six months period while being warned in writing of such a problem;

Regulations on the Implementation of the Employment Contract Law of the People’s Republic Of China, which was adopted at the 25th executive meeting of the State Council on September 3, 2008 as Decree of the State Council of the People’s Republic of China, No. 535.
(b). absence from duty for a total five days in six months period while being warned in writing of such a problem; and where the absence cannot be classified in any of the leaves provided under the proclamation;
(c). Deceitful fraudulent conduct in carrying out his duties;
(d). misappropriation of the property or fraud of the employer with intent to procure for himself or to a third person unlawful enrichment;
(e). performance result of a worker, despite his potential, is persistently below the qualities and quantities stipulated in the collective agreement or determined by the agreement of the parties;
(f). being responsible for brawls or quarrels at work, having regard to the gravity of the case;
(g). conviction for an offense where such conviction renders him incompatible for the post which he holds;
(h). being responsible for causing damages intentionally or through gross negligence to any property of the employer or to another property which is directly connected with the work of the undertaking;
(i). commission of any of the prohibited acts under Article 14(2) of this proclamation;
(j). Absence from work due to a court sentence passed against the worker for more than thirty days;
(k). commission of other violations stipulated in a collective agreement as grounds for terminating contract of employment without notice.

By having the above legal grounds of summary dismissal by the employer one evidence of a summary dismissal of a worker and decided by the court as lawful in 2017 who alleged for stealing his colleagues pot of flowers is a decision by the Shanghai Qingpu District People’s Court.\[60\] The employee claimed to the court that he told his colleague that he wanted a pot of flowers and when he subsequently took the pot of flowers from his colleague’s office, he intended to notify his colleague afterwards. When he asked about the pot of the flowers, the employee immediately admitted he had taken the pot of flowers, apologized to his colleagues, and returned them to him. His colleague denied all of the employee’s statements. The employee further argued that the company has no authority to determine whether his actions constituted “stealing”, as the company was not the police. The company took the position that the employee’s removal of the pot of the flowers without the owner’s consent should be deemed as theft, even though he was not subject to any criminal charges brought by the police. The company argued that its internal Human Resource Management Rules explicitly allow the company to summarily terminate an employee for theft, and therefore the termination was lawful. The court ruled in favor of the company and dismissed the employee’s wrongful termination claim.

Thus, how could we see the above Shanghai Qingpu District People’s Court decision in light of Article 39 (2) of the Chinese Labour Contract Law? Article 39(2) of the Chinese Labour Contract Law stipulated that the employing unit may have the labour contract revoked if a worker is found in seriously violating the rules and regulations of the employing unit. In the above case, the main focus was not on the actual value at stake or loses when determining whether the employee’s misconduct was severe enough to warrant a summary dismissal and in fact the burden to show whether such type of misconduct is expressly formulated in the employer’s internal policies.

\[60\] Baker Mekenzie supra note 29 above.
The other evidence presented here from the decisions of Chinese Courts is the employer’s effort to terminate the contract of employment relationship by taking “performance assessment” of a worker as a guise. Let us see the following case study published as an attachment by Wang Zhenqi and Wang Changshuo et al as a case study of Labour Dispute Settlement.  

In May 2000, a factory recruited new employees to work on a main production line and concluded 5-year labour contracts with them. In June 2000, in order to adapt to market changes, the factory decided to replace the production line with a new one. These employees would have to be assessed in accordance with the requirements of the new production line before taking up new posts. As a result of the assessment, 36 employees were proved not up to the post. Therefore, the factory decided to revoke the labour contracts with them. In response to the decision, 6 persons out of the 36 requested for changing posts, and the rest 30 requested for carrying through the labour contracts. The factory insisted on its decision. The 36 employees applied to the District Labour Dispute Arbitration Committee for arbitration. Then, the committee decided:  

The decision made by the factory was announced wrong. Why it is wrong? The District Labour Dispute Arbitration Committee for arbitration argued that renewal of production line and the consequent necessity of re-assessment of employees is “great change of basis for the conclusion of the contract”, and should be dealt with in accordance with legal stipulations. According to Article 26 of Labour Law, when the objective conditions taken as the basis for the conclusion of the contract have greatly changed so that the original labour contract can no longer be carried out, and no agreement on modification of the labour contract can be reached through consultation by the parties involved, the employing unit may revoke the labour contract but a written notification shall be given to the labourer 30 days before in advance. The factory acted against the stipulation, because it revoked labour contracts without prior consultation with the employer.  

Therefore, the arbitration committee decided that the factory should satisfy the request made by 6 employees for changing their posts and revoking the labour contract of the rest of employees only after the fact that the employees are not agreed with the modification of contracts and by giving 30 days advance notice and financial compensations.

3.4.2. “Change of circumstances” that are not enough causes for lawful termination by the worker

Among different “change of circumstances” in employment relationship between the employing unit and the worker, I opt to present the circumstances of “change of the working place of the worker” as the case in point. The contrary understanding of the conception is that there are situations by which the refusal to accept and proceed to work for the worker in situations of “change of the working place of the worker” enables the employing unit to terminate the employment contract as lawful. There are practical cases from both Ethiopia and China in this regard.

In the case of Water Actions vs. Yilma Assefa of 2008 in the Federal Supreme Court Cassation Division of Ethiopia, the case started from a Lower Courts of First Instance up to the Cassation Division of the State’s Regional Supreme Court in one of the Regions of Ethiopia and finally submitted by the employer owing to the error of law committed by lower courts and

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61 Wang Zhenqi and Wang Changshuo et al supra note 21 above at 53-54.

62 Ibid.

63 Ibid.

64 Water Actions vs. Yilma Assefa, Cassation Division, File Number 29415, Yekatit (February) 7, 2008, Published in Decisions of the Cassation Division, Vol.6, at 370-372.
subsequently confirmed by Appellate Courts of the Regional State to the Cassation Division of the Federal Supreme Court for the correction of error of law that the worker’s working place is changed from one project of our company to other project of the same company but the worker is refused to accept the post of the new project and he was absent for 5 consecutive days from his new working place, thus the company terminated the contract of employment of the worker by the company’s initiative pursuant to Article 27(2) (b) of Labour Proclamation No. 377/2003. The facts presented by the employer are all assured by the court as facts, thus the Cassation Division of the Federal Supreme Court decided that if a worker refused to accept a work place changed by the employer, the employer can revoke and cancel the Labour Contract and the termination is lawful. Therefore, the Cassation Division of the Federal Supreme Court reversed the decisions of the lower courts. This decision of the Federal Supreme Court is confirmed and supported by subsequent decisions of the same division. It is possible to mention Abeba Transport PLC vs. Samuel Kidane Case of 2009 and Ropack International PLC vs. Yidersal Aemero Case of 2009 of the Federal Supreme Court Cassation Division Decisions that confirmed the above case of Water Actions vs. Yilma Assefa case of 2008 as precedent.

The Courts of the People’s Court of China also give interpretation for what is “major change” termination ground for employment contract. The case entertained before a court in Beijing is the claim of a worker that “the change of the work place from District to District in Beijing is a major change and thus I have the right to terminate my contract of employment lawfully and the employing unit has to pay severance payment.” But the court rejected the claim of the worker in the meaning of the Employment Contract Law of that “Changing the working place of the employing unit with in Beijing from District to District is not a fundamental change and thus the employing unit has a right to unilaterally terminate the employment contract without notice and without any severance payment.” On this issue, Beijing High People’s Court and Beijing Municipal Labour Arbitration Commission on April 24, 2017 jointly issued a new guidance that tried to show the scope of the “major change” as a termination ground. Under the Employment Contract Law of the People’s Republic of China if there is “a major change” in the objective circumstances upon which the employment contract was originally agreed, rendering the employment contract unenforceable and the company and the employee cannot reach an agreement on the amendment of the employment contract through consultation, the company can unilaterally terminate the contract. The new guidance’s definition of “a major change” is already discussed.

4. Recent Labour Issues of the People’s Republic of China and Ethiopia
4.1. Labour Challenges of the People’s Republic of China

As it is already frequently said that China’s economic transformations of the last four decades and its engagement with the world and with the global market system has brought stunning growth but also new and formidable challenges regarding the management of this growth so that it delivers better lives and better features for the greatest number of people. The last four decades of transformation had also modernized the legal system of the country including its labour law legal regime. Among others, the effort made to protect the labour rights of migrant workers is very crucial. But still there are critical employment challenges in for instance, accelerating the rate of the creation of decent jobs and productivity growth, and developing an

65 Abeba Transport PLC vs. Samuel Kidane, Cassation Division, File Number 41623, Megabit (March) 18, 2009, Published in Decisions of the Cassation Division, Vol.8, at 182-183.
66 Ropack International PLC vs. Yidersal Aemero, Cassation Division, File Number 38189, Sene (June) 7, 2009, Published in Decisions of the Cassation Division, Vol.8, at 204-206.
efficient, equitable and unified labour market to ensure continued economic growth. Therefore, in this short essay, an effort is made to show selective labour issues and challenges of the People’s Republic of China.

4.1.1. Focus on decent work for all: Forced labour issues in China
The ILO’s concept of “decent work” is all about four pillars, such as the centrality of employment in national policy, the guarantee of workers’ basic rights, a floor of social protection, and the promotion of social dialogue. Since the adoption of the first 1994 fundamental Labour law of the People’s Republic of China, many efforts had made to protect the labour rights of workers as to the extent of the international practice of “decent work” and in protecting the rights and interests of migrant workers though there are scholars who criticized the labour law legal regime by saying still that there are “workers without benefits.” But still there are labour issues that demand the commitment of the government. Among others the labour issue of preventing forced labour and assuming international responsibility of best international practice is the question of the day.

According to the updates of ILO in 2016, 25 million people were caught in the grip of forced labour, 4.3 million of them children below the age of 18 years, and a greater prevalence today of forced labour in the Europe and central Asia region than Africa. Among 187 ILO members, 12 countries do not ratify the ILO’s the Abolition of Forced Labour Convention. But there are frequent discussions between ILO and China on international labour standards of Forced Labour Convention. On 23 November 2017 in Kunming (the capital of Yunnan Province), a national seminar was jointly organized by the ILO and the Ministry of Human Resources and social security of the People’s Republic of China under the EU-China Dialogue on Migration and Mobility Support Project, funded by the European Union (EU) and jointly implemented by the ILO and the International Organization for Migration (IOM).

The seminar reached on consensus on the following saying of TIM De Meyer, Director of ILO country Office for China and Mongolia. The Director’s saying goes: “[L]abour performed under coercion or threat rather than on the basis of an agreement that brings clear benefits to both employer and worker is economically unproductive, socially unsustainable and ultimately disrespectful of human dignity … Nearly one of every four victims of forced labour was exploited outside their country of residence. In many parts of the world, irregular migrants as well as many labour migrants working in low skilled sectors still lack access to necessary legal protection required in order to protect them from becoming victims of trafficking, exploitation, and forced labour. The ILO standards as well as technical assistance and co-operation have provided important guidance to member states in developing a comprehensive policy response.”

On that occasion, Deputy Director General of the Ministry of Human Resources and Social Security of the People’s Republic of China pointed out that “[I]t is of historical and practical significance to suppress and completely stop unacceptable forms of labour. Through this seminar, we look forward to continuing to clarify the problems facing China’s ratification, listen to the views of the ILO and communicate with representatives of other countries on the

67 Ron Brown, “Chinese ‘Workers without Benefits’”, 15 Richmond Journal of Global Law & Business 1(2016), 21-53.
68 ILO, “Ending Forced Labour by 2030: A Review of Policies and Programmes”, Geneva, 2018 at 3, available at: www.ilo.org/pubs.
69 ILO, “ILO in China and Mongolia”, available at: https://www.ilo.org/Beijinginformation-resources/public-information/press-realses/WCMS_601884/lang-en/index.htm, Accessed on 19 January 2020.
70 Ibid.
work against forced labour and modern slavery.” Therefore, the issue of prevention as well as abolishing of forced labour is a labour concern of China that needs strengthening the effort already started and international commitment.

4.1.2. A demand of scaling up “collective agreements” to “collective bargaining”
The Chinese Labour Law Legal Regime already recognized the labour law legal provisions of collective agreements. The issue here is, does the recognition of collective agreement empowered workers to negotiate for their labour rights and interests to the maximum workers minimum conditions? What is its impact for some labour unrest such as the incidents of the workers’ strike at Honda Parts Plants in Zhongshan, Guangdong Province in June 2010 and Workers’ strike at the State Owned Pangang Group Chengdu Steel and Vanadium Company Stuck of January 2012? The collective agreement (consultation) legal provisions of the People’s Republic of China have some critical differences with the collective bargaining conception of ILO Conventions. In order to see the similarities as a priority, both the Chinese contexts of collective agreement and ILO’s Convention have similarities in the involvement of parties that the parties involved are management workers, the procedure of the bargaining is similar, and the strategy, approach and techniques employed are similar, because in collective consultation and collective bargaining, trade unions serve as the workers’ representatives in accordance with legal procedures, the content covers issues relating to workers’ rights and interests, and working conditions, the consultation or bargaining process aims to reach agreement on the basis of consensus. The difference between Chinese collective consultation (agreement) and Collective bargaining is that, in collective bargaining sometimes take a potentially confrontational approach, where as in China, collective consultation stresses communication and co-operation and in dealing with deadlock, when collective bargaining reaches deadlock or breaks down, workers may resort to strike action to show their strength and exert pressure, while the employer may take measures such as withdrawing capital or downsizing operations to put pressure on workers, and in China, if consensus cannot be achieve through collective consultation or a dispute arises, workers typically abide to keeping harmonious environment and seek support to address the problem. Therefore, in Chinese Labour Legal Regime, the practical application of collective consultation is more of focused on monitoring the enforcement of the labour law and regulations that sometimes labour unrest is steadily increasing. Thus, it might be better to assess the collective consultation provisions of Chinese Labour law and its application.

4.1.3. The Statutory retirement age of workers and the actual paradox in China
The transformation of Chinese Opening up and reform impacts the life of Chinese people from different perspectives. For instance while looking at the life expectancy of Chinese people;

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71 Ibid.
72 Concerning with the changing nature of workers’ unrest and collective bargaining, see Manfred Elfstrom and Sarosh Kuruvilla, “The Changing Nature of Labour Unrest in China” 67 ILR REVIEW 2(2014), 453-480, available at: http://digitalcommons.ilr.cornell.edu/ilrreview; Ronald C. Brown, “China’s Collective Contract Provisions: Can Collective Negotiations Embody Collective Bargaining?”, 16 Duke Journal of Comparative & International Law 35(2006), 35-77; Christoph Scherrer (Ed.), China’s Labour Question, Munchen, Mering 2011, available at www.Hampp-verlag.de; Kuruvilla, Sarosh and Zhang, Hao (2016) Labour unrest and incipient collective bargaining in China, Management and Organizational Review, 12(1), pp.159-187, available at: http://eprints.iise.ac.uk/65208;
73 Ethical Trading Initiative (ETI), “Building Good Labour Relations through Collective Consultation: Guidance from Ethical Trading Initiative (ETI) for Guangdong Province, China”, 2015 at 8.
74 Ibid.
great changes have taken place in life expectancy since 1949 that it increased from 35-40 years in 1949 to 71.4 years in 2000.75 The policy implication of this improving in life expectancy is an important indicator to measure the quality of life. This improvement of life expectancy is also reflected in the labour right of workers in statutory retirement age that there are workers in China that continued to be workers in re-employment after their statutory retirement age of 60 for men and 50 for women. As already discussed above in detail, there is no uniform practice among Provinces of the People’s Republic of China in protecting the rights and interests of re-employed workers. In fact the Chinese Government has a plan to raise the age of retirement. According to the press release by Yin Weimiu, Minister of Human Resources and Social Security, told a news conference on February 29, 2016 that “… the current retirement policy seems to be out of date that was formulated about 60 years ago when the average life expectancy was relatively low but now life expectancy increased. Therefore, China should raise the retirement age until it reached a reasonable level step by step.”76 Therefore, this government commitment will be practical if manifest in repealing of the relevant labour laws.

4.2. Labour challenges and issues of Ethiopia
As it is already noted in the preceding discussions, like the People’s Republic of China, the genesis and development of Labour Law of Ethiopia is also young and different efforts has made to improve the legal framework of the Labour Legal Regime. Recently Ethiopia amended its Labour Law in the last months of 2019. But still there are a lot of challenges that needs intervention. Some of the challenges are similar with that of China that discussed above. Here below are some of the challenges precisely.

4.2.1. Migration and Forced Labour
Migration for employment and associated pressure and forced labour are challenges of the globe. Ethiopia faces challenges in terms of forced labour, irregular migration and other related issues.77 In terms of forced labour and irregular migration, Ethiopia has become an important of origin, transit, and destination for irregular migration flows in the Horn of Africa. The majorities of immigrants are destined to the Middle East (Saudi Arabia and other Gulf States), South Africa and Europe and are vulnerable to exploitive human trafficking.78 Thus efforts have to make at home to create “decent work” situations.

4.2.2. Non-existence of Minimum wage
The main purpose of minimum wages have been widely introduced to protect the workers against unduly low pay, achieve various economic and social goals, that is overcome poverty and ensure the satisfaction of the needs of all workers and their families, give wages earners necessary social protection as regards minimum permissible levels of wages, reduce wage inequality, set a wage floor, contribute for establishing the rules of the game that are equal to all and reinforce social dialogue. Therefore, the minimum wage is recognized as one international labour standard. The ILO has a Minimum wage Fixing Convention, 1970 (No.

75 Song Xinming and Chen Gong et al, “Chinese Life Expectancy and Policy Implications”, Procedia Social and Behavioral Sciences 2(2010), at 7550, available at www.sciencedirect.com.
76 Su Zhou, China plans to raise age of retirement, China Daily, updated on March 1, 2016.
77 For the Detail Discussion of Migration and Forced Labour in Ethiopia, see Assefa Admassie and Seid Nuru et al, “Migration and Forced Labour: An Analysis on Ethiopian Workers”, ILO Country Office for Ethiopia, Djibouti, Somalia, Sudan and South Sudan, 2017.
78 Ibid.

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131) that under its Article 1 provides: “[E]ach Member of the International Labour Organization which ratifies this convention undertakes to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate.” But Ethiopia is not ratified this minimum wage convention. Thus, currently in Ethiopia, there is no consistent minimum wage mechanism; however some enterprises have set their own minimum wages. Thus, this problem has to be solved.

4.2.3. No minimum standard of Compensation for Work Injury
The government of Ethiopia has undertaken various measures in order to strengthen the country’s social protection framework. The government has manifested an interest to shift from the social welfare approach to a systematic and comprehensive social protection approach, with social insurance as one of the key area of focus. In terms of labour proclamations, Proclamation No. 1156/2019 gives emphasis for occupational injuries and diseases, degrees and disablement. According to Article 95 of the Labour Law Proclamation No. 1156/2019, occupational injuries are either an employment accident or occupational diseases. The employer is liable for any employment injury at the work place, irrespective of fault as prescribed by Article 96 of the proclamation. The only exceptions to this strict liability is where the worker completely disregards safety instructions or accident prevention rules and the other where he/she reports to work will a level of intoxication that prevents proper control over the body or the mind according to Articles 100 and 101. The labour law in addition to defining and classifying the type of work injuries put compensation for employment injuries. The problem is lack of minimum injury insurance benefit as to the requirement of ILO’s Convention No. 121 with to the level of benefit.

5. Concluding Remarks
China and Ethiopia have more commonalities than their differences in our above discussion of the Labour Law Legal Regime of the two countries. The two countries have unique ideological perspectives that empower the working class (the labourer) at the top of the political power in their socialist view of last decades. The real and practical manifestation of such political dispensation is realized through adopting a modernized labour law legal regime and the legislators of the two countries tried their best to modernize their labour laws to the extent of international labour legislation standards. The two countries registered profound achievements in protecting labour rights and in striking the balance between the interests of the employer and the worker. But the adoption and transplantation history of laws of the two countries follow their own path and characteristics.

The labour dispute settlement mechanism of the two countries is almost similar in that “the out of court” dispute resolving methods of conciliation, mediation and arbitration plays a significant role in both countries. The only difference is that in the case of China, the dispute settlement system is a one-track while it is a double-track in Ethiopia. The case laws of the two countries evidenced that labour disputes are the most frequent cases and entertained before arbitral tribunals and litigations. The trend of most decisions of the cases also supports the hypothesis that “labour laws are merciful to workers.” With regard to recent labour issues of the two countries, government intervention is very critical that especially for China, the big industrial hub of the world, peaceful industrial relation is means everything. Therefore, still revisiting the labour legal regime to the extent of balanced satisfaction of both the employer and the worker is the question of the days in Labour Law Legal Regime of Both China and Ethiopia.

79 ILO, “Report to the Government- Employment Injury Insurance in the Federal Democratic Republic of Ethiopia: Legislation, Financing and Administrative Review”, March 2017 at 12, available at www.ilo.org/publicn.
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[9] Ethiopian Higher Transport Buss Association Ltd. vs. Ayalew Yirgu, Cassation Division, File Number 31402, Ginbot (May) 10, 2008, published in decisions of the Cassation Division, Vol.6, at 348-350.

[10] Ethiopian Insurance Agency vs. Constable Syum Kassa, Cassation Division, File Number 25889, Sene (June) 5, 2008, published in decisions of the Cassation Division, Vol.5, at 369-371.

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[49] Water Actions vs. Yilma Assefa, Cassation Division, File Number 29415, Yekatit (February 7, 2008, Published in Decisions of the Cassation Division, Vol.6, at 370-372.

[50] Wenjia Zhuang and Feng Chen supra note 22 at 384.

[51] Wenjia Zhuang and Feng Chen, “Mediate First: The Revival of Mediation in Labour Dispute Resolution in China”, The China Quarterly 222, 2015, pp 386-402.