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Trade Liberalisation, Labour Law and Gender: The Protections of  
Temporary Workers under the Ethiopian Labour Law

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*'Labour law protects some people and not others. Those others are becoming more common.'*

(Standing; 2008)

## **Abstract**

The presence of a flexible labour market is a key aspect of a neo-liberal macroeconomic policy of trade liberalisation. In line with this policy, many developing countries since the 1980s have adopted Structural Adjustment Programmes that require legal and institutional reform including labour market deregulation. Ethiopia started such a program in 1992. One consequence of deregulation under a flexible labour market policy is claimed to be an increase in women's participation in the labour market and a reduction in gender wage gaps. It is also argued that this will benefit developing countries most by creating employment opportunities for their abundant, predominantly female unskilled labour force and thereby foster economic growth. This paper attempts to examine the links between trade liberalisation, labour law and gender in Ethiopia using available literature and statistics. It focuses on Ethiopian labour law and policy before and after the reform and the implication for women's work. It specifically analyses the protection of temporary workers under Ethiopian labour law and women's position in this context. It shows that trade liberalisation caused changes in labour law and policy in Ethiopia. The paper also shows the rise of flexible labour arrangements that fall outside the scope of labour law protection. Women are predominantly occupied in such work arrangements. As a result they are subject to different vulnerabilities. The paper argues that there is a need for the adoption of a more gender sensitive employment policy that recognizes the reproductive roles and social status of women. Moreover, it further argues that there is a need to redesign labour law so that it gives effective protection to such workers.

## **Keywords**

Trade liberalisation, labour law, temporary workers, Gender, Ethiopia

## **Author's Note**

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## 1. Introduction

### 1.1. Background of the Study

There have been intense debates over the link between trade liberalisation, labour law and gender. According to neo-liberal trade theory advanced by Heckscher-Ohlin model, trade should be based on the comparative advantage of countries, which in turn is determined by the relative abundance of production factors (labour and capital).<sup>1</sup> Accordingly, developing countries, with an abundance of unskilled and cheap labour should specialise in labour-intensive production. Under liberalised trade, this will expand employment in developing countries.<sup>2</sup> The theory predicts that trade liberalisation and labour deregulation will benefit women more by generating disproportionately higher employment opportunities for them and reducing the gender-based wage gaps.<sup>3</sup> This theoretical prediction about the employment effects of trade liberalisation is based on the premise of a perfectly functioning market, one that can rapidly self-adjust to attaining full employment.<sup>4</sup> This process of self-adjustment within a deregulated and flexible labour market is therefore said can lead to an increase in labour-intensive industries, which in turn increases the demand for unskilled labour along with an upward pressure on unskilled wages.<sup>5</sup>

However, these arguments and assumptions have been questioned on theoretical, conceptual and empirical grounds by feminist and other heterodox economists. Some feminist economists have argued that a neo-liberal macroeconomic policy of trade liberalisation gives centrality to market efficiency rather than to people and therefore tends to delegitimise any form of state regulatory interventions.<sup>6</sup> Given women's different gender roles and social status, this approach disproportionately affects them.<sup>7</sup> From this more critical standpoint it is then argued that while women's involvement in paid work particularly in export-oriented

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<sup>1</sup>Sonali Deraniyagala (2005) 'Neoliberalism in International Trade: Sound Economics or a Question of Faith?', in Saad-Filho, A. and Johnston, D. (eds.) *Neoliberalism: A Critical Reader*, Pluto Press, London, pp.100;

<sup>2</sup>James Heintz (2006) 'Low-Wage Manufacturing and Global Commodity Chains: A Model in the Unequal Exchange Tradition', 30, *Cambridge Journal of Economics*, p.509

<sup>3</sup>Nilufer Cagatay and Korkuk Erturk (2004) *Gender and Globalization: A Macroeconomic Perspective*, Working Paper No. 19, ILO, Geneva, p.18-19; see also Lilia Domínguez-Villalobos and Flor Brown-Grossman (2010) 'Trade Liberalization and Gender Wage Inequality in Mexico', 16(4), *Feminist Economics*, pp.55-56; and Zo Randriamaro (2011) 'Gender, Trade Liberalization and the Multilateral Trading System: Towards an African Perspective', in Ouedraogo, J. and Achieng, R.M. (eds.) *Global Exchanges and Gender Perspectives in Africa*, Fountain Publishers, Kampala, p.192

<sup>4</sup>Thomas I. Palley (2005) 'From Keynesianism to Neoliberalism: Shifting Paradigms in Economics', in Saad-Filho, A. and Johnston, D. (eds.) *Neoliberalism: A Critical Reader*, Pluto Press, London, p.24; see also Marzia Fontana, Susan Joekes and Rachel Masika (1998) *Global Trade Expansion and Liberalisation: Gender Issues and Impacts*, BRIDGE Development-Gender Report No. 42, Institute of Development Studies, Brighton, p.8. Available at: <http://www.bridge.ids.ac.uk/reports/re42c.pdf>, Assessed: 13/12/2012

<sup>5</sup>Sonali Deraniyagala (2005), *supra note 1*, pp.102-103

<sup>6</sup>Emezat Mengesha (2008) 'Rethinking the Rules and Principles of the International Trade Regime: Feminist Perspectives', 22(78), *Agenda: Empowering Women for Gender Equity*, p.13

<sup>7</sup>Ibid; see also Zo Randriamaro (2006) *Gender and Trade*, BRIDGE Development-Gender Overview Report, Institute of Development Studies, Brighton, p.10. Available at: <http://www.bridge.ids.ac.uk/reports/CEP-Trade-OR.pdf>, Assessed: 10/12/2012

labour-intensive industries has been increasing due to trade liberalisation, they are predominantly employed in low-paid, unprotected, and low-skilled segments of a global supply chain.<sup>8</sup> A variety of heterodox economists also have argued that trade liberalisation has different outcomes for men and women.<sup>9</sup> Studies by the ILO, for instance, have shown that while the participation of women in paid work has been increasing due to trade liberalisation, women continue to be disproportionately involved in an unsecured and precarious work.<sup>10</sup> Moreover, several empirical evidences have indicated that women have undoubtedly gained access to the market as workers but they are also subjected to new burdens and risks.<sup>11</sup>

Trade liberalisation and labour deregulation in developing countries have expanded under the influence of the Structural Adjustment Programmes of the World Bank and IMF. The programme is used by these Institutions as a pre-condition for granting or releasing loans.<sup>12</sup> These institutions are strong advocates of deregulation of labour law. It is being argued that as a support for trade liberalisation, this will benefit developing countries most by creating employment opportunities for their abundant unskilled labour force and thereby foster economic growth and reduce poverty.<sup>13</sup> The existence of the abundant unskilled labour force is perceived as a comparative advantage for developing countries. In line with this policy, developing countries governments have adopted structural adjustment programmes since 1980s. One aspect of which has been to respond to the requirements of Structural Adjustment Programmes is to make their labour law more flexible. Moreover, developing countries may

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<sup>8</sup>Guy Standing (1999) 'Global Feminization through Flexible Labour: A Theme Revisited', 27(3), World Development, pp. 596-600; see also Amelita King Dejardin (2008) Gender Dimensions of Globalization, ILO Discussion paper, ILO, Geneva, pp.18-19; Nilufer Cagatay and Korkuk Erturk (2004), *supra note 3*, p.20; Stephanie Seguino and Caren Grown (2006) Feminist-Kaleckian Macroeconomic Policy for Developing Countries, Working Paper No. 446, The Levy Economics Institute, New York, p. 13. Available at: [http://www.levyinstitute.org/pubs/wp\\_446.pdf](http://www.levyinstitute.org/pubs/wp_446.pdf), Assessed: 12/12/2012; Naila Kabeer (2004) 'Globalization, Labour Standards and Women's Rights: Dilemmas of Collective (in) action in an Interdependent World', 10(1), Feminist Economics, p.20; Lilia Domínguez-Villalobos and Flor Brown-Grossman (2010), *supra note 3*, p.56 and p.72; Zo Randriamaro, *supra note 3*, p.190; and Ann Stewart (2011) Gender, Law and Justice in a Global Market, Cambridge University Press, New York, p.315

<sup>9</sup>Richard B. Dadzie (2012) 'Developmental State and Economic Development: Prospects for Sub-Saharan Africa', 5(9), Journal of Sustainable Development, p.14

<sup>10</sup>International Labour Office (2006) Changing Patterns in the World of Work, Report of the Director-General, ILO, Geneva, p.20; Available at: <http://www.ilo.org/public/english/standards/relm/ilc/ilc95/reports.htm> Assessed: 23/02/2012; see also Sara Elder and Dorothea Schmidt (2004) Global Employment Trends for Women, Employment Strategy Paper, ILO, Geneva, p.14; Available at: [www.ilo.org/trends](http://www.ilo.org/trends), Assessed: 15/11/2012; and ILO-UNDP (2009) Work and Family: Towards New Forms of Reconciliation with Social Co-Responsibility, ILO and UNDP, Santiago, p.47

<sup>11</sup>United Nations Research Institute for Social Development (UNRISD) (2005) Gender Equality: Striving for Justice in Unequal World, UNRISD, Geneva, p.63; see also Analee Pepper (2012) 'Sexual Divisions of Labour in Export-Oriented Manufacturing Sectors: The Reconstruction of Gender and the Urbanization of Production in the Global South', 8(1), Consilience: The Journal of Sustainable Development, p.149; Simon Walker (2004) 'Human Rights, Gender and Trade: A Legal Framework', in in Tran-Nguyen, A. and Zampetti, A.B. (eds.) Trade and Gender: Opportunities and Challenges for Developing Countries, United Nations, New York, p.333; and Günseli Berik (2011) 'Gender Aspects of Trade', in Jansen, M., Peters, R. and Salazar-Xirinachs, J.M. (eds.) Trade and Employment: From Myths to Facts, ILO, Geneva, p.197

<sup>12</sup>Alejandro Colás (2005) 'Neoliberalism, Globalisation and International Relations', in Alfredo Saad-Filho and Deborah Johnston (eds.) Neoliberalism: A Critical Reader, Pluto Press, London, p.77, see also Arturo Bronstein (2009) International and Comparative Labour Law: Current challenges, Palgrave Macmillan, UK, p.26

<sup>13</sup>United Nations Economic Commission for Africa (2005) The Globalization of Labour Markets: Challenges, Adjustment and Policy Response for the Informal Sector in Africa, United Nations, New York, p.5

compete with each other by making their labour law more flexible to attract investments and reduce capital flight.<sup>14</sup>

Ethiopia adopted a trade liberalisation policy as part of structural adjustment programmes in 1992.<sup>15</sup> The reform programmes mainly focused on replacing the previous centrally planned, command economy with a private sector oriented, market economy.<sup>16</sup> The national development programme focused mainly on the development of the private sector. The resulting privatization programme has caused the expansion of private enterprises and shrinkage of publicly owned and operated public enterprises.<sup>17</sup> The country adopted an export diversification and employment creation macroeconomic policy aimed at diversifying labour-intensive export-oriented industries and expanding job opportunities for its abundant labour force.<sup>18</sup> Moreover, the country enacted a new labour law in 1993, which radically altered the Labour Proclamation No 64/1975. Contrary to the previous labour proclamation, which was based on a socialist ideology of a command economy, the new law is based on support for the free market. This proclamation was also repealed and replaced by the current Labour proclamation No. 377/2003. There is no fundamental difference between the two. But, the present law introduced the protection of trade unions from cancellation by an authoritative decision.<sup>19</sup>

Despite these landmark reforms, there is a scarcity of literature that discusses the link between trade liberalisation, labour law and gender in Ethiopia. More specifically, there is no comprehensive study that examines the protection of temporary workers under Ethiopian labour law and its implication for women's employment. At the broadest level this study is intended to address these gaps in the literature. It generally discusses how a neo-liberal policy of trade liberalisation influenced the Ethiopian labour law and policy. It particularly examines the impact of trade liberalisation and labour deregulation on the protection of temporary workers in Ethiopia. More specifically, it examines the employment and social implications for women workers who dominate this type of work. Therefore, it is a new contribution to the

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<sup>14</sup>Katherine V.W. Stone (2006) 'Flexibilization, Globalization, and Privatization: Three Challenges to Labour Rights in our Time', 44(1), Osgoode Hall Law Journal, pp.85-86; see also David J. Bederman (2008) Globalization and International Law, Palgrave Macmillan, New York, pp.96; and Amelita King DeJardin (2008), *supra note 8*, p.3

<sup>15</sup>Seid Yimer (2012) 'Impacts of Trade Liberalization on Growth and Poverty in Ethiopia: Dynamic Computable General Equilibrium Simulation Model', 3(11), International Journal of Business and Social Science, p.288

<sup>16</sup>Eshetu Bekele and Mammo Muchie (2009) Promoting Micro, Small and Medium Enterprises (MSMEs) for Sustainable Rural Livelihood, Working Paper No. 11, Development, Innovation and International Political Economy Research (DIIPER), Denmark, p.7. Available at: <http://www.diiper.ihis.aau.dk/research/3397011>, Assessed: 10/11/2012; see also Maria Sabrina De Gobbi (2006) Labour Market Flexibility and Employment and Income Security in Ethiopia: Alternative Considerations, Employment Strategy Paper No.1, ILO, Geneva, p.2

<sup>17</sup>Berihu Assefa Gebrehiwot (2008) Determinants of the performance of the Garment industry in Ethiopia: The Case of Addis Ababa, Applied Development Research paper, Ethiopian Development Research Institute (EDRI), Addis Ababa, p.13

<sup>18</sup>Nebil Kellow, Gezahegn Ayele, and Hayat Yusuf (2010) Enabling the Private Sector to Contribute to the Reduction of Urban Youth Unemployment in Ethiopia, Private Sector Development Hub/Addis Ababa Chamber of Commerce and Sectorial Associations, Addis Ababa, p.37; see also Ministry of Labour and Social Affairs (2009) National Employment Policy and Strategy of Ethiopia, Policy Report, MoLSA, Addis Ababa, p.14 and p.19

<sup>19</sup>The Federal Democratic Republic of Ethiopia (2004) 'Labour Proclamation No. 377/2003', 10th, Year, No. 12, Federal Negarit Gazeta, Article 120

literature in this area and, it is hoped, to an emergent policy debate. Moreover, it may add to the limited knowledge in this area.

### **1.2.Objective of the Study**

The main objective of this study is to examine the protection of temporary workers under Ethiopian labour law and its implications for women's work. In line with the stated main objective, the specific objectives of this study are to:

- A. Review the impact of trade liberalisation on labour law and gender in Ethiopia;
- B. Assess the implication of the Ethiopian employment policies and strategies in relation to the protection of temporary workers;
- C. Outline and examine the Ethiopian labour law in relation to the protection of temporary workers;
- D. Examine the position of women under temporary work arrangements;
- E. Identify the challenges and vulnerabilities that women temporary workers are facing;
- F. Contribute to filling the gaps in the literature on this area of employment law and policy; and
- G. Suggest some legal and policy recommendations.

### **1.3.Research Questions**

To achieve the objectives stated above, the study intends to consider and address the following research questions:

- A. What are the effects of trade liberalisation on the Ethiopian labour law and policy?
- B. Does the current Ethiopian labour law and policy give proper protection to temporary work arrangements?
- C. What is the position of women under such arrangements?
- D. To what extent has the flexibilisation of labour law and feminisation of labour-intensive export-oriented industries enhanced or worsened women's economic opportunities?
- E. What are the challenges and vulnerabilities that Ethiopian women temporary workers are facing?

### **1.4.The Scope of the Study**

In light of the objectives of the study and the research questions outlined above the paper examines in outline the effect of trade liberalisation on labour law and policy in Ethiopia and its implication for women's labour rights. More specifically, it analyses the protection of temporary workers under the Ethiopian labour law and its implication for women's employment. The term 'temporary' is used in this study to imply workers in formal employment relationship, but with limited duration. Thus, the scope of this study is limited to casual, fixed-term, and seasonal workers. The main focus is on the labour law and policy after the Structural Adjustment Programme. However, it briefly highlights labour law and policy during the Imperial and Derg regime for comparative purposes. To keep the study within manageable boundaries, the paper examines the working conditions of women, with special emphasis to temporary workers in some labour-intensive export-oriented industries

such as floriculture, textile and garment industries. This is due to the fact that these industries are heavily labour-intensive, predominantly employ women and involved in a buyer-driven global commodity chains.

### **1.5. Research Methodology**

This paper examines the links between trade liberalisation, labour law and gender in Ethiopia using relevant literature and statistics. This includes both legal inquiry; to understand the relevant provisions of labour law, and analysis of data and relevant literature. The legal inquiry comprises examination of relevant provisions of the Ethiopian Constitution, Labour proclamations, Civil Code, relevant ILO conventions and other countries' labour legislation. The study relies heavily on the statistical data of the Ethiopian Central Statistical Authority (CSA). The literature survey includes relevant books, journals, papers, and reports. Interviews from one private textile industry are also used. Moreover, relevant Supreme Court judgements are used to understand the practical applicability of labour law in relation to temporary workers. The use of different countrywide surveys, different literature and updated primary data from selected industries is employed to reduce the risk of presenting an overly positive or overly negative picture of the employment effects of trade.

### **1.6. Organisation of the Study**

The paper has five sections. The current section introduces and sets the scope of the study and its background and identifies the research methodology. Section two discusses theoretical and empirical evidences of the effect of trade liberalisation on labour law and gender as reported by various studies to date. It focuses on the issue of the flexibilisation of labour law, the rise of temporary work arrangements particularly in export-oriented labour-intensive industries and women's position within these arrangements, and considers feminist understanding of this change. Section three focuses on Ethiopian labour law and policy before and after the Structural Adjustment Programmes. It particularly examines the impact of trade liberalisation on labour law and policies in Ethiopia and its implication for the protection of women's labour rights. Section four analyses in detail the protection of temporary workers under Ethiopian labour law and its implication for women's work. Finally, Section five deals with the conclusions and recommendations.

## 2. Literature Review

### 2.1. Trade Liberalisation and Labour Law

There is a vast literature that examines the impact of trade liberalisation on labour law. This sub-section starts with a review of literature that discusses neo-liberal arguments about labour law, rigidity-flexibility debates, and ends up with the effects on national labour legislation. To begin, a wide body of literature shows that a neo-liberal macroeconomic policy of trade liberalisation assumes labour rights as costs to businesses.<sup>20</sup> It is argued that protections against unfair dismissal, prohibition or limitations on the use of temporary workers, working time protection, collective bargaining regulation and other labour rights will increase costs to businesses and make them less competitive. Moreover, a labour law that protects these rights is seen as a rigid law and thus prevents enterprises from making decisions that are adaptable to market fluctuation. According to Bronstein, such a law is generally seen as a constraint.<sup>21</sup> It is also one of the alleged causes of high unemployment rate, slow economic growth and labour market rigidities experienced by many developed countries in 1980s and 1990s.<sup>22</sup> The establishment of minimum wage regulation is also seen as a measure that prevents the labour market from producing optimal outcomes and discourages employment.<sup>23</sup> This is because of a neo-liberal belief in a perfect market model that operates to ensure people paid what they are worth in economic terms to an employer.<sup>24</sup> According to Howell, mainstream economists and leading international policy and financial institutions have argued that as businesses are confronted by increasingly competitive, global markets, workers must adjust

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<sup>20</sup>A. C. L. Davies (2004) *Perspectives on Labour Law*, Cambridge University Press, New York, pp.13-14; see also David R. Howell (2005) 'Introduction', in David R. Howell (ed.) *Fighting Unemployment: The Limits of Free Market Orthodoxy*, Oxford, New York, p.3; and Arturo Bronstein (2009), *supra note 12*, p.26

<sup>21</sup>Arturo Bronstein (2009), *supra note 12*, p.26

<sup>22</sup>Dean Baker, Andrew Glyn, David R. Howell, and John Schmitt (2005) 'Labour Market Institutions and Unemployment: Assessment of the Cross-Country Evidence', in David R. Howell (ed.) *Fighting Unemployment: The Limits of Free Market Orthodoxy*, Oxford, New York, p.107, see also Guy Standing (2008) 'Economic Insecurity and Global Casualisation: Threat or Promise?' 88(15), *Springer*, p.19

<sup>23</sup>David H. Bradley (2006) 'Employment Performance in OECD Countries: A Test of Neoliberal and Institutional Hypotheses', 40(12), *Comparative Political Studies*, p.3

<sup>24</sup>Thomas I. Palley (2005), *supra note 4*, p.23



by accepting lower wages, lower benefits, and less secure employment.<sup>25</sup> They argue that removing rigidities in labour law would lead to increased employment, reduced wage inequality and a decline in poverty levels.<sup>26</sup> In general, the neo-liberal trade policy and institutions strongly condemn rigid labour laws.<sup>27</sup>

Here the basic question is what constitutes ‘rigid’ labour law as opposed to ‘flexible’ one. According to Stanford, the term ‘rigid’ or ‘inflexible’, in a common-sense understanding refers to various failures of the law to change and respond to change.<sup>28</sup> This happens when a law restricts firms’ abilities to adjust quantities and prices of labour.<sup>29</sup> The World Bank has also developed a ‘Rigidity of Employment Index’ by which it ranks countries.<sup>30</sup> The index is intended to help potential investors to assess and select the countries in which they might invest.<sup>31</sup> The index is the average of three sub-indices: hiring rigidity, working time rigidity, and firing rigidity. Hiring rigidity comprises the prohibition or limitation of temporary contracts, and establishment of minimum wages regulation. Working time rigidity includes restrictions on night work, holiday work, annual leave and working hours. The firing rigidity also deals with issues like mandatory legal requirements to terminate redundant worker and costs associated with dismissal. All sub-indices take scores between ‘0’ and ‘100’. Absence of law represented by ‘0’ indicates more flexibility while the higher scores indicate larger rigidity. Bronstein argue that the index sends a message that a country with higher scores is not good for investment.<sup>32</sup>

This approach has attracted a body of literature and analysis both strongly supportive and equally strongly critical. A study by Botero et al., which developed a methodology that served as the intellectual inspiration for Doing Business, indicates that rigid regulation has adverse consequences for labour force participation and levels of employment.<sup>33</sup> Using a harmonised firm-level database from 16 industrial, emerging and transition countries, Haltiwanger, Scarpetta, and Schweiger found that stringent hiring and firing regulations distort job flow patterns and thus negatively affect efficiency, productivity and growth.<sup>34</sup>

<sup>25</sup>David R. Howell (2005), *supra note 20*, p.3

<sup>26</sup>Fernando Ignacio Leiva (2006) ‘Neoliberal and Neo-structuralist Perspectives on Labour Flexibility, Poverty and Inequality: A critical Appraisal’, 11(3), *New Political Economy*, p.342

<sup>27</sup>Lance A. Compa (2006) Trade Liberalization and Labour Law, Paper presented at the XVIII World Congress, International Society for Labour and Social Security Law, Paris, p.6; Available at: <http://digitalcommons.ilr.cornell.edu/conference/6/>; Assessed: 09/11/2012

<sup>28</sup>Jim Stanford (2005) ‘Testing the Flexibility Paradigm: Canadian Labour Market Performance in International Context’, in David R. Howell (ed.) Fighting Unemployment: The Limits of Free Market Orthodoxy, Oxford, New York, p.122

<sup>29</sup>Peter Kuhn (1997) Canada and the ‘OECD Hypothesis’: Does Labour Market Inflexibility Explain Canada’s High Level of Unemployment?, Working Paper No. 10, Canadian International Labour Network, McMaster University, P.17; Available at: <http://socserv.mcmaster.ca/econ/rsrch/papers/CILN/cilnwp10.pdf>, Assessed: 09/11/2012

<sup>30</sup>World Bank (2012) Doing Business: Employing Workers Methodology, Available at: <http://www.doingbusiness.org/methodology/employing-workers>, Assessed: 09/01/2013

<sup>31</sup>Arturo Bronstein (2009), *supra note 12*, p.26

<sup>32</sup>Ibid, p.26

<sup>33</sup>Juan C. Botero, Simeon Djankov, Rafael La Porta, Florencio Lopez-de-Silanes and Andrei Shleifer (2004) ‘The Regulation of Labour’, 119, *Quarterly Journal of Economics*, p.1340

<sup>34</sup>John Haltiwanger, Stefano Scarpetta and Helena Schweiger (2010) Cross Country Differences in Job Reallocation: The Role of Industry, Firm Size and Regulations, Working Paper No. 116, European Bank for

Similarly, Dabla-Norris and Inchauste argue that countries with stringent regulation tend to have larger informal sectors and small formal sectors.<sup>35</sup> Moreover, Helpman and Itskhoki argue that countries with flexible labour regulation benefit more from trade.<sup>36</sup> Their study indicates that flexible regulation increases the number of export firms, and raises productivity, employment and welfare.

Contrary to this position, other studies have shown that the index has fundamental conceptual and methodological problems.<sup>37</sup> According to Berg and Cazes, one of the conceptual problems in the indicators is the simplistic assumption of ‘regulations as costs’, which undermines the very existence of labour law.<sup>38</sup> They argue that the index not only discourages the enforcement of different ILO Conventions, but also gives misleading policy messages.<sup>39</sup> Similarly, Lee, McCann and Torm argue that the index has conceptual shortcomings and methodological limitations and is thus misleading.<sup>40</sup> Lee and McCann also argue that the working time rigidity is not only based on overly simplistic indicators, but also tends to ignore the original social and economic objectives for the development of working time regulations.<sup>41</sup> Moreover, Evans and Gibb argue that the index encourages countries to compete with each other by reducing their labour standards.<sup>42</sup> Standing also argues that the index encourages casualization of labour.<sup>43</sup>

Deregulation policy along with its advocates, the World Bank and IMF, influenced governments to relax their labour laws to allow a wider variety of temporary employment contracts that fall outside the scope of labour law.<sup>44</sup> In developing countries, structural

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Reconstruction and Development, London, p.25; see also Andrea Bassanini, Luca Nunziata, and Danielle Venn (2008) Job Protection Legislation and Productivity Growth in OECD Countries, IZA Discussion Paper No. 3555, Bonn, p.45

<sup>35</sup>Era Dabla-Norris and Gabriela Inchauste (2008) ‘Informality and Regulations: What Drives the Growth of Firms?’, 55(1), IMF Staff Papers, p.50

<sup>36</sup>Elhanan Helpman and Oleg Itskhoki (2007) Labour Market Rigidities, Trade and Unemployment, Working Paper 13365, National Bureau of Economic Research, Cambridge, p.33, Available at: <http://www.nber.org/papers/w13365>, Assessed: 03/01/2013

<sup>37</sup>Janine Berg and Sandrine Cazes (2007) The Doing Business Indicators: Measurement Issues and Political Implications, Economic and Labour Market Paper No. 6, ILO, Geneva, pp.17-18, see also John Evans and Euan Gibb (2009) Moving from Precarious Employment to Decent Work, Discussion Paper No. 13, ILO, Geneva, p.46, and Sangheon Lee, Deirdre McCann and Nina Torm (2008) ‘The World Bank’s ‘Employing Workers’ Index: Findings and Critiques- A Review of Recent Evidence’, 147, International Labour Review, p.426

<sup>38</sup>Janine Berg and Sandrine Cazes (2007) The Doing Business Indicators: Measurement issues and political implications, Economic and Labour Market Paper No. 6, ILO, Geneva, pp.17-18

<sup>39</sup> *Ibid*, p.18

<sup>40</sup>Sangheon Lee, Deirdre McCann and Nina Torm (2008), *supra note 37*, p.426

<sup>41</sup>Sangheon Lee and Deirdre McCann (2008) ‘Measuring Labour Market Institutions: Conceptual and Methodological Questions on ‘Working Hours Rigidity’’, in Berg, J. and Kucera, D.(eds) In Defence of Labour Market Institutions: Cultivating Justice in the Developing World, Palgrave Macmillan, Houndmills, p.32

<sup>42</sup>John Evans and Euan Gibb (2009), *supra note 37*, p.46

<sup>43</sup>Guy Standing (2008), *supra note 22*, p.30

<sup>44</sup>Minawa Ebisui (2012) Non-Standard Workers: Good Practices of Social Dialogue and Collective Bargaining, Working Paper No. 36, ILO, Geneva, p.1; see also Richard Mitchell (2010) Where are We Going in Labour Law? Some Thoughts on a Field of Scholarship and Policy in Process of Change, Working Paper No. 16, Monash University, Monash, p.12; Arturo Bronstein (2009), *supra note 12*, p.14; ILO (2006) Changing Patterns in the World of Work, Report of the Director-General, ILO, Geneva, p.54; and United Nations (2009) Rethinking Poverty : Report on the World Social Situation 2010, Department of Economic and Social Affairs, UN, p.100

adjustment programmes, through its loan conditionality and ‘rule of law’ projects, shaped labour law.<sup>45</sup> Employing the Workers Index has also been widely used to promote the reform.

It is argued that the reform has increased women’s involvement in paid work. This can increase not only women’s autonomy both within and outside the family, but also their economic and social status.<sup>46</sup> It further can enhance female bargaining power in intra-household resource distribution and shift power relations between women and men.<sup>47</sup> Despite such advantages, several theoretical and empirical studies show that the reform created a job which is characterised by income and employment insecurity. Leiva argues that contrary to the neoliberal’s predictions, labour deregulation has increased unemployment, led to informality of work arrangements, and increased inequality, insecurity, and working poverty.<sup>48</sup> Moreover, several studies indicate that there is no correlation between labour deregulation and employment creation.<sup>49</sup> For example, a study by Menezes-Filho and Muendler on Brazil’s trade liberalisation indicates that trade liberalisation increases transitions to services, informal work and unemployment.<sup>50</sup> A study by Arbache, Dickerson and Green also indicates the decrease in wages of unskilled workers in Brazil after liberalisation.<sup>51</sup> Moreover, several studies have shown that trade liberalisation and labour deregulation have increased wage inequality particularly in developing countries.<sup>52</sup> For example Goldberg and Pavcnik argue that inequality has been growing in many developing countries following trade liberalisation.<sup>53</sup> It is also argues the deregulation has resulted in a decline in trade union membership and diminish collective bargaining. This is because of the

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<sup>45</sup>Lawrence Tshuma (2009) The Political Economy of the World Bank’s Legal Framework for Economic Development, 8(1), Social and Legal Studies, p.91; see also Alvaro Santos (2006) ‘The World Bank’s uses of the ‘Rule of Law’ Promise in Economic Development’, in Trubek, D.M. and Santos, A. (eds.) The New Law and Economic Development: A Critical Appraisal, Cambridge University Press, New York, p.267

<sup>46</sup>Simon Walker (2004), *supra note 11*, p.330

<sup>47</sup>Vivianne Ventura-Dias (2010) Beyond Barriers: The Gender Implications of Trade Liberalization in Latin America, International Institute for Sustainable Development, Winnipeg, p.15

<sup>48</sup>Fernando Ignacio Leiva (2006), *supra note 26*, pp.349-351; see also Anushree Sinha (2011) ‘Trade and the Informal Economy’, in Jansen, M., Peters, R. and Salazar-Xirinachs, J.M. (eds.) Trade and Employment: From Myths to Facts, ILO, Geneva, p.133

<sup>49</sup>Dean Baker, Andrew Glyn, David R. Howell, and John Schmitt (2005), *supra note 22*, p.107; see also International Labour Organization (2012) World of Work Report 2012: Better Jobs for a Better Economy, ILO, Geneva, p.41; Margaret McMillan and Íñigo Verduzco (2011) ‘New Evidence on Trade and Employment: An Overview’, in Jansen, M., Peters, R. and Salazar-Xirinachs, J.M. (eds.) Trade and Employment: From Myths to Facts, ILO, Geneva, p.56

<sup>50</sup>Naércio Aquino Menezes-Filho and Marc-Andreas Muendler (2011) Labour Reallocation in Response to Trade Reform, Working Paper 17372, National Bureau of Economic Research, Cambridge, P.33; Available at: <http://www.nber.org/papers/w17372>, Assessed: 03/12/2012

<sup>51</sup>Jorge Saba Arbache, Andy Dickerson and Francis Green (2004) ‘Trade Liberalisation and Wages in Developing Countries’, 114, The Economic Journal, p.F93

<sup>52</sup>Ernesto Aguayo-Téllez (2011) The Impact of Trade Liberalization Policies and FDI on Gender Inequality: A Literature Review, Background paper for the World Development Report 2012, World Bank, Washington, DC., p.22; see also Oleg Itkhoki (2009) International Trade and Labour Markets: Unemployment, Inequality and Redistribution, Doctoral dissertation, Harvard University, Cambridge, p.92

<sup>53</sup>Pinelopi Koujianou Goldberg and Nina Pavcnik (2007) Distributional Effects of Globalization in Developing Countries, NBER Working Paper 12885, National Bureau of Economic Research, Cambridge, p.55, Available at: <http://www.nber.org/papers/w12885>, Assessed: 12/09/2012

legal rules governing trade union and collective bargaining are always premised on the presence of standard contracts rather than individualised and temporary contracts.<sup>54</sup>

## 2.2. Flexible Labour Arrangements and the Position of Women

Deregulation policy has contributed to a significant change in the nature of employment. The traditional standard, open-ended full-time employment contract is increasingly challenged by the growing number of temporary employment contracts. Flexible labour arrangements such as casual, fixed-term, part-time and seasonal, are boosted and becoming more common.<sup>55</sup> These types of work arrangements are characterized by job insecurity, low-wages, limited social benefits and statutory entitlement, and high risks of ill-health.<sup>56</sup>

It is argued that labour deregulation has increased globally the number of flexible and temporary workers. The World of Work Report 2008 indicated that the incidence of temporary employment has increased particularly since 1990s, particularly among women.<sup>57</sup> Other studies also indicated that the share of involuntary temporary workers has increased after trade liberalisation.<sup>58</sup> The growing numbers of temporary workers do not fit with the protections provided for permanent workers and thus lack statutory protection and social benefits.<sup>59</sup> They are paid far less than permanent workers.<sup>60</sup> Moreover, temporary workers are more vulnerable to risks of unexpected economic downswings; job and wage losses.<sup>61</sup> In the case of economic difficulties, they will always be the first to go. García-Pérez and Muñoz-Bullón argued that the transition of temporary workers to permanent work is very low.<sup>62</sup>

The substantial increasing of women's involvement in paid work has been one of the most striking phenomena of recent times. This phenomenon is associated with the rise of export-oriented labour-intensive productions such as textile and; garment manufacturing and floriculture in developing countries.<sup>63</sup> For example globally, women account for 65-70

<sup>54</sup>Katherine V.W. Stone (2006) 'Legal Protections for Atypical Employees: Employment Law for Workers without Workplaces and Employees without Employers', 27(2), Berkeley Journal of Employment and Labour, p.254; see also Minawa Ebisui (2012), *supra note 44*, p.5

<sup>55</sup>Guy Standing (2008), *supra note 22*, p.21; see also Gabriel Martínez, Nele De Cuyper, and Hans De Witt (2010) 'Review of Temporary Employment Literature: Perspectives for Research and Development in Latin America', 19(1), Psyche, p.70; and Ann Stewart (2011), *supra note 8*, p.12; and Kim Van Eyck (2003) Flexibilizing Employment: An Overview, Seed Working Paper No. 41, ILO, Geneva, p.28

<sup>56</sup>Leah F. Vosko (2008) 'Temporary Work in Transnational Labour Regulation: SER-Centrism and the Risk of Exacerbating Gendered Precariousness', 88(1), Springer, p.133

<sup>57</sup>International Labour Organization (2008) World of Work Report 2008: Income Inequalities in the Age of Financial Globalization, ILO, Geneva, p.118

<sup>58</sup>International Labour Organization (2012), *supra note 49*, p.6; see also Guy Standing (2008), *supra note 22*, p.21; Gabriel Martínez, Nele De Cuyper, and Hans De Witt (2010), *supra note 55*, p.70; Ann Stewart (2011), *supra note 8*, p.12; and Kim Van Eyck (2003), *supra note 55*, p.28

<sup>59</sup>Minawa Ebisui (2012), *supra note 44*, p.1 and Katherine V.W. Stone (2006), *supra note 14*, p.254

<sup>60</sup>International Labour Organization (2012), *supra note 49*, p.9

<sup>61</sup>Amelita King Dejardin (2008), *supra note 8*, p.8

<sup>62</sup>J. Ignacio García-Pérez and Fernando Muñoz-Bullón (2011) 'Transitions into Permanent Employment in Spain: An Empirical Analysis for Young Workers', 49(1), British Journal of Industrial Relations, p.103

<sup>63</sup>ILO (2006), *supra note 44*, p.23; see also Amelita King Dejardin (2008), *supra note 8*, p.18; and Nilüfer Çağatay and Korkuk Ertürk(2004), *supra note 3*, p.20

percent of workforce in floriculture.<sup>64</sup> They also constitute about 81 percent of workforce in the garment sector in Cambodia.<sup>65</sup> However, they are employed in temporary, low-paid, low-skilled and precarious segments of a global supply chain. Studies indicate that the percentage of women in temporary work greatly exceeds that of men.<sup>66</sup> For example 75 percent and 73 percent of temporary workers in floriculture in Kenya and Ethiopia, respectively are women.<sup>67</sup>

## 2.3.Feminist View of Trade Liberalisation

### 2.3.1. Feminisation of Work and Poverty

The literature on trade liberalisation and women's employment from feminist perspective is large and varied. Mengesha argues that a free trade regime, which has been legitimised by conceptions of the natural and autonomous nature of the market, gives centrality to market efficiency rather than to people and thus delegitimises any form of state regulatory interventions.<sup>68</sup> Given women's different gender roles and social status, this approach disproportionately affects them.<sup>69</sup> Several feminist writers nevertheless indicate that trade liberalisation and deregulation undoubtedly increased women's employment opportunities in developing countries particularly in labour-intensive export-oriented sectors.<sup>70</sup> Standing argues that women's participation in paid labour has increased at the expense of men's.<sup>71</sup> From many feminists' perspective, this trend is termed as 'feminisation of labour', the concept that captures both the quantity and quality aspect of gendered employment.<sup>72</sup> The quantity aspect indicates the expansion of women's participation in the paid work. This is

<sup>64</sup>Victoria International Development Education Association (2002) 'Deceptive Beauty: A Look At The Global Flower Industry', 1(2), Global Citizens for A Global Era, p.4

<sup>65</sup>United Nations Research Institute for Social Development (2010) Combating Poverty and Inequality: Structural Change, Social Policy and Politics, UNRISD, Geneva, p.48

<sup>66</sup>Stephanie Seguino and Caren Grown (2006), *supra note 8*, p.6; see also Gabriel Martínez, Nele De Cuyper, and Hans De Witte (2010), *supra note 55*, p.64; and International Labour Organization (2008), *supra note 57*, p.118

<sup>67</sup>Ann Stewart (2010) 'Engendering responsibility in global markets: Valuing the women of Kenya's agricultural sector', in Perry- Kessar, A. (ed.) Law in the Pursuit of Development: Principles into Practice?, Routledge, London, p.22; see also Pamela Tsimbiri Fedha (2009) Environmental and health challenges of floriculture industry in Kenya, Faculty of Health Sciences, Egerton University, p.15; Available at: [http://www.idrc.ca/uploads/userS/12332584841Pamela\\_Tsimbiri\\_Floriculture\\_in\\_Kenya.pdf](http://www.idrc.ca/uploads/userS/12332584841Pamela_Tsimbiri_Floriculture_in_Kenya.pdf), Assessed: 20/10/2012; and Tewodros Worku (2010) Promoting Workers' Right in the African Horticulture: Labour Condition in the Ethiopian Horticulture Industry, The National Federation of Farm, Plantation, Fishery and Agro-Industry Trade Unions of Ethiopia (NFFPFATU), p.24; Available: <http://www.womenww.org/documents/Ethiopia-2010-action-research.pdf>, Assessed: 10/09/2012

<sup>68</sup> Emezat Mengesha (2008), *supra note 6*, p.13; see also Diane Elson (1999) 'Labour Markets as Gendered Institutions: Equality, Efficiency and Empowerment Issues', 27(3), World Development, p.618

<sup>69</sup> Zo Randriamaro (2006), *supra note 7*, p.10; see also Zo Randriamaro (2011), *supra note 3*, p.194

<sup>70</sup>Guy Standing (1999), *supra note 8*, pp. 596-600; see also Amelita King Dejardin (2008), *supra note 8*, pp.18-19; Stephanie Seguino and Caren Grown (2006), *supra note 8*, p.13; Naila Kabeer (2004), *supra note 8*, p.20; Günseli Berik (2011), *supra note 11*, p.197; Zo Randriamaro (2006), *supra note 7*, p.2; Zo Randriamaro (2011), *supra note 3*, p.193; Simon Walker (2004), *supra note 11*, p.333

<sup>71</sup>Guy Standing (1999), *supra note 8*, pp.596-600

<sup>72</sup>Günseli Berik (2011), *supra note 11*, p.179; see also Shahra Razavi (2011) World Development Report 2012: Gender Equality and Development- An Opportunity both Welcome and Missed (An Extended Commentary), UNRISD, New York, p.5; Maria Thorin (2001) The gender dimension of globalisation: A review of the literature with a focus on Latin America and the Caribbean, United Nations, New York, p.16., Guy Standing (1999), *supra note 8*, p.583; and Ann Stewart (2011), *supra note 8*, p.12

generally viewed as a positive outcome because it has an effect on women's status and autonomy both in the household and wider community. The quality aspect refers to the flexibilisation and in-formalisation of labour by which temporary, low-paid, and precarious work is typically associated with women's employment. Some feminists have argued that feminisation of the workplace resulted from the perceived conception of the employer who considers women as more compliant; dexterous and careful; their wages as less and supplemental to the main family income generated by the male; and their work as unskilled.<sup>73</sup> Moreover, employers consider women as a source of abundant, cheap, flexible labour; and thus a better mechanism to keep costs down and accumulate capital.<sup>74</sup> That is why they are predominantly employed in precarious, low-paid, low-skilled segments of a global supply chain. Some feminists have argued that feminisation may be a temporary phenomenon as industries are now moving toward skilled workers.<sup>75</sup> After analysing gender wage gaps in the Mexican export-oriented manufacturing industry, Domínguez-Villalobos and Brown-Grossman argue that export booms in developing countries increase forms of exploitation and subordination for women rather than empowering them.<sup>76</sup> Their study indicates the existence of gender wage gaps in which women are the loser in both absolute and relative terms. Similarly, Randriamaro argues that the structural adjustment programmes encourage structural discrimination against women and thus worsened the situation of African women.<sup>77</sup> According to Standing, the lower wages for women as compared to men is due to employment segregation.<sup>78</sup> Further, Blanpain et al have shown that women constitute more than 60 percent of world's working poor.<sup>79</sup> Thus, many feminists view trade liberalisation as a process of feminisation of labour and poverty.

### 2.3.2. Work and Family Responsibility

The link between work and family responsibility is a subject of discussion in a number of literatures. According to Elson, Labour markets are gendered institutions where the productive and reproductive works intersect.<sup>80</sup> In most societies, reproductive works such as caring and other domestic activities undertaken in the household are predominantly done by

<sup>73</sup>Catherine S. Dolan and Kristina Sorby (2003) *Gender and Employment in High-Value Agriculture Industries*, Agriculture and Rural Development Working Paper 7, World Bank, Washington, DC., p.10; see also Ann Stewart (2010), *supra note 67*, p.30; Günseli Berik (2011), *supra note 11*, p.181, and Guy Standing (1999), *supra note 8*, p.600

<sup>74</sup>Analee Pepper (2012), *supra note 11*, p.146; see also Günseli Berik (2011), *supra note 11*, p.183, and Stephanie Seguino and Caren Grown (2006), *supra note 8*, p.3

<sup>75</sup>Lourdes Benería, Maria Floro, Caren Grown and Martha MacDonald (2000) 'Introduction: Globalization and Gender', 6(3), *Feminist Economics*, p.11; see also Nilüfer Çağatay and Korkuk Ertürk(2004), *supra note 3*, p.21

<sup>76</sup>Lilia Domínguez-Villalobos and Flor Brown-Grossman (2010), *supra note 3*, p.72

<sup>77</sup>Zo Randriamaro (2011), *supra note 3*, p.199

<sup>78</sup>Guy Standing (1999), *supra note 8*, p.590

<sup>79</sup>Roger Blanpain, William R. Corbett, Michael J. Zimmer, Susan Bisom-Rapp and Hilary K. Josephs (2007) *The Global Workplace: International and Comparative Employment Law- Cases and Materials*, Cambridge University Press, New York, p.16

<sup>80</sup>Diane Elson (1999), *supra note 68*, p.611

women.<sup>81</sup> It is argued that women's increased involvement in paid labour has not been accompanied by an increase in men's involvement in unpaid family work.<sup>82</sup> Moreover, studies have shown that women's reproductive roles have limited and shaped their access to paid work.<sup>83</sup> Stewart argues that women faced a 'triple burden' due to their disproportionate responsibility for unpaid family work.<sup>84</sup> This 'burden' is having paid work, unpaid family work and wider caring in the community. These conditions, so it is argued, have resulted in the feminisation of poverty.<sup>85</sup> Feminists have argued that labour markets have not only failed to recognize the contribution of reproductive work to the economy, but also operated in a way that affects women who are predominantly occupied in them.<sup>86</sup> Labour law also fails to acknowledge the social reproductive role of women in employment.<sup>87</sup> As a result, women are forced to take temporary jobs, with low bargaining power over their wage and working conditions.

### 3. Overview of Labour Law and Policy in Ethiopia

#### 3.1. Introduction

Ethiopia, a country of over 73 million populations<sup>88</sup>, economically depends on agriculture which accounts for about 50 percent of the country's GDP, 90 percent of foreign currency earnings and employs 85 percent of total employment.<sup>89</sup> About 50 percent of the populations are women.<sup>90</sup> More than half (56.3 percent) of male were literate while the proportion of literate females (37.8 percent) was far less than their male counter parts.<sup>91</sup> The country has experienced diverse economic systems over the last fifty years. The economic system has shifted from being market-oriented during the imperial (pre-1974) regime to a socialist

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<sup>81</sup>Nilüfer Çağatay and Korkuk Ertürk(2004), *supra note 3*, p.5, see also Ann Stewart (2011), *supra note 8*, p.17; and Department of Economic and Social Affairs (2010) The World's Women 2010: Trends and Statistics, United Nations New York, p.99

<sup>82</sup>Ann Stewart (2011), *supra note 8*, p.16

<sup>83</sup>Anh-Nga Tran-Nguyen (2004) 'The Economics of Gender Equality, Trade and Development', in Tran-Nguyen, A. and Zampetti, A.B. (eds.) Trade and Gender: Opportunities and Challenges for Developing Countries, United Nations, Geneva, p.2; see also United Nations Research Institute for Social Development (2010), *supra note 65*, p.113; ILO-UNDP (2009), *supra note 10*, p.43; and International Labour Organization (2011) Equality at Work: The Continuing Challenge, Report of the Director-General I (B), ILO, p.19

<sup>84</sup>Ann Stewart (2011), *supra note 8*, p.17

<sup>85</sup>Ibid; see also Ann Stewart (2011), *supra note 8*, p.17; see also Simon Walker (2004), *supra note 11*, p.334

<sup>86</sup>Diane Elson (1999), *supra note 68*, p.612; see also Shahra Razavi (2011), *supra note 72*, p.4

<sup>87</sup>Ann Stewart (2011), *supra note 8*, p.17; see also ILO-UNDP (2009), *supra note 10*, p.76

<sup>88</sup>Central Statistical Agency of Ethiopia(2008) Summary and Statistical Report of the 2007 Population and Housing Census Results: population size by age and sex, CSA, Addis Ababa, p.14 Available at: <http://www.csa.gov.et>, Assessed: 20/12/2012

<sup>89</sup>Tilahun Temesgen (2005) 'Determinants of Wage Structure and Returns to Education in a Developing Country: Evidence from Linked Employer-Employee Manufacturing Survey data of Ethiopia', 18(4), Seoul Journal of Economics, p.280

<sup>90</sup>Central Statistical Agency of Ethiopia(2008), *supra note 88*, p.14

<sup>91</sup>Central Statistical Agency of Ethiopia (CSA) (2012) Ethiopian Welfare Monitoring Survey 2011, Summary Report, CSA, Addis Ababa, P.2

system during the Derg regime (1974-1991) and then back to a market-orientation under the current government. Labour law and policy also have been varied accordingly. This section discusses labour law and policy during these regimes with particular emphasis on the current regime.

### 3.2.Pre-1991 Labour Law and Policy

The current labour law and policy in Ethiopia came into existence due to the modern industrial development and with the rise of the status of the employee as wage earner. The modernization process was started during the times of Emperor Menelik II (1889-1913) and was gradually consolidated during the reign of Emperor Haile-Sellase I (1930-1974).<sup>92</sup> The last decade of Emperor Haile-Silassie I (1960-1974) regime was characterized by a series of legal and policy reforms. The regime adopted a market-based economic policy that strongly encouraged private sector development and has attracted considerable foreign investment to the industrial sectors such as large commercial farming, manufacturing, education, banking, insurance, transportation and textiles.<sup>93</sup>

Before 1960, the employment relationship in Ethiopia was similar to the one between a master and a servant.<sup>94</sup> An employer provides a worker with food, clothes, shelter, and medical assistances besides very low wages. It was only in 1960 with the adoption of the civil code that the law governing the employment relationship was introduced for the first time in Ethiopia.<sup>95</sup> Under the civil code, an employment contract can be entered into for indefinite, a definite period or even for a piece of work.<sup>96</sup> The law gave parties freedom to select the type of employment contract they wish without limitation. Moreover, there is no provision that deals with the protection of women workers rights except one provision that grants women one month maternity leave, with half wage payment.<sup>97</sup> In 1963, ‘Labour Relations Proclamation No. 210/1963’, which recognized the rights of associations of employers and workers, was enacted.<sup>98</sup> However, individual employment relations were exclusively governed by the civil code.<sup>99</sup>

In 1974, a military junta called the ‘Derg’; deposed Emperor Haile-Selassie and established a socialist state. The Derg (1974-1991) replaced the market economic policies of the imperial

<sup>92</sup>Monika M. Sommer (2003) National Labour Law Profile: Federal Democratic Republic of Ethiopia, online journal, ILO; Available at: [http://www.ilo.org/ifpdial/information-resources/national-labour-lawprofiles/WCMS\\_158894/lang--en/index.htm](http://www.ilo.org/ifpdial/information-resources/national-labour-lawprofiles/WCMS_158894/lang--en/index.htm), Assessed: 10/01/2013

<sup>93</sup>Alemayehu Geda (2006) ‘The Political Economy of Growth in Ethiopia’, in Benno Ndulu, Stephen O’Connell, Jean-Paul Azam, Robert Bates, Augustin Fosu, Jan Willem Gunning and Dominique Njinkeu (eds.) The Political Economy of Economic Growth in Africa, 1960-2000: Country Case Studies, Chapter 4 of volume 2, Cambridge University Press, London, p.2; see also Eshetu Bekele and Mammo Muchie (2009), *supra note 16*, p.5; and Mulat Demeke, Fantu Guta and Tadele Ferede (2006) Towards a More Employment-Intensive and Pro-Poor Economic Growth in Ethiopia: Issues and Policies, Discussion Paper 22, ILO, Geneva p.3

<sup>94</sup>Maria Sabrina De Gobbi (2006), *supra note 16*, p.26

<sup>95</sup>Ibid

<sup>96</sup>The Empire Government of Ethiopia (1960) ‘The Civil Code Proclamation of 1960: Proclamation No. 165/1960’, Year 19<sup>th</sup>, No. 2, Negarit Gazeta, Articles 2512, 2567, and 2568.

<sup>97</sup>Ibid, Article 2566

<sup>98</sup>Maria Sabrina De Gobbi (2006), *supra note 16*, p.27,

<sup>99</sup>Monika M. Sommer (2003), *supra note 92*



regime with a communist-inspired and centrally controlled socialist economic policy that discouraged the market and private sector.<sup>100</sup> The government immediately nationalised land, manufacturing industries, banking and insurance companies.<sup>101</sup> During this regime, employment was largely depended on the development of public sectors.<sup>102</sup> It was estimated that the public sector accounted for more than 94 percent of total paid labour.<sup>103</sup> Further, labour law was based on the public ownership of the means of production and subject to central control. In 1975, ‘Labour Relations Proclamation No. 210/1963’ was repealed and replaced by ‘Labour Proclamation No. 64/1975’, which contained almost all provisions of a socialist labour law. Like the civil code, the proclamation provides that a contract of employment can be for a limited or; unlimited duration or even for a piece of work.<sup>104</sup> However, the law does not provide any type of work that can be taken as permanent or temporary. Its determination is left to the court. In this regard, Balachew argues that due to the superiority of the working class, every contract is seen and interpreted as a contract for unlimited duration.<sup>105</sup> There was no contractual freedom between employer and employee. The recruitment was highly centralized and had to happen through public employment offices.<sup>106</sup> Denu, Tekeste and van der Deij argue that labour law and wage policies during the Derg regime were rigid and protectionist.<sup>107</sup> The laws have introduced hiring and firing rigidities, set inflexible minimum wages, and established a centralized recruitment system.<sup>108</sup>

### 3.3. Post-1991 Labour Law and Policy

#### 3.3.1. From Nationalisation to Liberalisation

In May 1991, the Ethiopian People Revolutionary Democratic Front (EPRDF) deposed the Derg regime. Since then, the country has witnessed a wide range of policy and legal reforms. The government has focused on reorienting the economy through market-based economic policy and implementing structural adjustment programmes (SAPs) with the help of the Breton Woods Institutions.<sup>109</sup> As a result, the socialist-oriented command economy has been replaced by a market-based liberal type of economic system. Consistent with the SAPs, the government took major liberalisation measures such as rolling back the state from the economy, liberalising foreign exchange markets, reducing tariff and non-tariff barriers,

<sup>100</sup>Mulat Demeke, Fantu Guta and Tadele Ferede (2006), *supra note 93*, p.5 ; Mulat Demeke, Fantu Guta, Tadele Ferede (2003) Growth, Employment, Poverty and Policies in Ethiopia: An Empirical Investigation, Discussion Paper 12, ILO, Geneva, p.4, Eshetu Bekele and Mammo Muchie (2009), *supra note 16*, p.6

<sup>101</sup>Mulat Demeke, Fantu Guta and Tadele Ferede (2006), *supra note 93*, p.5; Eshetu Bekele and Mammo Muchie (2009), *supra note 16*, p.6

<sup>102</sup>Berhanu Denu, Abraham Tekeste and Hannah van der Deijl (2005) Characteristics and Determinants of Youth Unemployment, Underemployment and Inadequate Employment in Ethiopia, Employment Strategy Papers 7, ILO, Geneva, p.17

<sup>103</sup>Ibid

<sup>104</sup>The Transitional Military Government of Ethiopia (1975) ‘Labour Proclamation No. 64/75’, 35<sup>th</sup> Year, No.11, Negarit Gazeta, Article 8(1)

<sup>105</sup>Belachew Mekriya (2011) Fundamental Principles of the Ethiopian Labour Law, Far-East Trading PLC, Addis Ababa (book-hard copy in Amharic Language), p.59

<sup>106</sup>Berhanu Denu, Abraham Tekeste and Hannah van der Deijl (2005), *supra note 102*, p.5

<sup>107</sup> Ibid, p.35

<sup>108</sup> Ibid

<sup>109</sup>Alemayehu Geda (2006), *supra note 93*, p.3

privatising state-owned enterprises and improving investment policies.<sup>110</sup> In 1994, the government has adopted Agricultural Development Led Industrialization (ADLI), as its core development strategy, which aimed to expand labour-intensive industries for abundant unskilled rural workforce.<sup>111</sup> This was followed by two successive poverty reduction programmes, the Sustainable Development and Poverty Reduction Program, (SDPRP, 2002-2005) and the Plan for Accelerated and Sustained Development to End Poverty, (PASDEP, 2005-2010), and the current Growth and Transformation Plan (GTP, 2010-2015). These programmes are aimed at accelerating growth through commercialization of agriculture; private sector development, and investment promotion.<sup>112</sup> The privatisation programme was also started in 1994. Until April 2010, about 287 public enterprises and their branches have been privatized.<sup>113</sup>

### 3.3.2. Employment Policy Reform

Unlike the Derg regime, the current National Employment Policy and Strategy of Ethiopia which was adopted in 2009 targeted the development of private sector to achieve employment creation and poverty reduction.<sup>114</sup> Rapid growth of the private sector (both formal and informal); particularly the export-oriented labour-intensive industry is seen as an engine of economic growth; employment creation and poverty reduction. The existence of a cheap and abundant workforce is used by the government as a strategy to attract investment.<sup>115</sup> As a result, the government has increased the policy emphasis on export-led manufacturing growth, providing a wide range of incentives to promote exports. Textiles, leather, agro-processing, and flower industries are among the sectors that the government has most sought to promote.<sup>116</sup> The policy has three objectives: enhancing social welfare, accelerating economic growth, and achieving political stability. It also comprises two dimensions of job creation: demand-side and supply side. The supply-side, also called a push factor, deals with supplying labour to the market. The demand-side deals with is the market's absorbing capacity of the labour force. Kellow, Ayele and Yusuf argue that there is a low quality workforce on supply-side of the Ethiopian labour market due to workers low educational quality and skills.<sup>117</sup> Further, they argue that the demand-side of market is also highly challenged by its low absorption capacity, resulted from different macroeconomic conditions.<sup>118</sup> They argue that the present employment policy is focused on the supply-

<sup>110</sup> Mulat Demeke, Fantu Guta, Tadele Ferede (2003), *supra note 100*, p.5

<sup>111</sup> Mulat Demeke, Fantu Guta and Tadele Ferede (2006), *supra note 93*, p.5; See also Woinishet Asnake Sisay (2010) Participation into off-farm activities in rural Ethiopia: who earns more?, Master thesis, International Institute of Social Studies, The Hague, p.2

<sup>112</sup> International Labour Organisation (2011) Ethiopia Decent Work Country Program (DWCP) Review: 2009-2012, ILO Country Office, Geneva, p.2

<sup>113</sup> Aweke Tenaw (2011) The Performance of Privatized Public Enterprises in Ethiopia: The Case of Hotel Enterprises, Master thesis, Addis Ababa University, Addis Ababa, p.1

<sup>114</sup> Ministry of Labour and Social Affairs (MoLSA) (2009), *supra note 18*, p.14

<sup>115</sup> Ethiopian Investment Agency (2010) Investment Guide, EIA, Addis Ababa, p.17 Available at: [www.ethioinvest.org](http://www.ethioinvest.org), Assessed: 12/10/2012

<sup>116</sup> Arne Bigsten and Mulu Gebreyesus (2009) 'Firm Productivity and Exports: Evidence from Ethiopian Manufacturing, 45(10), Journal of Development Studies, p.1596; see also Berhanu Denu, Abraham Tekeste and Hannah van der Deijl (2005), *supra note 102*, p.39

<sup>117</sup> Nebil Kellow, Gezahegn Ayele and Hayat Yusuf (2010), *supra note 18*, p.30

<sup>118</sup> *Ibid*, p.34

side.<sup>119</sup> Further, there is no defining strategy that encourages the transition of temporary workers to permanent jobs.

### 3.3.3. Labour Law Reform

Labour law reform is one of the measures that Ethiopia has undertaken following the structural adjustment programmes. In 1993, the country enacted Labour Proclamation No.42/1993, which repealed and replaced Labour Proclamation No.64/1975, which was in turn based on a socialist ideology of a command economy. This proclamation was also replaced by the current Labour proclamation No.377/2003. There is no fundamental difference between the two most recent measures. But, there are some relaxations and clarifications under the current proclamation.

Contrary to the previous regime labour law, both the 1993 and 2003 labour laws are flexible.<sup>120</sup> Under both proclamations the recruitment system is highly decentralized. The hiring through Employment Exchange Offices was terminated. The parties are free to conclude, modify or terminate employment contract at a firm level. The law allows the use of a wider variety of temporary employment contracts. Moreover, the number of reasons that allow employers to hire workers under a temporary employment contract has expanded. For example there are seven main reasons to employ workers on temporary basis under proclamation No. 42/1993.<sup>121</sup> More reasons were added under proclamation No.377/2003.<sup>122</sup> As a result, employers can easily recruit workers on temporary basis even for a permanent work.

Moreover, the law does not prescribe minimum wages through statute. Wage determination is decentralized and left to the market. The wage is determined by employer and workers agreement or through collective bargaining. Working time regulations are also relaxed. The law allows overtime work, night work, holiday and work on leave with additional payments.

The rules protecting workers against dismissal were also eased. The reasons for lawful dismissals become wider.<sup>123</sup> The law allow collective dismissal for economic reason.<sup>124</sup> The employer is not legally obliged to consider other options before dismissals.<sup>125</sup> Moreover, the law does not provide priority rules for re-employment. According to De Gobbi, firing costs for permanent employee are lower in Ethiopia as compared to other countries.<sup>126</sup> Denu, Tekeste and van der Deijl also argue that the current labour law in Ethiopia seems to be more flexible than other countries.<sup>127</sup>

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<sup>119</sup> Ibid, p.43

<sup>120</sup> Maria Sabrina De Gobbi (2006), *supra note 16*, p.30; see also Berhanu Denu, Abraham Tekeste and Hannah van der Deijl (2005), *supra note 102*, p.36

<sup>121</sup> The Transitional Government of Ethiopia (1993) 'Labour Proclamation No. 42/1993', 52<sup>nd</sup> Year, No. 27, *Federal Negarit Gazeta*, Article 10

<sup>122</sup> Labour Proclamation No. 377/2003, *supra note 19*, Article 10

<sup>123</sup> Labour Proclamation No. 377/2003, *supra note 19*, Article 23-33

<sup>124</sup> Ibid, Article 29 and 30

<sup>125</sup> Ibid, Article 29

<sup>126</sup> Maria Sabrina De Gobbi (2006), *supra note 16*, p.30

<sup>127</sup> Berhanu Denu, Abraham Tekeste and Hannah van der Deijl (2005), *supra note 102*, p.36

### 3.3.4. Gender Aspects of the Reform

Several attempts were made by the government to include gender issues in policy and legal framework since 1992. In 1993, the government has adopted the National Policy on Ethiopian Women. The policy stipulates clearly the government's commitment to abolish all discriminatory laws and regulations as well as creating an enabling environment for all. The Federal Democratic Republic of Ethiopia (FDRE) constitution also recognized women's right to equality in employment, promotion, pay, and pension entitlements.<sup>128</sup> Gender equality has been emphasized in the SDPRP, PASDEP and GTP. All programmes aimed at reducing poverty and ensuring gender equality. Both the proclamation No.42/1993 and the current one also discuss the working condition of women.<sup>129</sup>

The policies and legal reform seems to be promising. The focus on increasing participation of women in labour market encourages their involvement in paid work. Earning a wage which is external to the household can lead to greater empowerment for women, both in the home and in the wider community. But, as many feminists argue, the law and policy failed to recognize the differences between men and women. Due to their disproportionate responsibility for family works and wider caring in the community, women are predominantly employed in temporary, low-paid, low-skilled and precarious jobs. The labour law and policy need to consider these facts and protect such employment relationship. The next section discusses in detail the impacts of such reforms on temporary workers, particularly women.

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<sup>128</sup>The Federal Democratic Republic of Ethiopia (1994) 'The Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995', 1<sup>st</sup> Year, No. 1, Federal Negarit Gazeta, Article 35(8)

<sup>129</sup>Labour Proclamation No. 42/1993, *supra note 121*, Article 87 and 88, and Labour Proclamation No. 377/2003, *supra note 19*, Article 87 and 88

## 4. Temporary Workers, Protections and Women's Position in Ethiopia

### 4.1. Temporary Works and Workers

There is no single and universally accepted terminology describing works that are not full-time and permanent. Different terms have been used in different countries, regions or sub-regions. In the OECD countries, 'temporary work' is used to express all forms of works other than permanent jobs.<sup>130</sup> In US, the equivalent term is 'contingent work'.<sup>131</sup> Other terms such as 'atypical', 'non-standard', 'precarious', and 'non-permanent' are also used interchangeably in different literatures.

Traditionally, the basic difference between 'temporary' and 'permanent' work relates to the nature of the work performed. Seasonal and piecework that are interruptible by their nature are considered as temporary works. In Ethiopia, during the Derg regime, temporary work is related to the interruptible nature of the work. Labour proclamation provides that if a work for which a worker employed is of a continuous nature, the contract entered for a definite period is deemed to have been made for an indefinite period.<sup>132</sup>

Today, many temporary works are characterised by continuity in the nature of work. In Ethiopia, both the 1993 and 2003 labour proclamations allow the use of different forms of temporary employment for permanent works.<sup>133</sup> Besides seasonal and piecework, there are many instances by which the law allows an employer to hire a worker on temporary basis. Replacement and fixed-term contracts can be cited as an example of such instances.<sup>134</sup> Such works mainly depend on the nature of employment contract rather than the nature of the work. Further, they are diversified.

Workers in an enterprise are nowadays segmented into core and periphery group. Core group are those workers who have open-ended permanent employment contracts with single employer. The peripheral group are temporary workers. For the purpose of this study, 'temporary worker' implies a worker employed for a limited duration and includes a casual, fixed-term and seasonal worker. Casual worker is a worker who works occasionally and intermittently for a specific number of hours, days, or weeks.<sup>135</sup> Casual workers usually do not have explicit or implicit contract for long-term employment. As a result, they are the most vulnerable type of workforce. A fixed-term worker is a worker employed for a specified period of time. Such a period is determined by objective conditions such as reaching specific date, completing a specific task, or the occurrence of specific event.<sup>136</sup> Fixed-term employment is common in developed countries. To prevent abuse arising from the use of

<sup>130</sup>Gabriel Martínez, Nele De Cuyper, and Hans De Witte (2010), *supra note 55*, p.71

<sup>131</sup>Nele De Cuyper, Jeroen de Jong, Hans De Witte, Kerstin Isaksson, Thomas Rigotti and René Schalk (2007) 'Literature Review of Theory and Research on the Psychological Impact of Temporary Employment: Towards a Conceptual Model', 9(4), *International Journal of Management Reviews*, p.2

<sup>132</sup>Labour Proclamation No. 64/1975, *supra note 104*, Article 8(1)

<sup>133</sup>Labour Proclamation No. 377/2003, *supra note 19*, Article 10(1) (b,c,d,h,i); and Labour Proclamation No. 42/1993, *supra note 121*, Article 10(2-4)

<sup>134</sup>Labour Proclamation No. 377/2003, *supra note 19*, Article 10(1) (b, h, and I)

<sup>135</sup>David Macdonald and Caroline Vandenabeel (1996) *Glossary of Industrial Relations and Related Terms*, ILO, Geneva, p.1

<sup>136</sup>Malcolm Sargeant and David Lewis(2010) *Employment contract*, 5<sup>th</sup> edition, Pearson, UK, p.38

successive fixed-term contracts, the EU Council Directive 1999/70/EC concerning the framework agreement on fixed-term work provides that fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract.<sup>137</sup> It further suggests member states to introduce safeguarding measures such as objective reasons justifying the renewal of fixed-term contracts, maximum total duration, and the number of renewals of such contracts.<sup>138</sup> As a result, labour law in many EU members protects fixed-term contracts. Seasonal worker is a worker employed for fixed but limited periods related to fluctuations in demand for labour at different times of the year.<sup>139</sup>

In Ethiopia, there is no definition in the labour proclamation of a ‘casual’, ‘fixed-term’, or ‘seasonal’ worker. Thus, it is difficult to differentiate one from another. The current proclamation defines a ‘worker’ as a person who has an employment relationship with an employer in accordance with Article 4 of the Proclamation.<sup>140</sup> This relationship is deemed to be created if a person agrees directly or indirectly to perform a work for and under the authority of an employer for a definite or indefinite period or piecework in return for wage.<sup>141</sup> This implies that the law applies to all workers irrespective of the terms of their contract. That means all casual, fixed-term and seasonal workers are accorded the rights of the statute.

However, except the provision that allow the use of different forms of temporary employment for different reason, there is no specific provision that governs such employment contracts.<sup>142</sup> That means although the proclamation defined the word ‘worker’ to include all workers irrespective of their status, there is no specific provision that extends the protections and benefits traditionally apply for permanent workers to temporary workers as well. Many employment protections and benefits presuppose the existence of permanent employment contracts. Further, there is no provision that require employer not to discriminate between workers solely because they have a temporary contract. As a result, temporary workers generally lack most of the benefits and protections of labour law in Ethiopia.

#### **4.2. Gender Disparities at Temporary Work**

The 2005 Labour Force Survey (LFS) result showed that the total employed population in March 2005 to be 31,435,108 of which 16,860,264 were males and 14,574,844 were females.<sup>143</sup> About 80.2 percent of the country’s employed persons are engaged in agricultural sector.<sup>144</sup> The unpaid family workers accounted for 50.3 percent at national level, followed by self-employed (40.9 percent). Women are largely employed in unpaid family works (68.5 percent of women against 34.6 percent of men). The paid employee constituted about

<sup>137</sup>Arvo Kuddo (2009) Labour Laws in Eastern European and Central Asian Countries: Minimum Norms and Practices, SP Discussion Paper No. 0920, World Bank, Washington, p.16

<sup>138</sup> Ibid, see also Arturo Bronstein (2009), *supra note 12*, p.42

<sup>139</sup>Robert Heron and Liesbeth Urger (1999) Glossary of Labour Administration and Related Terms, ILO, Geneva, p.20

<sup>140</sup> Labour Proclamation No. 377/2003, *supra note 19*, Article 2(3)

<sup>141</sup> Ibid, Article 4(1)

<sup>142</sup>Ibid, Article 10

<sup>143</sup>Central Statistical Agency of Ethiopia (CSA) (2006) Report on the 2005 National Labour Force Survey, Statistical Bulletin 365, CSA, Addis Ababa, p.40; Available at: <http://www.csa.gov.et>, Assessed: 10/09/2012

<sup>144</sup>Ibid, p.36

8percent of the total working population, of which government employee constituted only 2.6 percent.<sup>145</sup> This indicates that the share of private workers is higher than that of government. Generally, men's labour force participation was higher than women's. In 2005, 79 percent of women and 86 percent of men aged between 15 and 29 were participated in the labour force. For men, this was a slight decrease from 87 percent participation in 1999 whereas for women this was an increase from 75 percent in 1999.

As it happened in many countries, labour deregulation has contributed to the expansion of temporary employment in Ethiopia. Temporary employment has increased after the reform, particularly among women. The following table attempts to give some perspective to this.

Table 1: Percentage distribution of paid employees by term of employment in urban and rural areas, 1999, 2005

Term of employment	1999			2005		
	Male	Female	Total	Male	Female	Total
Urban permanent	51.37	36.76	45.61	52.76	36.1	45.73
Urban fixed-term	9.47	5.91	8.07	8.65	7.46	8.15
Urban casual	39.15	57.33	46.33	38.58	56.41	46.12
Rural permanent	11.8	5.5	10.1	20.42	19.45	20.14
Rural fixed-term	14.1	6.3	12	18.38	7.96	15.36
Rural casual	74.1	88.2	77.9	61.19	72.56	64.49

Source: CSA, Calculated from LFS 1999 and 2005.

As shown in the table, in both the 1999 and 2005 surveys, women are disproportionately employed as temporary workers in both urban and rural areas. For instance, in the 1999 survey, about 88.2 percent of the total paid female workers in rural area were casual workers.<sup>146</sup> This indicates that workers in the most precarious employment situations are women.

Like in many developing countries, the growth of export-oriented labour-intensive industries is the main cause for higher participation of women in paid work in Ethiopia. Evidences have shown that such industries are growing in Ethiopia after liberalisation.<sup>147</sup> Further, women's share in such industries has increased. One indicator of such trends is the unprecedented growth of the Ethiopian flower industry. Before 1991, there were only two flower industries, both state-owned.<sup>148</sup> Today, there are more than 90 enterprises.<sup>149</sup> The sector has created

<sup>145</sup>Ibid, p.38

<sup>146</sup>Central Statistical Agency of Ethiopia (CSA) (1999) Statistical Report on the 1999 National Labour Force Survey, Statistical Bulletin 225, CSA, Addis Ababa, p.331; Available at: : <http://www.csa.gov.et>, Assessed: 12/01/2013

<sup>147</sup>Admasu Shiferaw and Arjun Bedi (2009) The Dynamics of Job Creation and Job Destruction: Is Sub-Saharan Africa Different?, Discussion Paper No. 4623, The Institute for the Study of Labour (IZA), Bonn, p.8; see also Ramesh Kolli (2010) A Study on the Determination of the Share of the Private Sector in Ethiopian Gross Domestic Product, Private Sector Development Hub/Addis Ababa Chamber of Commerce and Sectorial Associations, Addis Ababa, p.70 and Mulat Demeke, Tewodros Negash, Solomon Damte, Assefa Bersufekad, Temesgen Aklilu (2004) Decent Work Deficit in the Ethiopian Cotton Sector, ILO, Geneva, p.29

<sup>148</sup>John Sutton and Nebil Kellow (2010) An Enterprise Map of Ethiopia, International Growth Centre, London, p.59

employment opportunities for about 100,000 workers, of which women accounted for about 80 percent of the total workforce.<sup>150</sup> The industry has created employment opportunities for low-skilled and poor rural women who have never been in paid employment before. This may positively contribute to their income and status. However, about 70-80 percent of the total workers in the sector are temporary.<sup>151</sup> Women take dominant share because they are overwhelmingly employed at low and unsecured stages of production.

Higher proportion of females than males involved in manufacturing sector.<sup>152</sup> Textile and garment industries are the most employers in the manufacturing sector.<sup>153</sup> The national workforce in the textile and garmenting sector is reported to be 38,000, excluding the 500,000 people involved in the informal traditional hand-loom sector.<sup>154</sup> The data collected by the author from Almeda Textile and Garment PLC indicate that about 71 percent of the total workforces in the firm are women.<sup>155</sup> According to Demeke et al, temporary employment accounted for about 65.5 percent of the total employment in the sector.<sup>156</sup>

### 4.3. The Protections of Temporary Workers and Women's Position

#### 4.3.1. Minimum Wage

Minimum wage is the lowest wage that can be legally paid to a worker in a country, a geographical area, an industry or an occupation.<sup>157</sup> It is designed to improve the income and living conditions of workers who are considered to be the most vulnerable in the labour market mainly women and their families.<sup>158</sup> It is perceived as an important policy tool that can make a major contribution to social justice by improving the lives of low-paid workers.<sup>159</sup>

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<sup>149</sup>Ben Taylor (2011) Ethiopia's Growth Set to Boom? A Global Production Networks Analysis of an Experiment in Economic Liberalisation, PHD Thesis, University of East Anglia School of International Development, Norwich, p.67

<sup>150</sup>Ibid, p.67 and p.166; see also Tilman Altenburg (2010) Industrial policy in Ethiopia, Discussion Paper 2/2010, German Development Institute, Bonn, p.24; Available at: [http://www.die-gdi.de/CMS-Homepage/openwebcms3.nsf/\(ynDKcontentByKey\)/ANES-843GXA/\\$FILE/DP%202.2010.pdf](http://www.die-gdi.de/CMS-Homepage/openwebcms3.nsf/(ynDKcontentByKey)/ANES-843GXA/$FILE/DP%202.2010.pdf), Assessed: 10/11/2012

<sup>151</sup>Tigist Workneh (2007) An Assessment of the Working Condition of Flower Farm Workers: A Case Study of Four Flower Farms in Oromia Region, Master Thesis, Addis Ababa University, Addis Ababa, p.40, Available at [http://etd.aau.edu.et/dspace/bitstream/123456789/2368/1/GENDER\\_35.pdf](http://etd.aau.edu.et/dspace/bitstream/123456789/2368/1/GENDER_35.pdf), Assessed: 20/12/2012; see also Tewodros Worku (2010), *supra note 67*, p.24

<sup>152</sup>Central Statistical Agency of Ethiopia (CSA) (2006), *supra note 143*, pp.36-37 and Central Statistical Agency of Ethiopia (CSA) (1999), *supra note 146*, p.262

<sup>153</sup>Admasu Shiferaw and Arjun Bedi (2009), *supra note 147*, p.9 ; and John Sutton and Nebil Kellow (2010), *supra note 148*, p.109

<sup>154</sup>Sarah Vaughan and Mesfin Gebremichael (2011) Rethinking business and politics in Ethiopia: The role of EFFORT, the Endowment Fund for the Rehabilitation of Tigray, Research Report 02, Overseas Development Institute, London, p.44

<sup>155</sup>An interview with Ato Ariaya Mearid, head of human resource management, August 28/08/2012 (From 5150 total workers, 3641 are women)

<sup>156</sup>Mulat Demeke, Tewodros Negash, Solomon Damte, Assefa Bersufekad, Temesgen Aklilu (2004), *supra note 147*, p.6

<sup>157</sup>David Macdonald and Caroline Vandenabeel (1996), *supra note 135*, p.20; see also International Labour Organization (2009) Gender, Employment and the Informal Economy: Glossary of Terms, ILO, Geneva, p.53 and Robert Heron and Liesbeth Urger (1999), *supra note 139*, p.15

<sup>158</sup>International Labour Organization (2009) Gender, Employment and the Informal Economy: Glossary of Terms, ILO, Geneva, p.53

<sup>159</sup> A. C. L. Davies (2004), *supra note 20*, p.138



Further, it is seen as an important tool to limit low pay and reduce gender pay gap.<sup>160</sup> According to ILO, minimum wage should be one element of policy direction to reduce poverty and provide a satisfactory standard of living to workers and their families.<sup>161</sup> It is applied in more than 90 percent ILO members.<sup>162</sup>

In Ethiopia, women are predominantly employed in temporary works due to different factors that work against them. Women's family responsibilities such as housework and childcare could be a strong incentive for them to engage in such less rewarding segments of the labour market.<sup>163</sup> The oversupply of women in labour market also reduces their bargaining power for better wage since employers can select workers from large pool of unskilled labour. As a result, women are highly vulnerable to low-wages. Thus, setting minimum wage is the main concern of women in Ethiopia.

However, the country has no minimum wage for private sector. Actually, it is solely the employer who freely determines the wage of a worker. This enables the employer to discriminate among workers. Due to the lower position they have in labour market and other social factors, women are forced to take low-wage that is not sufficient to support their livelihood and their families. A study by Worku indicated that majority of workers in the Ethiopian floriculture earned a daily wage between 0.83-1.25USD.<sup>164</sup> According to a study by Temesgen, women earn on average 73 percent of men's earnings in the Ethiopian manufacturing sector.<sup>165</sup> Demeke et al also indicated that a significant numbers of the workers in textile and garment sector can be considered as the working poor.<sup>166</sup>

#### 4.3.2. Duration of Employment Contract

In Ethiopia, the general rule is that any contract of employment is deemed to have been concluded for an indefinite period.<sup>167</sup> The use of employment contract for a definite period or piecework is an exception from this rule.<sup>168</sup> Such exceptions are varied. The proclamation provides various instances where an employer is allowed to employ workers for a limited duration or piecework. One of such instances is to employ a worker for the performance of specified piecework. Usually, the maximum duration for piecework is depends on the time required for the total performance of that work. Other instances are to employ workers on the basis of casual and fixed-term employment contracts. The law allows the use of such

<sup>160</sup>International Labour Organization (2012) Giving Globalization a Human Face, ILO, Geneva, p.286; see also International Labour Organization (2008) Global Wage Report 2008/09: Minimum Wages and Collective Bargaining Towards Policy Coherence, ILO, Geneva, p.60; and Arvo Kuddo (2009), *supra note 137*, p.25

<sup>161</sup>Richard Anker (2011) Estimating a Living Wage: A Methodological Review, Conditions of Work and Employment Series No. 29, ILO, Geneva, p.16

<sup>162</sup>International Labour Organization (2008), *supra note 158*, p.34

<sup>163</sup>Alexandre Kolev and Pablo Suárez Robles (2011) 'Exploring the Gender Pay Gap Through Different Age Cohorts: The Case of Ethiopia', in Arbache, J.S., Kolev, A. and Filipiak, E. (eds.) Gender Disparities in Africa's Labour Market, The World Bank, Washington, p.69

<sup>164</sup>Tewodros Worku (2010), *supra note 67*, p.27

<sup>165</sup>Tilahun Temesgen (2006)'Decomposing Gender Wage Differentials in Urban Ethiopia: Evidence from Linked Employer-Employee (LEE) Manufacturing Survey Data', 35(1), Global Economic Review, p.61

<sup>166</sup>Mulat Demeke, Tewodros Negash, Solomon Damte, Assefa Bersufekad, Temesgen Aklilu(2004), *supra note 147*, p.64

<sup>167</sup>Labour Proclamation No. 377/2003; *supra note 19*, Article 9

<sup>168</sup> Ibid, Article 10(1)(a-i)

employment contract for permanent works or works which relates to permanent part of the work of an employer for different reasons.<sup>169</sup> However, there is no specific end-date for such employment contract under the law. Unlike in many developed countries, fixed-term contracts are allowed without a maximum time limitation in Ethiopia.<sup>170</sup> It is only in two cases that the law provides maximum duration in Ethiopia.<sup>171</sup>

Absence of maximum duration for temporary employment contract has different impact for temporary workers. It enables employer to exploit workers by employing them on temporary basis for unlimited duration. Temporary workers are considered as temporary though they employed by the same employer for years. This disproportionately affects women who are predominantly occupied such works.

#### **4.3.3. Limitation on Renewal and Successive Contracts**

In many developed countries, the number of renewed and successive contracts is limited by law. For example in Denmark, renewal is allowed only for objective reasons while it is totally prohibited in Spain.<sup>172</sup> In Ethiopia, there is no limitation on renewed and successive fixed-term contracts. There is no provision in the law that prevent employers from repeatedly renewing fixed-term contracts over a long period of time. As a result, parties can renew it as many times as they wish.

Absence of limitation on renewal and successive employment contracts made particularly women the subject of exploitation and vulnerabilities. It enables employers to repeatedly recruit them as a temporary worker to avoid the application of protections provided for permanent workers by the law. That means women, although they employed by the same employer for years repeatedly, are still considered as temporary workers.

#### **4.3.4. Promotion and Transition to Permanent contract**

Traditionally, temporary employment is seen as a stepping stone to a permanent contract. Many temporary workers also accept temporary jobs with a view that they will be transformed to permanent employment with the same employer in the near future.<sup>173</sup> However, some studies have indicated that such a transition is very low in general and for unskilled women in particular.<sup>174</sup> Gonzalez-Rendon, Alcaide-Castro and Florez-Saborido argue that temporary employment is a dead-end for women and un-educated workers in Spain.<sup>175</sup> In Ethiopia, there is no clear evidence exists on whether temporary employment is a

<sup>169</sup> Labour Proclamation No. 377/2003; *supra note 19*, Article 10(1)(b,c,d,e,g)

<sup>170</sup> A. C. L. Davies (2004), *supra note 20*, p.66, see also Arvo Kuddo (2009), *supra note 137*, pp.17-18 (for example it is one year in Spain, 18 months in France, and four year in UK)

<sup>171</sup> *Ibid*, Article 10(2)

<sup>172</sup> Arvo Kuddo (2009), *supra note 137*, p.18

<sup>173</sup> Nele De Cuyper, Hans De Witte and Hetty Van Emmerik (2011) 'Guest Editorial: Temporary employment Costs and benefits for (the careers of) employees and organizations', 16(2), *Career Development International*, p.106

<sup>174</sup> J. Ignacio García-Pérez and Fernando Muñoz-Bullón (2011), *supra note 62*, p.103; see also Maia Guell and Barbara Petrongolo (2007) 'How binding are legal limits? Transitions from temporary to permanent work in Spain', 14, *Labour Economics*, p.179

<sup>175</sup> Manuel Gonzalez-Rendon, Manuel Alcaide-Castro and Ignacio Florez-Saborido (2005) 'Is it Difficult for Temporary Workers to get a Permanent Job? Empirical Evidence from Spain', In Zeytinoglu, I.U. (ed.) *Flexibility in Workplaces: Effects on Workers, Work Environment and the Unions*, IIRA/ILO, Geneva, p.35

trap for workers or a bridge for permanent jobs. Employment policy does not provide any strategy that encourages the transition of temporary workers to permanent posts. Further, there is no any instance by which labour law supports such transitions. The transition to permanent worker solely left to employers' prerogative will. According to Worku, in the Ethiopian flower industry, there is no chance of promotion for temporary workers who are predominantly women to become group leaders, supervisors, and managers.<sup>176</sup> The study further indicated the existence of workers who worked for the same employer for years without having permanent contract. Further empirical evidences are important to understand this trend.

#### 4.3.5. Eligibility for Employment Protections and Benefits

Temporary workers generally lack the benefits and protections attached to the open-ended permanent workers. In Ethiopia, only a worker who has completed his/her probation period is eligible for severance pay and compensation.<sup>177</sup> Temporary workers are different from workers in probationary contracts. The latter is used to test a worker's suitability to a permanent post. Accordingly, a worker who has successfully completed his/her probation is generally seen as a permanent worker. Thus, temporary workers are not eligible for severance pay and compensation under labour law. Accordingly, the Cassation Bench of Supreme Court of Ethiopia rendered binding decision in cases between the '*Ethiopian Telecommunication Corporation v. Tigist Worku*'<sup>178</sup>; '*Riva Eengineering P.L.C. V. Indale Tadesse and others*'<sup>179</sup>; and the '*Commercial Bank of Ethiopia v. Ato Alemayo kebbede and others*'<sup>180</sup> that temporary workers are not eligible for severance pay and compensation despite their long period and successive employment contract with the same employer. Moreover, workers eligibility for annual leaves assume the existence of standard full-time employment contracts. A worker who has uninterrupted fixed-time contract with single employer for many years may claim such rights. But, casual and seasonal workers who are predominantly women do not qualify for such benefits. Further, only a worker who has completed his/her probation period is entitled to sick leave.<sup>181</sup> Therefore, temporary workers are not eligible for such benefits and protections. Furthermore, casual and seasonal workers do not qualify for maternity leave protection due to the nature and duration of their contracts.<sup>182</sup>

#### 4.3.6. Health and Safety Protections

It is generally argued that temporary workers are more vulnerable to health and safety risks.<sup>183</sup> In Ethiopia, labour law requires an employer to take the necessary measure to safeguard adequately the health and safety of the workers.<sup>184</sup> However, case studies showed

<sup>176</sup>Tewodros Worku (2010), *supra note 67*, p.35

<sup>177</sup>Labour Proclamation No. 377/2003; *supra note 19*, Articles 39, 40, 41, 31, and 32

<sup>178</sup>The Ethiopian Telecommunication Corporation v Tigist Worku, (File No. 11924, 2005), Vol. 3 pp.31-40, (Cassation Bench of Supreme Court of Ethiopia)

<sup>179</sup> Riva Eengineering P.L.C. V. Indale Tadesse and others (File No. 29419, 2008), Vol.6, pp.381-84, (Cassation Bench of Supreme Court of Ethiopia)

<sup>180</sup>The Commercial Bank of Ethiopia v. Ato Alemayo kebbede and others, (File No. 29692, 2008), (Vol. 6, pp.327-330), (Cassation Bench of Supreme Court of Ethiopia)

<sup>181</sup> Labour Proclamation No. 377/2003; *supra note 19*, Article 85

<sup>182</sup>Labour Proclamation No. 377/2003; *supra note 19*, Article 88

<sup>183</sup>John Evans and Euan Gibb (2009), *supra note 37*, p.16

<sup>184</sup>Labour Proclamation No. 377/2003; *supra note 19*, Article 92

that employers actually disregard these obligations. For example a study by Demeke et al indicated that adequate facilities are not provided for a considerable size of the workforce in the Ethiopian textile and garment industries.<sup>185</sup> Studies also indicated that workers in the Ethiopian flower industry are vulnerable to serious health problems resulted from heavy workload and pesticides. Women working in the pack house are vulnerable to kidney infection and swollen legs due to long hours of standing.<sup>186</sup> Further, many workers are exposed to hazardous pesticides without wearing any kind of protective equipment.<sup>187</sup> Temporary workers who are predominantly women are more vulnerable to such health hazards because they lack protective equipment, work related training and predominantly employed at ill-health posts.

#### 4.3.7. Access to Trade Union and Collective Bargaining

The right to organise and collective bargaining are fundamental to the ILO. The 1998 ILO Declaration on Fundamental Principles and Rights at Work has recognized them as fundamental rights and principles.<sup>188</sup> Ethiopia has ratified the Freedom of Association and Protection of the Right to Organize Convention No.87/1948, and the Right to organize and Collective Bargaining Convention No. 98/1949, which form the basis for trade union rights. Moreover, labour proclamation provides that workers have the right to establish and join the organisation of their choice.<sup>189</sup> The law guaranteed the right to organise and collectively bargain to all workers regardless of their status.

However, it is usually difficult for temporary workers to organise and bargain collectively. This is because they generally lack long-term strong attachment with single employer. Moreover, they may be reluctant to exercise their rights because of fear of job losses. They feel that if they join trade unions and collectively bargain, they will be fired, not have their contracts renewed, or find it difficult to obtain another job. Demeke et al argued that workers attempts to organise and collectively bargain in the Ethiopian textile and garment sector is highly resisted by the employers.<sup>190</sup> They found that workers of private commercial farms have no trade unions at all. As a result, temporary workers particularly women are exposed to poor working conditions and low-wage.<sup>191</sup> The same holds true for temporary workers in the Ethiopian flower industries.

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<sup>185</sup>Mulat Demeke, Tewodros Negash, Solomon Damte, Assefa Bersufekad, Temesgen Aklilu(2004), *supra note 147*, p.64

<sup>186</sup>Tigist Workneh (2007), *supra note 151*, pp.64-65

<sup>187</sup> Bedada, S. and Eshetu, M. (2011) Ethiopian Floriculture Industry from Corporate Social Responsibility (CSR) and Governance Perspective 'How is CSR practiced in the Ethiopian Floriculture Industry, and does it has a linkage with the governance system?', Master Thesis , Karlstad Business school, p.43

<sup>188</sup>Minawa Ebisui (2012), *supra note 44*, p.4

<sup>189</sup>Labour Proclamation No. 377/2003, *supra note 19*, Article 113(1)

<sup>190</sup>Mulat Demeke, Tewodros Negash, Solomon Damte, Assefa Bersufekad, Temesgen Aklilu(2004), *supra note 147*, p.42

<sup>191</sup> Ibid, p.9

## **5. Conclusions and Recommendations**

### **5.1. Conclusions**

This study shows that there is a close relationship between trade liberalisation, labour law and gender. The neo-liberal trade theory concludes that markets are more efficient at resource allocation than government regulation. Liberalised labour market is thus predicted to increase employment, reduce wage inequality and poverty. Thus, trade liberalisation and deregulation policy along with its advocates influenced government to relax their national labour law. In developing countries including Ethiopia, the SAPs of World Bank and IMF influenced the nature of labour laws. Labour law in many countries allows the use of different forms of temporary employment. As a result, temporary employment is growing and becoming more common. Further, the workforces involved are heavily feminized.

This study also indicates that trade liberalisation and labour deregulation have caused changes in labour law and policy in Ethiopia. The current government adopted employment policy which targeted employment generation for the country's abundant workforce through the expansion of labour-intensive export-oriented private industries. The Government has also amended labour law so as to individualise contracts of employment and to enhance labour market flexibility. Accordingly, the current law allows the use of different forms of temporary employment contract for different reasons. As it has happened in other countries, there has been a sharp increase in temporary workers (women) in Ethiopia since the reform.

Thus, there is a general trend of casualization of employment relationship and feminisation of workforces in Ethiopia.

Moreover, the study has not ignored the positive outcomes of trade liberalisation and labour deregulation in Ethiopia. Consistent with the neo-liberal prediction, they have increased women's participation in paid work. The expansion of labour-intensive export-oriented industries has generated disproportionately employment opportunities for women. Women constitute majority of the workforce in floriculture, textile and garment sectors in Ethiopia. Such sectors have opened an opportunity door for many unskilled and poor women who have never been in paid employment before. Women's involvement in paid employment can improve not only their autonomy in the household but also enhance their economic security and social status. Although they are low and insufficient, their salary may support their economic interest and family. It has also an impact on gender division of works and associated perceptions. From employers' perspective, flexibilisation enables them to adapt to demand fluctuations. Particularly, temporary employment due to the interruptible patterns in production and replacement of temporarily absent regular worker may be justified in economic terms. It also offers them to employ workers who have specific knowledge and skills but that are required only on a temporary basis. This enables employers to save on costs.

However, the main concern of this study is the income and employment insecurities associated with temporary employment due to the absence of protections. In Ethiopia, employment policy has no defining strategy that encourages the transition of temporary employment to permanent contracts. Further, there is no attempt to balance the reproductive and productive work of women. There is no statutory minimum wage to protect vulnerable employment. Furthermore, there is no definition in the labour proclamation of a 'casual', 'fixed-term', or 'seasonal' worker. Thus, it is difficult to identify one from another. Further, except the provision that allow the use of different forms of temporary employment contracts for different reasons, there is no provision that regulate such employment relationships. The deregulation of temporary employment was undertaken without modifying the regulation of permanent employment. That means the reform has not extended minimum protections that originally attached to permanent workers to temporary workers as well. The protection that labour law provides always assumes the existence of standard permanent employment contract. Thus, the growing numbers of temporary workers do not fit with the protections attached to permanent works. The current labour law protects only permanent workers and not others. Temporary workers are thus included in labour law but excluded from fundamental protections and benefits of labour law. As a result, women who dominate such workforce are subjected to various vulnerabilities and exploitations. They are vulnerable to low-wage; less employer-funded training; low bargaining power; poor and unhealthy working conditions; and high job insecurity.

## **5.2.Recommendations**

The objective of labour law is to counteract the inequality of bargaining power which is inherent in the employment relationship. Workers, particularly temporary workers are in the weaker bargaining position. Women in particular have lower bargaining power as compared to men mainly due to family responsibilities and social norms; which arguably affect the amount and type of paid work that they can undertake. The existence of minimum protections for temporary workers is thus the main concern of women. This requires redesigning of the existing labour law to extend its protections to temporary employment as well. Further, the law should clearly define different types of temporary employment contracts. It should also require employers not to discriminate against workers solely due to the type of contract they have. Furthermore, the law should introduce safeguarding measures such as objective justification for renewal, maximum total duration and number of renewal for such employment relationships.

Minimum wage is a point of reference that allows workers to negotiate with their employers. Absence of minimum wage will force workers to accept whatever is suggested by the employer. Thus, the establishment of minimum wage is also another main concern of women. Labour law needs to consider minimum wage.

Further, at the broadest level, the findings of this study suggest the need for the adoption of a more gender sensitive employment policy that recognizes the socially constructed gender roles, the biological differences between men and women, and how these interact in the world of work. This includes policies aimed at:

- Improving working conditions, health and safety of temporary workers;

- Promoting the development and implementation of social protection systems that enable men and women to balance both their paid and reproductive work responsibilities;
- Encouraging the establishing social protection system that recognizes women's disproportionate reproductive role both in the household and wider community and its impact on their access to productive work; and
- Creating incentives and defining strategies that encourage employers to make permanent positions for precarious workers.



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