



# RESEARCH BRIEF

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## Labour Law Compliance among Chinese Enterprises in Ethiopia

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### Key Points:

- Chinese enterprises in Ethiopia have faced a large number of lawsuits due to their failure to comply with local labour law.
- The most common workplace disputes arise from the lack of clarity regarding employment agreements, the failure to make overtime payments, and the wrongful termination of contracts.
- One of the main barriers to labour law compliance is a lack of oversight by contractors over Chinese subcontractors, which continue to skirt labour regulations. Good labour practices by contractors, in other words, fail to trickle down.

### Introduction

Over the past two decades Chinese contractors in Ethiopia have faced thousands, if not tens of thousands, of labour cases. The exact number is

however hard to pin down as many labour suits are heard in the numerous first instance courts in remote rural regions where Chinese firms carry out road, railway, electricity, telecommunications, and water drilling and supply projects. Labour disputes typically transform into court cases when Ethiopian employees are dismissed or chose to leave their job of their own accord following a dispute with expatriate management. As soon as they take legal action, their relationship with their Chinese employer is beyond repair. Termination of contract, then, is the most common type of labour case that Chinese contractors face in Ethiopia.

In this Research Brief, I discuss some of the reasons behind the high number of labour cases related to Chinese infrastructure projects entertained by Ethiopia's first instance courts, and, upon appeal, by the country's high courts, supreme courts and federal cassation court.<sup>1</sup> I do

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<sup>1</sup> The field research on which this Brief is based was carried out in Ethiopia throughout 2020 as part of the China, Law and Development Project, funded by the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation programme (Grant agreement no. 803763). Research consisted of interviews with legal

professionals and disputants, courtroom observation, and analysis of relevant laws and case files. I examined lawsuits involving various Chinese contractors, including, among others, China Civil Engineering Construction Corporation, China Gezhouba Group, China Railway Engineering

so by examining the most common sources of dispute in the Chinese employer-Ethiopian employee relationship. These pertain to employment agreements and job descriptions, work hours, and termination of contract. I will conclude with a discussion on recent improvements made by Chinese companies in response to the increasing number of lawsuits.

### Employment agreements

Labour disputes in Chinese-run workplaces in Ethiopia arise, first and foremost, from a lack of clarity regarding the nature and length of employment. In keeping with the Ethiopian Labour Proclamation 1156/2019, employers have a duty to specify the type of employment and its duration.<sup>2</sup> Chinese employers frequently fail to do so, largely due to poor communication or a lack of communication altogether. Ethiopian employees, especially semi-skilled and unskilled labourers are often hired without a written contract, even if they end up working for months, if not years, for their employer.<sup>3</sup> The oral agreements they enter into are prone to miscommunication. This is due not just to the language barrier, but also to the steep hierarchy within Chinese enterprises, in which subordinates are not expected to ask questions. The racial divide that runs through the corporate hierarchy further exacerbates this dynamic.

It transpires from labour suits that it is often unclear to Ethiopian employees on what terms they are appointed. In the most common scenario, they assume they are recruited for an indefinite period of time, whereas management believes it

has hired them for a specific task or a fixed term. When conditions are not specifically stated in writing, the labour law protects the employee. After a probation period of 60 days under the 2019 proclamation,<sup>4</sup> an employee is hired on a permanent basis, unless otherwise specified. Given that the terms of employment are rarely indicated, Ethiopian employees win the majority of labour suits, which, in turn, has forced expatriate management to revise recruitment practices.

The content of the job is often equally unclear. Chinese employers do not always provide job descriptions, and if they do, they fail to adhere to them. They may ask a carpenter to haul cement sacks or a driver to clean the toilets. This leads to a lot of strife, as management, by assigning what Ethiopians construe as lowly tasks to skilled workers such as welders, mechanics, and drivers, challenges social hierarchies of work. Manual work has long been stigmatised in Ethiopia, with the result that the job of a driver is seen as higher than that of a mason and the job of a carpenter is held in higher regard than that of a carrier. Besides defying social and cultural norms, which touch a nerve with local employees, Chinese management also violate the law by failing to adhere to job descriptions.

### Work hours

The failure of Chinese employers to respect weekly rest days and holidays was another bone of contention. Employees are routinely requested to work overtime, that is, beyond the eight hours of a

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Corporation, and China Tiesiju Civil Engineering Group, mostly involved in the construction industry.

<sup>2</sup> Labour Proclamation 1156/2019, art. 4.

<sup>3</sup> The employer does not necessarily have to conclude a written contract, according to the Ethiopian labour law. It has however to provide the employee with a written and

signed letter containing the details of employment and the agreement, the address of the employee and employer, and a signature of both parties. Chinese companies rarely provided such letters, *see* Labour Proclamation 1156/2019, art. 7.

<sup>4</sup> Labour Proclamation 1156/2019, art. 11.3.

normal working day, but are not granted extra pay according to the rates stipulated in the Labour Proclamation. The circumstances under which overtime work is permissible are detailed in the law, as are the rates for overtime payment. In the case of work carried out between 6am in the morning and 10pm in the evening, for instance, payment shall be made at the rate of 1.5 multiplied by the ordinary hourly rate.<sup>5</sup> Different rates exist beyond these hours and for weekly rest days and holidays.

Especially in rural northern Ethiopia, holidays are a recurring source of tension between expatriate management and the local workforce. Orthodox Christians regularly celebrate saint days on which they traditionally refrain from working; in fact, if you work on these days you are considered to defy religious and cultural norms.<sup>6</sup> Chinese managers expect workers to come to work on these days and find that few employees turned up. This leads to strife and, occasionally, when Chinese foremen lose their patience, wrongful dismissals. On their part, Chinese managers complained about the many holidays Ethiopians observe and the unwillingness of Ethiopian employees to work overtime, even if they are rewarded additional pay.

Much like disputes about the nature of employment and its duration, conflicts related to work hours emerged from a perceived violation of cultural norms and legal rules *combined*. Indeed, many Ethiopian labourers took legal action when they found not just their legal rights being disregarded but also their dignity, and that of the community at large, being harmed by Chinese

managers' disrespect for local practices and beliefs.

### Termination of contract

The failure to give prior notice for termination of employment and the grounds on which terminations were based constituted a third source of disputes. According to Labour Proclamation 1156/2019, employers are obliged to provide a written statement specifying the reasons for the termination and the date of termination.<sup>7</sup> Sometimes Chinese managers notify workers orally. The absence of a written notice, however, renders a dismissal unlawful. Furthermore, Chinese employers regularly dismiss employees without sufficient grounds, and, if they have valid reasons for dismissal without notice, such as when an employee has stolen company property, they fail to provide evidence to this effect.

Part of the problem in regard to termination practices was non-compliance on the side of junior managers employed by subcontractors from China. Contractors of overseas projects are responsible for ensuring that their subcontractors follow the law and procedure concerning worker protection.<sup>8</sup> This pertains not just to Chinese employees but also to local staff. Although contractors put considerable effort into devising regulations and overseeing their implementation, a gap remains. Their exemplary and lawful practices fail to trickle down to the management of subcontracting firms.

In Ethiopia, this is partly due to the power imbalance between contractor and subcontractor and their intricate relationship. The limited

<sup>5</sup> Labour Proclamation 1156/2019, art. 68.

<sup>6</sup> TOM BOYLSTON, *THE STRANGER AT THE FEAST: PROHIBITION AND MEDIATION IN AN ETHIOPIAN ORTHODOX CHRISTIAN COMMUNITY* (2018).

<sup>7</sup> Labour Proclamation 1156/2019, art. 27.2.

<sup>8</sup> Aaron Halegua & Xiaohui Ban, *Labour protections for overseas Chinese workers: Legal framework and judicial practice*, 8(2) CHINESE J. COMP. L. 304-330 (2020).

number of in-country Chinese subcontractors and the considerable cost of mobilizing new firms to Africa grants subcontractors more leverage, making it harder for contractors to hold them accountable. What is more, subcontractors are able to escape direct liability. Many Chinese private subcontracting firms involved in the construction sector enter the country under the contractor's name and purview.<sup>9</sup> They are not registered in Ethiopia and therefore do not have a legal personality. Ethiopian lawyers, commonly hired by the main contractor, are usually only marginally involved in the subcontracting firms' operations. While some lawyers are willing to work closely with subcontractors in an attempt to improve overall compliance, others refuse to assist Chinese subcontractors, since they are not employed by them. As a result, the good practices they encourage among contractors fail to trickle down to subcontractors.

Chinese on-site foremen employed by subcontractors often dismiss Ethiopian labourers at a whim, even if they do not have the legal mandate to fire staff. The Ethiopian Labour Proclamation gives the mandate to hire, transfer, suspend, and dismiss employees to 'managerial employees' only, defining 'managerial employee' as an employee who 'by law or delegation of the employer is vested with the power to lay down and execute management policies.'<sup>10</sup> Here is where it often goes wrong in Chinese work places. Foreman and line managers believe they do have the mandate to make these decisions, or simply claim this mandate, and dismiss their employees with a simple 'Go!'

The Ethiopian labour law protects the employee in such situations. If they claim to be wrongfully dismissed, the employer carries the burden of proof to demonstrate that the termination was lawful. Of course, when the employer denies that they terminated the employee's contract, the burden of proof shifts onto the plaintiff, who has to demonstrate that their contract was terminated. In some cases, tensions and pent-up grievances lead Ethiopian employees to leave their job and, arguably opportunistically, claim compensation for wrongful termination in court. The underlying source of friction however often comes down to miscommunication or a lack of communication, leading to radically different interpretations of the employer-employee relationship and the disputes that emerge from them. Poor communication and non-communication equally complicate the peaceful settlement of disputes outside the court, leading some lawyers to conclude that litigation is the only option.<sup>11</sup>

### Recent improvements

Unfamiliar with the Ethiopian labour law, new expatriate managers are often surprised to be found in the wrong and held liable for unlawful termination or other practices they deem perfectly acceptable. Indeed, managers brought along the cultural practices and understandings gained from their experience of working in China's construction industry; practices that are common but not necessarily in line with China's labour law either. Old hands complained that the Ethiopian labour law favours employees or is biased against them as foreign nationals. Either way, faced with a

<sup>9</sup> This is in response to restrictions posed by the Ethiopian government on the subcontracting of foreign firms, in part as an incentive to hire local firms.

<sup>10</sup> Labour Proclamation 1156/2019, art. 2.10.

<sup>11</sup> Interview with Ethiopian lawyer, Lower Omo Valley, May 16, 2020.

growing number of lawsuits, Chinese companies have been forced to improve employment practices, especially in regard to the recruitment, management, and dismissal of Ethiopian staff. They have increasingly concluded written agreements with employees, paid their employees appropriate remuneration for overtime work, and sent out notices for termination of contract or posted them on the notice board.

Ethiopian in-house counsels and legal advisors play a crucial role in improving management practices of Chinese firms and decreasing the number of on-site disputes and lawsuits. Some assertive in-house counsels have single-handedly advanced their company's labour practices and brought them in line with the law. Their legal advice finds a willing ear when expatriate management realizes something needs to change, not just to reduce the time spent in court, but also to smooth labour-management relations with an eye to enhancing productivity.

Involved in both transactional practice and litigation, Ethiopian lawyers draw up contract templates, liaise with contracting parties, create awareness about rights and obligations of employer and employee, and represent their company in court. They urge managers to contact them first before making important decisions. Adjustments, meanwhile, have also come from Ethiopian employees, especially in regard to working hours. While management has started respecting religious and national holidays,

employees have become more familiar with longer work days and strict time management.

The main barrier to labour law compliance, however, remains Chinese overseas contractors' lack of control over their subcontractors. Whereas contractors in the construction industry, mostly central state-owned enterprises which are under greater scrutiny by the Chinese state, generally comply with the law, their subcontractors often fail to do so, especially when labour is abundant and the firm hard-pressed to complete the work. Predominantly privately-owned firms, many Chinese subcontractors continue to enter into ambiguous agreements, fail to pay for overtime, and fire Ethiopian labourers capriciously.

Certainly, Chinese contractors have a strong incentive to improve labour law compliance among subcontractors, not just to maintain industrial peace and prevent lawsuits, but also to protect their reputation with an eye to securing future contracts. However, as mentioned, contractors lack bargaining power over subcontractors. The strengthening of contractor-subcontractor relations and the oversight and regulatory control of the former over the latter is therefore imperative to enhancing labour law compliance.

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