

TRADE UNION RIGHTS OF GOVERNMENT EMPLOYEES IN ETHIOPIA: LONG OVERDUE!

By Desset Abebe Teferi*

1. Introduction

Countries all over the world follow various approaches towards the implementation of trade union rights. Some countries recognize trade union rights only for those workers in the private sector and deny these rights for public sector employees. Other countries follow a procedure whereby a limited category of workers are entitled to trade union rights provided in labour law. There are also countries that recognize trade union rights for most sectors such as civil servants, teachers, journalists, medical personnel and even the police. Countries with liberal legal framework may extend the recognition of trade union rights protection to workers in the informal sector including domestic workers.¹ Assessing the scope of protection provided for government employees (civil servants) in Ethiopia is the main aim of this article.

This article is primarily prompted by the motto 'Trade Union Rights are Human Rights', which was selected by the 49 year old Ethiopian Workers' Associations Confederation (EWAC) for the celebration of May Day in Ethiopia which was celebrated for the 123th time in the world and for the 37th time in Ethiopia on May 1, 2012. In his statement on the press release for the celebration, Ato Kassahun Folo, the President of the EWAC, stated that the motto was chosen after closely scrutinizing the *status quo* of enjoyment of trade union rights by workers/employees in the country.² Trade union rights are among those fundamental human rights and freedoms entrenched in the bill of rights section (Chapter Three) of the Federal Democratic Republic of Ethiopia Constitution (1995) (the Constitution or FDRE Constitution). Apart from the Constitution various international and regional human rights instruments ratified by Ethiopia guaranteed trade union rights.

In Ethiopia, government employees 'whose work compatibility allows for it and who are below a certain level of responsibility' are entitled to trade union

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¹ 'ህብረት የህልውና መሰረት' የሰራተኛው ደምጽ 23 ሚያዝያ 2004 ዓ.ም 15.

² 'የ2004 ዓ.ም. የሜይዲይይ በዓልን አስመልክቶ በኢሰማኮ ስራ አስፈጻሚ የተሰጠ ጋዜጣዊ መግለጫ' (n 1 above) 7.

rights as per article 42 (1) (a) of the Constitution. The Constitution stipulates that categories of such government employees should be determined by further legislation. It has been more than 16 years since the adoption of the Constitution and such law has not yet materialized, which left a legislative void in the implementation and protection of a fundamental human right. This lack of legislation has contributed significantly to a deep rooted misunderstanding that government employees are not entitled to trade union rights despite the fact that it is a constitutionally guaranteed fundamental right.³

This article aims to bring light to the issue by providing a descriptive overview of sources of the right both at the national and the international level. It further seeks to show gaps in the protection and enhance awareness on the scope and content of trade union rights in general and the scope of entitlement of this right to government employees in particular. Finally, it aims to point out a way forward to uphold this fundamental human right by indicating possible steps that could be taken and the appropriate bodies that are responsible to take these steps. In order to achieve the above objectives, the article will discuss the history, definition, nature and components of trade union rights and particularly the scope of entitlement of these rights to government employees in Ethiopia by exploring legal basis for the right both in national legislations and international instruments adopted by Ethiopia.

2. Historical background

The history of trade unions all over the world is a history of struggle for greater social justice, both in societies and at the work place.⁴ Being the centers of capitalist development and industrialization, the United States and Great Britain were major states of strikes, unrest and a series of killings where workers lost their lives during the 19th century.⁵ In most cases, as individual

³ It has been more than 2 years now since the EWAC started vigorously advocating for the amendment of the Labour Proclamation 377/2003 to include civil servants for the purpose of trade union rights. Ato Kassahun Folo highlighted the wrong impression created by the statement made by some government officials regarding the non entitlement of trade union right for civil servants/government employees. 'የሰራተኞች የመደራጀት መብት ጥያቄዎችና ፈተናዎች' ሪፖርተር 21 ሚያዝያ 2004 ዓ.ም. www.ethiopianreporter.com/politics/295-politics/6117-2012-04-28-09-03-23.html (accessed on 3 August 2012).

⁴ M Serrano & E Xhafa et al (eds) *Trade unions and the Global Crisis: Labour's visions, strategies and responses ILO* (2011) Page xi.

⁵ J Apsel 'The Right to Work in Dignity: Human Rights and Economic Rights'.

workers were economically weak and possessed low bargaining power, they were exposed to exploitation and their lives and working conditions became so poor over time. Trade unionism is a response to such situations which forced workers to protect themselves from exploitation such as low pay, long working hours and generally appalling working conditions.⁶ Through time, organized through trade unions and by engaging in collective bargaining and social dialogue, workers were able to escape poverty, exploitation and the violation of their basic human rights.⁷ Accordingly, workers who were part of the movement to resist injustice and oppression and worked towards human solidarity and labour rights, take the credit for the beginning of trade union movements.

At the national level, the formal history of trade unions in Ethiopia dates back to the year 1963 when the monarchical rule of Haileselesie adopted the Labour Relations Decree of 210/1963. Though the 1955 Constitution guaranteed right to form workers' association, it was only after the Labour Relations Decree came into force that the 'Federation of Employers of Ethiopia' in 1963, and the 'Confederation of Ethiopian Labour Unions' (CELU) in 1964 came in to picture.⁸ The history before that was marked by the suppression of any movement close to unionism as criminal. This forced workers undertaking similar actions in to hiding and hold their meetings under the guise of social gathering in the compound of churches.⁹ Even after the adoption of the 1963 Decree, trade unions were not as strong and independent as they should have been, since the law was highly biased towards employers.¹⁰

The 1975 Workers Proclamation no 64 adopted under the military regime similarly did not bring about the desired change on the status of labour unions, rather unions were used as a tool for the promotion of socialist ideology and

<http://www.nyu.edu/projects/mediamosaic/thepriceoffashion/pdf/apsel-joyce.pdf> (accessed on 23 July 2012).

⁶ A Bersoufekad 'Ethiopia Trade Union Country Report' (November 2003). <http://www.fes-ethiopia.org/media/documents/social-development/Ethiopian%20Trade%20Union%20Country%20Report.pdf> (accessed on 18 August 2012).

⁷ (n 5 above) para 3.

⁸ 'National Labour Law Profile: Federal Democratic Republic of Ethiopia' http://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158894/lang--fr/index.htm (accessed on 10 August 2005).

⁹ (n 1 above) 7.

¹⁰ As above.

mouth piece of the government.¹¹After the overthrow of the Dergue regime in 1991, the law adopted to govern labour relations in Ethiopia was the Labour Proclamation no 42/1993. This law preceded the 1995 FDRE Constitution in its recognition of trade union rights.¹²This proclamation stayed into force until the adoption of Labour Proclamation no 377/2003. The 1995 Constitution, unlike the Constitutions in the previous regimes, comprehensively recognized rights of labour in general and trade union rights in particular.¹³

3. Conceptual framework

3.1. Definition of Labour Unions (Trade Unions)¹⁴

Blacks' Law dictionary defines a labour union as 'an organization formed to negotiate with employers, on behalf of workers collectively, about job-related issues such as salary, benefits, working hours and working conditions.'¹⁵ Several writers provide similar definition reflecting the nature and function of a labour union. The following definition of a labour union was developed by the Australian Bureau of Statistics and adopted by International Labour Organisation (ILO) in its 'World Labor Report 1997-1998':¹⁶

¹¹ The Labour Proclamation no. 64 of 1975, adopted during the Dergue regime provided no autonomy with regard to the conclusion of collective agreements as a form of independent control over working life exercised by freely constituted trade unions, there were no employers' organizations and no contractual freedom between employer and employee.

¹² Article 113 of the Labour Proclamation no 42/1993.

¹³ Fassil Nahum stated that the concern of the Constitution for labour rights emanated from the fact that labour has generally been the underdog at the hand of employers interested in profit maximization. He further stated that the struggle that were made to establish trade union rights i.e. the right to form or join trade unions, collective bargaining, the right to strike, was an important means to the recognition of rights at work such as healthy and safe work environment. F Nahum *Constitution for a Nation of Nations: The Ethiopian Prospect* (1997) 170.

¹⁴ The term labour union (British English) and trade union (American English) bear similar meaning throughout this article. i.e. legal instruments in Ethiopia including the Constitution uses the term 'Trade Union' while scholarly articles might use the term 'Labour Union' referring to similar concept.

¹⁵ The Dictionary provides definition for several form of unions such as closed unions (a union with restrictive membership requirements, such as high dues and long apprenticeship periods); company union (a union whose membership is limited to the employees of a single company / a union under company domination). BA Garner *Black's Law Dictionary 8th Edition* (2004) 4759.

¹⁶ Dr. MT Khan et al 'Role of Labour Unions for Human Resource Development (HRD) (Review Research)' (2012) 2:7 *International Journal of Business and Behavioral Science* 23.

[It] is an organization, consisting predominantly of employees, the principal activities of which include the negotiation of pay and conditions of employment for its members.

In addition to describing its composition and purpose, the following definition describes the means by which labour unions advance the interest of workers:

[It] is an organization based on membership of employees in various trades, occupations and professions, whose major focus is the representation of its members at the workplace and in the wider society. It particularly seeks to advance its interest through the process of rule-making and collective bargaining.¹⁷

On the other hand, the Labour Proclamation no 377/2003 defines trade unions simply as an organization formed by workers.¹⁸ The Proclamation states that, among other things, trade unions have the function of observing the conditions of work, respect the rights and interest of members and in particular, represent their members in collective negotiation and in labour disputes, engage in awareness creation of laws at work and laws in general and ensure their implementation by the members, initiate laws and regulations pertaining to workers and actively participate in the process of their adoption.¹⁹

The definitions provided above demonstrate that labour unions are a special type of association both in their defined composition (workers/employees)²⁰ and the modality of operation they follow to advance the interest of workers (collective bargaining/negotiation with employers).²¹ The legal regime regulating trade unions and other type of associations is also different. For

¹⁷ http://www.ilocarib.org.tt/Promalco_tool/productivity-tools/manual09/m9_4.htm (accessed on July 28 2012).

¹⁸ Article 113 (2) (1) of Labour Proclamation no 377/2003.

¹⁹ Article 115 of Labour Proclamation no 377/2003.

²⁰ This distinctive character of the composition of trade unions were also emphasised by the Supreme Court Cassation Division Judgment in the Case FDRE Ministry of Labour and Social Affairs v National Bank of Ethiopia Trade Union (2012) 55731. The Court highlighted that only 'workers/employees' as stated under article 42 of the Constitution can form/join trade unions. 'Federal Supreme Court Decisions: Volume 11' (2012) 209. <http://www.chilot.me/2012/02/11/new-federal-supreme-court-cassation-decisions-volume-11-12/> (accessed on July 20 2012).

²¹ The Court, citing the provisions of the Constitution (article 42) and Proclamation no 377/2003 stated that a trade union is different from other type of associations both in its organization, objective and modes of operation. (n 20 above) 208.

instance in Ethiopia, while other type of associations are registered under the Charities and Societies Proclamation no 621/2009 either as a 'Charity' or a 'Society' at the Charities and Societies Agency, a trade union that has membership of more than 50% support by workers is expected to register itself at the Ministry of Labour and Social Affairs (MoLSA).²²

The separate guarantee provided for the 'right to association for any cause or purpose' under article 31 and the right of workers '...to form associations to improve their conditions of employment and economic well-being' under article 42 of the Constitution is another evidence indicating the unique nature of the right to freedom of association enjoyed by workers through trade unions.²³

On the ground, trade unions function differently from other similar associations such as 'professional associations'. While a professional association is composed of group of professionals organized to practice and promote their profession,²⁴ trade unions are strictly composed of workers focused on advancing work related rights of their members. Moreover, trade unions are more effective in that they deal with specific work-related issues or rights, taking on an active role in the day-to-day work life of employees.²⁵ They further possess the legal right to negotiate on behalf of member employees i.e. on payment, conditions of work and key policies at work.²⁶ They also undertake the function of representing workers in labour dispute which provides workers with strong bargaining power.²⁷

On the other hand, professional associations tend to address issues beyond the confine of the work place. They take more of an advisory or educational role and the tactics they use are mostly limited to dissemination of information,

²² Article 115 (b) of Labour Proclamation 377/2003. According to article 30(5) of Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation no 691/2010 the Ministry of Labour and Social Affairs is the government organ mandated with the registration of workers and employers associations.

²³ The Supreme Court cassation Division also underlined this point in its decision in FDRE Ministry of Labour and Social Affairs v National Bank of Ethiopia Trade Union. (n 20 above).

²⁴ Garner (n 15 above) 378.

²⁵ 'The ILO and Public Service' a UNISON fact sheet'. www.unison.org.uk/file/ILO.pdf (accessed on 03 August 2012).

²⁶ As above.

²⁷ M Guadagni *Ethiopia Labour Law Handbook* (1972) 101.

holding discussion platforms, establishment of standards and improve public relations through publication and lobbying.²⁸

3.2. Categories of workers in Ethiopia

Broadly speaking, workers in Ethiopia can be categorized on the basis of their employment status as government employees (civil servants) and private sector employees.²⁹ Government employees are those working in government institutions excluding government officials.³⁰ The Civil Servant Proclamation no 515/2007, which regulates the federal civil service sector, also defines 'Civil Servant' as a person employed permanently by federal government institution.³¹ The definition excludes the following employees and officials:³²

- Government officials with the rank of State Minister, Deputy Director General and their equivalent and above;
- Members of the House of Peoples' Representatives and the House of the Federation;
- Federal Judges and Prosecutors;
- Members of the Armed Forces and the Federal Police including other employees governed by the regulations of the Armed Forces and the Federal Police;

²⁸ TM Hoveka 'Professional Associations or Unions? A Comparative Look' (1997) 46:2 *Library Trends* 242.

²⁹ The term 'government employees' 'public employees' 'civil servants' all bear similar meaning and refer to those employees in government institutions. In Amharic 'Yemenegist Serategnoch' is used in legislations and in the Constitution itself to represent the above mentioned English terms i.e. The Amharic translation of the 'Federal Civil Servants Proclamation' is 'Ye Federal Mnegset Serategnoch Awaj'.

³⁰ Article 2 (1), the Federal Courts Proclamation no 25 (1996) provides definition for the term 'Officials of the Federal Government'. Accordingly, members of the House of Peoples' Representatives and the House of the Federation, officials of the Federal Government above ministerial rank, ministers, Judges of the Federal Supreme Court and other officials of the Federal Government of equivalent rank' are officials of the government. A similar enumeration of high level government officials is also provided under other legislations i.e. Article 2 (5) of the Revised Federal Ethics and Anti-Corruption Commission Establishment Proclamation no 433/2005.

³¹ Article 2 (1) of the Civil Servants Proclamation 515/2007. The term 'Government Institution' is further defined under sub article 3 as '...any federal government office established as an autonomous entity by a proclamation or regulations and fully or partially financed by government budget; included in the list of government institutions to be drawn up by the Council of Ministers.'

³² Article 2 of the Civil Servants Proclamation 515/2007.

- Employees excluded from the coverage of the Proclamation by other appropriate laws.

At the federal level all employment relationship of civil servants as defined above is governed by Proclamation no 515/2007, while the employment relationships of civil servants at the state level is expected to be regulated by laws that are adopted by states themselves according to article 52 (2) f of the Constitution.³³

Another major category of employees is the category of employees at the private sector, which for the purpose of the labour law includes employees of public enterprises.³⁴ These categories of employees are governed by the Labour Proclamation no 377/2003, a law which also provides for trade union rights of workers in Ethiopia as guaranteed under article 42 of the Constitution.³⁵

Another category of workers are those employees working in essential public service undertakings.³⁶ Though they are not regulated by a separate law they

³³ It must be noted, however, that all arguments and conclusions in support of trade union rights of civil servants in this article are equally applicable to civil servants at the regional level. Trade union rights are guaranteed under the supreme law of the land, the FDRE Constitution and international human rights instruments, legally binding instrument which have universal application throughout the nation. Accordingly a state cannot act otherwise and resort to non recognition of trade union rights for civil servants found under its jurisdiction.

³⁴ 'Public Enterprise' or 'Yemenegist Yelemat Dirijit' was defined as 'any Federal Public Enterprise or Share Company which is fully or partly owned by the Government.' Some of the distinctive characteristics of public enterprises include: their profit making aim which is different from government agencies entrusted with the task of performing essentially regulatory function with the aim of civil service; the manner of money allocation from the state to public enterprises which is basically a onetime thing provided for the former as a working capital unless the government decides to subsidize it unlike government agencies whose budget is allocated every year; payment of income taxes and manners of books and account keeping. D. Asrat & A Shiferaw 'Law of Public Enterprises and Cooperatives: Teaching Material.' <http://chilot.files.wordpress.com/2011/06/public-enterprises-and-cooperatives.pdf> (accessed 02 August 2012).

³⁵ The Proclamation defines 'employer' as a person or an undertaking who employs one or more person' and 'undertaking' as 'any entity established under united management for the purpose of carrying on any commercial, industrial, agricultural, construction or any other lawful activity'. Article 2 (1) (2) of the Labour Proclamation no 377/2003.

³⁶ Essential Services are 'those the interruption of which would endanger the life, personal safety or health of the whole or part of the population'. L Swepston

are treated differently from other category of workers when it comes to enjoyment of trade union rights due to the special nature and importance of their tasks. According to article 136 (2) of the Labour Proclamation no 377/2003 essential public service undertakings has been defined as those services rendered by undertakings to the general public and includes the following:

- air transport;
- undertakings supplying electric power;
- undertakings supplying water and carrying out city cleaning and sanitation services;
- urban bus services;
- hospitals, clinics, dispensaries and pharmacies;
- fire brigade services; and
- telecommunication services;

As it can be inferred from the provision, the list is neither exhaustive nor limited to services provided by only private undertakings.

In the following sections, the article will discuss trade union rights and the legal basis of these rights of government employees in Ethiopia. Legislative framework found both at the international and national level will be analysed.

4. The right to work

The right to work is fundamental to human dignity and central to the survival and development of human personality.³⁷The right to work is interrelated and interdependent with other human rights such as the right to life, the highest attainable standard of physical and mental health and adequate standard of living, the right to education, freedom of movement, and freedom of association among other rights.³⁸

Various international and regional human rights instruments adopted by Ethiopia guarantee the right to work including the Universal Declaration of Human Rights (UDHR) (1948), the International Covenant on Economic Social and Cultural Rights (ICESCR) (1966) and the African Charter on Human

'Human rights law and freedom of association: Development through ILO supervision' (1998) 137:2 *Interantional Labour Review* 188.

³⁷ 'The Michigan Guideline on the Right to Work' www.refugee.org.nz/Michigan/Work.html 'accessed on 25 July 2012'.

³⁸ See further article 5 of the Vienna Declaration and Program of Action (1993) about the universality, indivisibility and interdependence of all human rights.

Peoples' Rights (ACHPR) (1981).³⁹The right to work is also guaranteed under article 42 of the Constitution. The provision provides protection for the following fundamental components of the right to work:

- trade union rights including the right to strike
- the right of women to equal pay for equal work
- defined working hours, breaks, leisure, periodic leave with pay, paid public holidays and a safe and healthy working environment

In addition to human rights instruments guaranteeing the right to work in general, the separate elements of rights at work are protected by international labour standards especially by the eight fundamental ILO conventions. Ethiopia is member of ILO since 1923 and has ratified its eight core labour conventions. The following table shows ILO instruments ratified by Ethiopia.

Ethiopia ILO Labour Convention Ratification Status⁴⁰			
No	Cn no	Convention Title	Date of Ratification
1.	C. 2	Unemployment Convention, 1919	11.06.1966
2.	C. 11	Right of Association (Agriculture) Convention, 1921	4.06.1963
3.	C. 14	Weekly Rest (Industry) Convention, 1921	28.01.1991
4.	C. 29	Forced Labour Convention, 1930	2.09.2003
5.	C. 80	Final Articles Revision Convention, 1946	23.07.1947
6.	C. 87	Freedom of Association and Protection of the Right to Organise Convention, 1948	4.06.1963
7.	C. 88	Employment Service Convention, 1948	4.06.1963
8.	C. 98	Right to Organise and Collective Bargaining Convention, 1949	4.06.1963
9.	C. 100	Equal Remuneration Convention, 1951	24.03.1999

³⁹ Article 23 and 24 of the UDHR, Article 6 and 7 of the ICESCR, Article 15 of the ACHPR respectively guarantees the right to work.

⁴⁰ 'International Labour Standards List of ratifications of International Labour Conventions'

<http://webfusion.ilo.org/public/applis/appl-byCtry.cfm?lang=EN&CTYCHOICE=0780> (accessed on 10 August 2012).

10.	C. 105	Abolition of Forced Labour Convention, 1957	24.03.1999
11.	C. 106	Weekly Rest (Commerce and Offices) Convention, 1957	28.01.1991
12.	C. 111	Discrimination (Employment and Occupation) Convention, 1958	11.06.1966
13.	C. 116	Final Articles Revision Convention, 1961	11.06.1966
14.	C. 138	Minimum Age Convention, 1973 <i>Minimum age specified: 14 years</i>	27.05.1999
15.	C. 144	Tripartite Consultation (International Labour Standards) Convention, 1976	6.06.2011
16.	C. 155	Occupational Safety and Health Convention, 1981	28.01.1991
17.	C. 156	Workers with Family Responsibilities Convention, 1981	28.01.1991
18.	C. 158	Termination of Employment Convention, 1982	28.01.1991
19.	C. 159	Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983	28.01.1991
20.	C. 181	Private Employment Agencies Convention, 1997	24.03.1999
21.	C. 182	Worst Forms of Child Labour Convention, 1999	2.09.2003

The right to work as guaranteed under various international and regional human rights instruments obliges states to take measures with a view to move towards full and productive employment. At the core of the right to work is freedom to gain a living by work freely chosen or accepted.⁴¹This is the first and fundamental component of the right to work encompassing access to employment without discrimination and free choice of work and entitlement to a supportive structure that aids access to employment, including access to vocational training.⁴²

The other significant component of the right to work is contained under bundle of rights that can be summarized by the term 'rights at work'. Long hours of hazardous work and lack of decent working conditions resulting in increased mortality and morbidity of workers and the physical and mental repercussions of such exploitation on peoples' lives and those of their families and communities is the background of the struggle for recognition of rights at

⁴¹ (n 37 above).

⁴² Article 6 (1) (2) of the ICESCR.

work.⁴³The following are the most important components of rights at work guaranteed under the various human rights instruments:⁴⁴

- the right to safe, hygienic and dignified working conditions;
- the right to work that is freely chosen or accepted; (protection against forced labour)
- the right to adequate remuneration;
- the right to a limited workday and remunerated periods of rest;
- the right to equal pay for work of equal value;
- the right to equal treatment; and
- the right to freedom of association and collective bargaining.

While all the above listed rights are guaranteed for individual workers, given the fact that employment relationship creates a degree of dependency of the employee on his/her employer, the power of individual workers to demand and enforce their rights at work has proven to be weak. Accordingly, as it has been discussed on the history of trade unions, collective power of workers to 'improve their conditions of employment and economic well being'⁴⁵ became necessary.

5. Trade union rights

The right of workers to form or join trade unions is part of the right to work and is guaranteed under various international and regional human rights instruments and national laws. In general, the components of trade union rights are the following.⁴⁶

- the right of workers to join and be active in trade union
- the right of workers and unions to organize (i.e. to form trade union or federation and recruit members)
- the right of a union to determine its own constitution and membership

⁴³ Apsel (n 5 above).

⁴⁴ The rights identified as elements of the right to work are found inculcated in international and regional human rights instruments such as the UDHR (article 23,24), ICESCR (article 6,7,8), ACHPR (article 15) and ILO Conventions adopted on specific rights.

⁴⁵ Article 42 (1) of the Constitution.

⁴⁶ KD Ewing & J Hendy 'Trade Union Rights: The short story'
www.ier.org.uk/sites/ier/Trade%20Union%20Rights%20-%20The%20Short%20Story_0.pdf (accessed on 2 August 2012).

- the right of a union to decide for itself what activities to undertake, including organizing industrial action
- the right of workers to take industrial action
- the right to free collective bargaining

The above listed components of trade union rights are guaranteed under various international human rights instruments adopted by Ethiopia. Accordingly, the state has three types of obligations towards enforcing this right: obligation to respect, obligation to protect and obligation to fulfill. The obligation to respect requires states to refrain from undertaking any action that impairs the enjoyment of trade union rights while the obligation to protect demands that states protect right holders from third party violation of rights by taking legislative, administrative and other necessary measures. The third obligation which is the obligation to fulfill requires states to take relevant measure towards the enjoyment of rights by right holders.⁴⁷

5.1. Legal Framework at the International Level

5.1.1. Universal Declaration of Human Rights (UDHR)

A significant human rights instrument that enshrined trade union rights at the international level is the UDHR. Though it is a declaration and does not have a binding nature it is the most influential human rights document that laid down the ground for the adoption of other binding human rights instruments such as the ICESCR which is a binding legal instrument guaranteeing trade union rights. Article 23 of the UDHR guarantees the right to work in general and trade union rights in particular. The provision states that ‘everyone has the right to form and to join trade unions for the protection of his interests’⁴⁸ in absolute terms unlike other human rights instruments which place exception of some kind.

⁴⁷M Sepulveda & Tv Banning et al *Human rights reference handbook* (2004) 16.

⁴⁸ Article 23 of the UDHR. It is to be recalled that Ethiopia is one of the 48 states voting in favor of the UDHR during its adoption in 1948. <http://www.globalization101.org/universal-declaration-of-human-rights/> (accessed on 7 July 2012).

5.1.2. International Convention on Economic, Social and Cultural Rights (ICESCR)

The Committee on Economic Social and Cultural Rights (Committee on ESCR), which is part of the United Nations (UN) human rights monitoring system and the body assigned to monitor the implementation of the ICESCR, acknowledged the fundamental role trade unions play in ensuring the respect of the right to work at the domestic and international level.⁴⁹ ICESCR explicitly guarantees the following trade union rights under article 8:⁵⁰

- the right of everyone to form or join trade union of his/her choice for the promotion and protection of his economic and social interests;
- the right of trade unions to establish national federations or confederations or join international trade organizations;
- the right of trade unions to function freely;
- the right to strike, provided that it is exercised in conformity with the laws of the particular country.

The ICESCR guarantees trade union rights to 'everyone' including government employees. Any restriction placed on the exercise of these rights should be 'prescribed by law and must be necessary in a democratic society in the interest of national security or public order or for the protection of the rights and freedom of others.'⁵¹ However, states are given the discretion to restrict the exercise of these rights by 'members of the armed forces or of the police or of the administration of the state.'⁵²

The ICESCR did not define what it meant by 'members of the administration of the state'. However, similar stipulation is found under ILO Convention no 98 (Cn 98) which states that 'the Convention does not deal with the position of public servants engaged in the administration of the state'.⁵³ The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has explained that restricting the rights of workers employed in the 'public administration of the state' to form and join trade unions is compatible with international standards only if 'the

⁴⁹ UN Committee on Economic, Social and Cultural Rights (Committee on ESCR): General Comment No. 18 (24 November 2005) 13.

⁵⁰ Article 8 of the ICESCR.

⁵¹ Article 8 (1) (a) of the ICESCR.

⁵² Article 8 of ICESCR.

⁵³ Article 6 of ILO Cn 98.

legislation...limits this category to persons exercising senior managerial or policy-making responsibilities' and these workers 'are entitled to establish their own organizations.'⁵⁴

According to article 2 of the ICESCR, states have an obligation to take steps including adopting legislative measures with a view to the realisation of rights enshrined in the Convention. States also have an obligation of reporting to the ICESCR monitoring Committee, the steps they have taken to enforce rights enshrined in the Convention, including measures they took towards guaranteeing trade union rights.⁵⁵

5.1.3. Standards under the International Labour Organisation (ILO)

The ILO is a specialized agency of the UN specifically concerned in protecting those human rights related to labor conditions.⁵⁶ The ILO Constitution establishing the Organisation was adopted in 1919 and freedom of association and collective bargaining are fundamental rights rooted in the Constitution⁵⁷ and the Declaration of Philadelphia annexed thereto. ⁵⁸ In practice, the Organisation underlined the vitality of these rights by undertaking extensive standard-setting functions and establishing various supervisory mechanisms

⁵⁴ Human Rights Watch 'Deliberate Indifference: El Salvador's Failure to Protect Workers' Rights' (2003)15:5(B) 10. www.hrw.org/sites/default/files/reports/elsalvador1203.pdf (accessed on 10 July 2012).

⁵⁵ Article 16 of the ICESCR.

⁵⁶ It should be noted, however, that the ILO only joined the UN in 1946 after 26 years of its establishment in 1919. www.ilo.org/declaration/thedeclaration/history/lang--en/index.htm (accessed on 25 July 2012).

⁵⁷ In its Preamble the ILO Constitution (1919) recognizes the principle of freedom of association as one of the means of improving conditions of workers, bringing social justice and ensuring peace.

⁵⁸ The Declaration of Philadelphia (1944), which forms part of the ILO Constitution, asserts that among other freedoms, freedom of association is essential for sustained progress and that it is one of the fundamental principles on which the ILO is based.

dedicated solely to monitor the implementation of freedom of association principles.⁵⁹

The two most significant ILO instruments defining the content and scope of trade union rights of workers are the Freedom of Association and Protection of the Right to Organise Convention no.87, 1948 (Cn 87), and the Right to Organise and Collective Bargaining Convention no. 98 (1949) (Cn 98).⁶⁰ In addition to these conventions the ILO Declaration on Fundamental Principles and Rights at Work (the Declaration) adopted in 1998 was also a significant step forward in the recognition of freedom of association and the effective recognition of the right to collective bargaining (trade union rights) as one of the four principal values to which all ILO members are committed to.⁶¹ This commitment extends to all state members of ILO regardless of whether they are party to relevant ILO conventions. According to article 2 of the Declaration states has an obligation to 'respect, to promote and to realize, in good faith and in accordance with the Constitution of ILO' these four principal values.⁶²

Another prominent aspect of trade union rights standards under the ILO is the supervisory mechanisms of the Organisation. The ILO has a very strong enforcement mechanism for the standards it adopts in general and on freedom of association principles in particular. These multi-layered supervisory mechanisms were praised by various writers as being the most efficient and effective enforcement mechanism at the international level.⁶³ These mechanisms can be classified as regular and special system of supervision. The regular supervision system contains the Committee of Experts on the Application of Conventions and Recommendations (CEACR)⁶⁴ and the International Labour

⁵⁹ 'Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of ILO' (2006) *Fifth revised edition 2*. (hereinafter referred as 'Digest')

⁶⁰ These Conventions will be further analysed in the subsequent section.

⁶¹ The other fundamental principles are (also referred as Core Labour Rights): the elimination of all forms of forced or compulsory labor; the effective abolition of child labor; and the elimination of discrimination in respect of employment and occupation. Article 2 of the Declaration (1998).

⁶² Article 2 of the Declaration (1998).

⁶³ VA Leary 'Lessons from the Experience of the International Labour Organisation' in P Alston (edtd) *The United Nations and Human Rights: A critical appraisal* (1992) 581.

⁶⁴ Its main mandate includes examining government reports, receiving workers' and employers' organizations comments and consider it together with the report of governments, request states which are not fully applying the relevant freedom of association standards to take the necessary action to do so. D Tajgman & K Curtis

Conference Committee (CC) on the Application of Standards.⁶⁵ The regular supervisory mechanism is dependent on the reports submitted by state parties according to article 22 of the ILO Constitution and observations sent by workers' organisations and employers' organisations.

The special system of supervision contains the Committee on Freedom of Association (CFA)⁶⁶ Fact-finding and Conciliation Committee on Freedom of Association,⁶⁷ Article 24 representation, ⁶⁸Article 26 complaint.⁶⁹ Unlike the regular system of supervision, these special procedures are based on the submission of a representation or a complaint.

Freedom of Association: A user's guide Standards, Principles and Procedures of the International Labour Organisation (2000)1.

⁶⁵ The Conference Committee on the Application of Standards (CC) is a standing tripartite body of the ILO which examines, each year, the report published by the CEACR. See further 'Conference Committee on the Application of Standards: Extracts from the record of procedures' www2.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_116491.pdf (accessed on 3 August 2012).

⁶⁶ The Governing Body (GB) of the ILO set up, in 1951, a Committee on Freedom of Association (CFA). The CFA examines complaints containing allegations of violations of the Conventions on freedom of association, regardless of whether or not the countries concerned have ratified those instruments. The consent of the governments concerned is not necessary in order for these complaints to be examined: the legal basis for this concept resides in the Constitution of the ILO and the Declaration of Philadelphia, according to which member States, by virtue of their membership in the Organization, are bound to respect the fundamental principles contained in the ILO Constitution, particularly those concerning freedom of association. See further Tajman & Curtis (n 64 above) 58.

⁶⁷ Ratification of the relevant convention is not required if the state agrees to the jurisdiction of the Committee.

⁶⁸ As per article 24 of the ILO Constitution, in the event of any representation being made to the ILO by an industrial association of employers or of workers that any of the members of the Organization has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party the ILO GB may communicate the representation to the government against which it is made, and may invite that government to make statement on the subject.

⁶⁹ Where the government whose reply was sought by the GB as per article 24 fails to forward a timely response or the reply is not deemed to be satisfactory, the GB of the ILO holds the right to publish the representation and the reply by the government. In addition its publishing mandate, the GB may establish a Commission of Inquiry (COI) as an ad hoc body. Tajman & Curtis (n 64 above) 1.

Reports, recommendations and decisions of these supervisory organs bear great significance in understanding the practical effect of the various ILO conventions and define the scope of rights guaranteed within. The influence of these reports, recommendations and decisions is primarily moral and the objectivity of the content and the perseverance of the bodies to follow up on concrete results coupled with the weight of public opinion is the most valuable means at the disposal of these supervisory mechanisms.⁷⁰

The issue of trade union rights of civil servants has been dealt with by the various ILO supervisory bodies in various occasions. The recommendations and decisions of these supervisory bodies had significant practical influence and impact on state practice over the years.⁷¹ Accordingly, in addition to provisions of relevant conventions, reports and digest of decisions and principles by these supervisory bodies, especially those adopted by the CEACR and CFA are employed to elaborate on the concept and content of freedom of association of civil servants throughout this article. Particularly the 'Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO' is used as a major reference document, as it collects and summarize important decisions made by the CFA about the application of freedom of association principles in cases brought before it.

- Freedom of Association and Protection of the Right to Organise Convention No 87⁷²

The very foundation of the trade union movement is the need for workers to join forces in their collective defense and for the advancement of their interests.⁷³ Cn No. 87 promotes recognition of trade union rights of workers and urges states to take measures aimed at protecting these rights. The Preamble of the Convention refers to the Preamble of the ILO Constitution declaring that

⁷⁰ Leary (n 63 above) 608.

⁷¹ Tajgman & Curtis (n 64 above) 1.

⁷² The Convention was adopted by the 31st Session of the International Labour Conference, in June 1948, by 127 votes to 0, with 11 abstentions. Thus the principles and guarantees embodied in the Convention were endorsed by an overwhelming majority of the delegates to the Conference. Ethiopia has ratified Cn 87 on 4 June 1963 which makes it part of the law of the land as per article 9 (4) of the Constitution.

⁷³

http://training.ilo.org/ils/foa/library/labour_review/1998_2/english/dunning_en.html (accessed on 1 August 2012).

'recognition of the principle of freedom of association is a means of improving conditions of labor and of establishing peace'.⁷⁴

Under article 2, the Convention provides for the first fundamental guarantee towards freedom of association in the following terms:

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Despite the overall clarity of the article, the question 'which employees are entitled to the right?' has been frequently asked. In principle, distinction based on occupational categories is prohibited and 'all workers, without distinction whatsoever, including without discrimination in regard to occupation, should have the right to establish and join organizations of their own choosing.'⁷⁵ Accordingly, the establishment by the state, of a limited list of occupations with a view to recognizing the right to associate would be contrary to this principle.

The wording of article 2 of Cn no 87, stating that 'workers and employers, without distinction whatsoever,'⁷⁶ have the right to establish and join organizations of their own choosing, affirms this principle and clearly extends the guarantee to both private sector and government employees.⁷⁷ Apparently, it was deemed inequitable to draw any distinction in trade union matters between workers in the private sector and government or public sector employees. After all the main rationale behind trade unionism is defending occupational interest, i.e. an interest which both private sector and public sector employees have in common.⁷⁸

⁷⁴ 'Considering that the Preamble to the Constitution of the International Labour Organization declares recognition of the principle of freedom of association to be a means of improving conditions of labour and establishing peace;' Preamble of Cn no 87.

⁷⁵ Digest (n 59 above) para 216.

⁷⁶ Article 2 of Cn 87.

⁷⁷ It should be noted that all workers, without distinction whatsoever, whether they are employed on a permanent basis, for a fixed term or as contract employees are entitled to the right to form or join trade union of their own choosing. Digest (n 59 above) para 255.

⁷⁸ Digest (n 59 above) para 218.

The only exception to this rule is the one provided under article 9 of Cn 87 which states that 'the extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations'.⁷⁹ However, sub article 2 stresses that the ratification of the Convention should not be interpreted in such a way that these groups will lose a right to freedom of association previously guaranteed by any existing law, award, custom or agreement.⁸⁰

Article 3 of the Convention provides for the right of workers and their organization to draw up their constitutions and rules, freely electing their representatives, organizing their administration and activities and formulating their programs.⁸¹ This provision thereby guarantees organizations against any interference by the authorities which would impede the lawful exercise of these rights.

Another protection to the right from an arbitrary administrative act is the limitation of the power of the administrative authorities to take a unilateral act of compelling the dissolution of an organization. Article 4 states that workers and employers organizations will not be liable to be dissolved or suspended by administrative authority and their dissolution can only be pronounced by ordinary courts of law.⁸² States bear the obligation of taking all the necessary and appropriate measures to ensure that workers and employers exercise their right to organize freely. These measures include legislative, administrative, budgetary or other appropriate actions. On the other hand, states should also refrain from taking steps that might hamper, harm or curtail the enjoyment of these rights.

- The Right to Organise and Collective Bargaining Convention no. 98 (1949)⁸³

Though Cn 87 provides protection for the rights of workers to form or join trade union, the protection was not enough by itself since trades union members were exposed to several types of rights violations as a result of their trade union activities. Accordingly, the necessity of adopting a framework to

⁷⁹ However, it should be noted that civilians working in the services of the army have the right to form trade unions. Digest (n 59 above) 229.

⁸⁰ Article 9 (2) Cn. 87.

⁸¹ Article 3 of Cn. 87.

⁸² Article 4 of Cn. 87.

⁸³ The Right to Organise and Collective Bargaining Convention (No. 98) was adopted at the 32nd Session of the International Labour Conference (June 1949).

protect workers in trade unions was felt by ILO which adopted another binding document, the Right to Organise and Collective Bargaining Convention no 98 (1949). In addition to its protection against anti-union discrimination, Cn 98 provides for other fundamental trade union rights; protection against acts of interference in trade union activities and the right of workers to be represented by trade unions in negotiating conditions of employment collectively (collective bargaining).

The first of these guarantees is embedded under article 1(1) of the Convention which states in terms of general principle that workers have the right to enjoy adequate protection against acts of anti-union discrimination in respect of their employment. Sub article 2 states that such protection should apply more particularly, in respect of acts calculated to:

- make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
- cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours

Apart from protection against anti-union discrimination, article 2 provides for prohibition against interference in employers organization by workers organization or agents and vice versa. This prohibition in particular applies to acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organisations or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organizations.⁸⁴

The other significant component of trade union rights guaranteed under Cn 98 is the right to bargain freely with employers with respect to conditions of work. Collective bargaining is the primary means through which trade unions

⁸⁴ Article 2(2) of Cn 98. According to article 3, the state is expected to provide for machinery appropriate to national conditions, where necessary, for the purpose of ensuring respect for the anti-unionism and non-interference guarantees provided for under article 1, and 2 of the Convention.

safeguard the interest of their members.⁸⁵As per article 4 of Cn 98, states are required to take:

measures appropriate to national conditions wherever necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.⁸⁶

Even before Cn 98 was adopted it was clearly indicated in the preliminary work of the adoption of Cn87 that 'one of the main objects of the guarantee of freedom of association is to enable employers and workers to combine to form organisations independent of the public authorities and capable of determining wages and other conditions of employment by means of freely concluded collective agreements'.⁸⁷Cn 98 gives a strong protection to this fundamental objective of trade unionism.

The scope of workers entitled to the right of collective bargaining is an issue that is dealt with the CFA in several occasions, for there has been inquires as to the status of public servants (government employees) from various actors. The CFA stated that all 'public service workers' other than those engaged in the 'administration of the state' should enjoy collective bargaining rights and Cn 98 article 4 also applies to them. The CFA emphasized that:

a distinction must be drawn between, on the one hand public servants who by their functions are directly engaged in the administration of the State (that is, civil servants employed in government ministries and other comparable bodies), as well as officials acting as supporting elements in these activities and, on the other hand, persons employed by the government, by public undertakings or by autonomous public institutions⁸⁸

⁸⁵ International Commission for Labour Rights 'The denial of public sector collective bargaining rights in the state of North Carolina (USA): Assessment and report' (14 June 2006).

http://www.laborcommission.org/ICLR_-_North_Carolina.pdf (accessed on 24 August 2012).

⁸⁶ Article 4 of Cn 98.

⁸⁷ Digest (n 59 above) 882.

⁸⁸ Digest (n 59 above) 887.

According to the CFA only the first category of workers are excluded from the scope of Cn 98 i.e. public servants who by their functions are directly engaged in the administration of the State as well as officials acting as supporting elements in these activities.⁸⁹ What originally was inserted to exclude 'public officials' and 'senior civil servants' has been interpreted over the year by most governments as excluding any worker delivering public service⁹⁰ which made the CFA take the initiative of elaborating on the issue and define the scope of permitted categories of workers that can be excluded.

In addition to a generalized comment on the issue of public sector servants, the CFA focused on the rights of groups whose right has been disputed. Accordingly, the CFA affirmed the right of workers such as state-owned commercial enterprises, workers found in the education sector (teachers with civil servant status),⁹¹ and the staff of national radio and television institution to collectively bargain on their conditions of work.

The 'subject matter' of collective bargaining is another issue that needs focus. As per the CFA, 'matters which might be subject to collective bargaining include the type of agreement to be offered to employees or the type of industrial instrument to be negotiated in the future, as well as wages, benefits and allowances, working time, annual leave, selection criteria in case of redundancy, the coverage of the collective agreement, the granting of trade union facilities, including access to the workplace beyond what is provided for in a legislation etc.'⁹² It has been further emphasized that these matters should not be excluded from the scope of collective bargaining by law.

Similar with article 9 of Cn. 87, article 5 states that the extent of the application of the convention to the armed forces and the police is to be determined by national laws or regulations. Ethiopia is party to Cn 98, therefore provisions within the convention dealing with the right of government employees and the scope of rights detailed by the CFA is directly relevant to government employees in Ethiopia.⁹³ This further reinforces the Constitutional guarantee and helps to understand the legal scope of the right at the national level.

⁸⁹ As above.

⁹⁰ 'The ILO and Public Service' a UNISON fact sheet. www.unison.org.uk/file/ILO.pdf (accessed on 03 August 2012).

⁹¹ Digest (n 59 above) para 901.

⁹² Digest (n 59 above) para 913.

⁹³ Both in the Convention and the illustrations provided by the CFA terms such as 'public employees' and 'civil servants' has been used while the Ethiopian Constitution generally uses the term 'government employees', however when it

- The right to strike

The right to strike is an 'intrinsic corollary to the right to organize protected by Cn 87' through which workers and their organizations may promote and defend their economic and social interests.⁹⁴ On many occasions the CFA underlined that the right to strike do not solely concern the betterment of working conditions only. Accordingly, workers seeking solutions to economic and social policy questions and major social and economic policy trends which have direct impact on their member and on workers in general and in particular matters regarding employment, social protection and standard of living are legitimate objects for the right to strike.⁹⁵ The CFA emphasized that conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and legal procedures for declaring a strike should not be so complicated as to make it practically impossible to declare a legal strike.⁹⁶

Like all other human rights, the right to strike is not an absolute right. Especially in case of civil servants 'recognition of the principle of freedom of association does not necessarily imply the right to strike'.⁹⁷ Accordingly, the CFA stated that the right to strike can be restricted or even prohibited:

- a. In the public service only for public servants exercising authority in the name of the State (these are officials working in the administration of justice and the judiciary, customs officers and the like who exercise authority in the name of the state)⁹⁸
- b. In essential services, in the strict sense of the term (these are services the interruption of which would endanger the life, personal safety or health of the whole or part of the population)

comes to derivative legislations even in the Ethiopian legal frame work terms such as civil servants and government employees is used to refer to employees of institutions who work in institutions which are financed fully or partially by the government. Other categories of 'workers functioning in the name of the state' or 'public officials' are also recognized under Ethiopian legal framework. Definition and classification of the same is provided in this article under section 3.2 'Categories of Workers'.

⁹⁴ Digest (n 59 above) para 523.

⁹⁵ Digest (n 59 above) para 526, 529.

⁹⁶ Digest (n 59 above) para 547,548.

⁹⁷ Public servants in state-owned commercial or industrial enterprises should have the right to negotiate collective agreements, enjoy suitable protection against acts of anti-union discrimination and enjoy the right to strike, provided that the interruption of services does not endanger the life, personal safety or health of the whole or part of the population. Digest (n 59 above) para 572,577.

⁹⁸ Digest (n 59 above) para, 578,579.

With regard to essential services the CFA put down some criterion by which what is 'essential' could be identified. Accordingly, the existence of a clear and imminent threat to the life, personal safety or health of the whole or part of the population could justify the labeling of a service as 'essential'.⁹⁹ However this is not a clear cut criterion since what is essential is determined to a large extent by the situation prevailing in the particular country and what is identified as a non-essential service may prove essential given the length of time the strike goes on.¹⁰⁰ The CFA listed services that might right away fall under the purview of essential services as follows:¹⁰¹

- the hospital sector
- electricity services
- water supply services
- the telephone service
- the police and the armed forces
- the fire-fighting services
- public or private prison services
- the provision of food to pupils of school age and the cleaning of schools
- air traffic control

The CFA however did not keep silent on the issue of prohibition or restriction of the right to strike and leave workers without a weapon to advance their interests. Accordingly, the state has an obligation to accompany this measure with a strictly impartial conciliation and arbitration procedure and a prohibition on the part of the employer from taking lock out measures.¹⁰²

To conclude, Ethiopia is party to both Cn no 87 and Cn 98; accordingly all the guarantees provided for trade union rights of government employees are directly applicable to government employees in Ethiopia. For the time being there is no legislation adopted to provide for trade union rights of government employees. Nevertheless, when one is adopted in the future, it must be in line with these two conventions and the scope of rights they provide.

⁹⁹ Digest (n 59 above) para 581.

¹⁰⁰ Digest (n 59 above) para 581,582.

¹⁰¹ Similar list is also found under article 136 (2) of the Labour Proclamation no 377/2003.

¹⁰² Digest (n 59 above) para 600,601.

5.2. *Legal Framework at the National Level*

5.2.1. **The Constitution of the Federal Democratic Republic of Ethiopia**

In Ethiopia, the Constitution is the supreme law of the land and any law, customary practice or a decision of an organ of state or a public official which contravenes the Constitution has no effect.¹⁰³ The bill of rights of the Constitution containing list of fundamental rights and freedoms is found under Chapter Three. Under this chapter, article 42 (1) (a) (b) of the Constitution explicitly guarantees trade union rights. Text of the provision is reproduced below:¹⁰⁴

- 1 (a) Factory and service workers, farmers, farm laborers other rural workers and government employees whose work compatibility allows for it and who are below a certain level of responsibility, have the right to form associations to improve their conditions of employment and economic well being. This right includes the right to form trade unions and other associations to bargain collectively with employers or other organizations that affect their interests.
- (b) Categories of persons referred to in paragraph (a) of this sub-Article have the right to express grievances including the right to strike.

As it can be inferred from the provision significant elements of trade union rights such as the right to form trade unions and other associations, to collectively bargain and the right to strike are fully protected. Apart from guaranteeing trade union rights, the Constitution stipulates the category of workers entitled to the rights i.e. factory and service workers, farmers, farm laborers other rural workers and government employees whose work compatibility allows for it and who are below a certain level of responsibility¹⁰⁵. The Constitution stipulates that further legislation should be adopted with a view to determine the category of government employees who

¹⁰³ Article 9 (1) of the Constitution.

¹⁰⁴ Article 42 (1) (a) (b) of the Constitution.

¹⁰⁵ It must be noted here that the Constitution limits the category of employees who has the right to form/join trade union which is incompatible with Cn no 87 which states all 'workers....without distinction whatsoever...' has the right to freedom of association. This would be a matter for further scrutiny; however, this article will limit itself to discussing on the need to adopt the legislation required by the Constitution with regard to government employees. See section 5.1.3 of this article for further reference on the content of Cn 87.

are entitled to trade union rights guaranteed under article 42 (1) (a) (b).¹⁰⁶The Constitution, as evidenced above endorses trade union rights of government employees in compliance with international and regional human rights instruments and ILO Conventions Ethiopia has committed to.

The other important stipulation found in the Constitution relevant to the protection of trade union rights of government employees is the manner of interpreting Chapter three and the status of human rights instruments in the normative framework of the country. The Constitution stipulates that fundamental rights and freedoms guaranteed under Chapter Three should be 'interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia.'¹⁰⁷Accordingly, if at all an issue of Constitutional interpretation arises regarding trade union rights, the UDHR and other international human rights instruments, ILO standards and their underlying principles will have to be called in to attention.¹⁰⁸The main principle underpinning international human rights instruments such the principle of universality, inalienability, indivisibility and interdependence of human rights also support the entitlement of trade union rights to government employees.

By virtue of article 9 (4) all international agreements ratified by Ethiopia are an integral part of the land which includes international human rights instruments since they are a special type of multilateral agreement.¹⁰⁹ Accordingly, international human rights instruments which guarantee trade union rights and particularly the ICESCR and the two ILO conventions (Cn 87 & Cn 98) that recognize trade union rights of government employees are part of the law of the land. The main importance of this stipulation is that government employees should be able to invoke directly the provisions of these instruments to get remedy before the court of law where adequate guarantee is not provided for within national legislations.¹¹⁰ However, this has

¹⁰⁶ Article 42 (1) (c) of the FDRE Constitution.

¹⁰⁷ Article 13 (2) of the Constitution. It should be noted, however, that when the provision is clear the issue of Constitutional interpretation will not arise.

¹⁰⁸ Since the guarantee providing for trade union rights is clear the issue of interpretation is most likely out of question. For the issue of interpretation of the Constitution see AK Abebe 'Human Rights under the Ethiopian Constitution: A descriptive Overview' (2011) 5 *Mizan Law Review* 43/46.

¹⁰⁹ Article 9 (4) of the Constitution.

¹¹⁰ There is a technical problem connected to invoking particular provisions of international human rights instruments before the courts in Ethiopia. Most

a practical difficulty since these instruments are not translated and promulgated in the Federal Negarit Gazette as per the requirement of the Federal Negarit Gazette Establishment Proclamation no 3/1995.¹¹¹ Studies have shown that where the provisions of a ratified international instrument are not officially translated into the working language, their implementation at the domestic level is close to nil.¹¹²

5.2.2. The Civil Servants Proclamation

The Federal Civil Servants Proclamation no 515/2007 is the law regulating the employment relationship of government employees at the Federal level in Ethiopia.¹¹³ Articles 3 and 4 of the Proclamation defines the term 'Civil Servant'¹¹⁴ and 'Temporary Civil Servant' simultaneously providing for list of workers falling out of the definition. A Civil Servant is an employee employed permanently (non-permanently incase of Temporary Civil Servant) by federal government institution. 'Federal Government Institution' means 'Federal Government Office established as an autonomous entity by a proclamation or regulations and fully or partially financed by government budget...'¹¹⁵

The Proclamation, however, excludes the following government employees from its scope of application and they are not considered as 'Permanent Civil Servants':¹¹⁶

- a) government officials with the rank of state minister, deputy director general and their equivalent and above;

international human rights texts are found in English and only instrument of ratification is published in the Negarit Gazette. There is a need to interpret the contents and publish these instruments in the Federal Negarit Gazette. Initiatives are currently taken by institutions such as the Ministry of Justice and the Ethiopian Human Rights Commission to interpret the text of international human rights instruments in to local vernaculars. However these initiatives are mostly limited to instruments found under the UN human rights system and not the ILO labour standards which contain a set of rights at work.

¹¹¹ Article 2 (3) (4) of Federal Negarit Gazette Establishment Proclamation no 3/1995.

¹¹² R Messele 'Enforcement of Human Rights In Ethiopia' (2002) (31 August 2012) 39.

¹¹³ Article 3 states that the Proclamation will be applicable on 'Government Institutions' and 'Civil Servants' ('Yemenegist Serategnoch' in the Amharic version of the Proclamation).

¹¹⁴ The term 'civil servant' and 'government employee' have a similar meaning in the Amharic Translation i.e 'Yemengist Serategnoch'. This can simply be inferred from the English and the Amharic Short Title of Proclamation no 515/ 2007.

¹¹⁵ Article 2 (3) of the Federal Civil Servants Proclamation 515/2007.

¹¹⁶ Article 2 (2).

- b) members of the House of Peoples' Representatives and the House of the Federation;
- c) federal judges and prosecutors;
- d) members of the Armed Forces and the Federal Police including other employees governed by the regulations of the Armed forces and the Federal Police;
- e) employees excluded from the coverage of this Proclamation by other appropriate laws

The following lists of personnel are also excluded from the scope of application of the Proclamation and they are not considered as 'Temporary Civil Servants':¹¹⁷

- a) persons employed as daily labourers who are paid on daily basis;
- b) persons who are assigned for internship or training;
- c) persons who enter into a contract with a government office as an independent contractor for consideration;
- d) persons who enter into a contract with a government office due to their special skills and ability on part-time basis for consideration

The Proclamation regulates every aspect of employment relationship of Civil Servants with the government including recruitment, salary scale, promotion, transfer, conditions of work etc. However, the Proclamation does not provide for trade union rights for government employees in line with the Constitution. On the other hand, article 421 of the Criminal Code provides for a punishment of fine not exceeding one thousand birr or simple imprisonment not exceeding six months¹¹⁸ for any 'public servant who, in breach of his professional or statutory obligations, goes on strike of his own free will or urges others to strike'.¹¹⁹

5.2.3. Labour Proclamation

Labour Proclamation no 377/2003 (the Proclamation) is the principal source of labour law in Ethiopia and it is applicable throughout the country.¹²⁰ Providing guarantee for the right of workers and employers to form their respective

¹¹⁷ Article 2 (2) of the Civil Servants Proclamation no 515/2007.

¹¹⁸ Article 420 of the Criminal Code of Ethiopia (2004).

¹¹⁹ Article 421 of the Criminal Code of Ethiopia (2004).

¹²⁰ According to article 55 (3) of the Constitution the legislative power to enact labour laws is vested in the House of Peoples Representative while states are left to regulate employment relationships of civil service in their respective state as per article 52 (2) (f) of the Constitution.

associations and engage in collective bargaining is one of the objectives of the Proclamation as stated under its Preamble.¹²¹ Expanding on this objective, the Proclamation provides for a Part, sub divided by Chapters, solely dealing with collective relations between workers and employers and particularly on 'trade unions and employers associations' and 'collective bargaining' respectively.¹²²

Under Chapter One, Article 113 provides for the right of workers and employers to establish and form trade unions or employers' associations, respectively and actively participate therein. In addition to stipulating the right, the Proclamation contains detailed provisions on formation and function of organizations/associations¹²³ (both workers and employers), registration, refusal to register and cancellation of registration of organizations. The following Chapter, Chapter Two deals with the issue of collective agreement/bargaining, its definition, subject matter, content, scope, registration and all other procedural issues of making a collective bargaining.

Save for few discrepancies with international standards, the Proclamation is commendable for it dedicates several provisions dealing with trade union rights and their implementation. One of the malignant discrepancies of the Proclamation is the exclusion of several groups of workers from its scope of applicability. This in turn excludes these workers from the rights and guarantees it aims to extend including trade union rights. Article 3 is the provision that defines the scope of applicability of the Proclamation. Accordingly groups covered by the following employment contracts fall outside the scope:¹²⁴

- Contracts for the purpose of upbringing, treatment, care or rehabilitation;
- Contracts for the purpose of educating or training other than apprentice;¹²⁵
- Managerial employees;¹²⁶

¹²¹ Preamble, Labour Proclamation no 377/2003.

¹²² Part Eight, Chapter One of the Proclamation.

¹²³ The Proclamation uses the term 'trade union', 'organization' to refer to workers association while it uses the term 'employers association' to refer to associations composed of employers.

¹²⁴ Article 3 of the Labour Proclamation no 377/2003.

¹²⁵ Here it should be noted that both teachers in the private and public sector are excluded by virtue of this specific stipulation which in turn make these group of workers fall out of the guarantee of trade union rights and other rights as provided by Proclamation no 377/2003.

- Contracts relating to persons such as members of the Armed Force, members of the Police Force, employees of state administration, judges of courts of law, prosecutors and others whose employment relationship is governed by special laws;
- Contracts relating to a person who performs an act, for consideration, at his own business or professional responsibility.

Most workers employed by the government who fall in the above exception are covered either by the Civil Service Proclamation or are governed by special laws i.e. the judiciary, public prosecutors and the army. However, the Proclamation applies to government employees working in public enterprises.¹²⁷

5.2.4 Charities and Societies Proclamation

It is important to discuss the Charities and Societies Proclamation no 621/2009 (CSP) so as to emphasize the unique nature of trade unions compared to other type of associations. As it can be inferred from the Preamble, the basic rationale behind the adoption of the CSP is ensuring the realization of citizens' right to association enshrined in the Constitution.¹²⁸ Accordingly, the CSP neither recognizes trade union rights nor does it regulate trade unions.

The Constitution under article 31 guarantees the right of every person to freedom of association for any cause or purpose. Accordingly, workers including those working in the public sector can form associations with a view to promoting their interest as a 'society' according to the CSP.¹²⁹ However, a

¹²⁶ The Proclamation details who managerial employees are. Accordingly employees who are vested with powers to lay down and execute management policies by law or by the delegation of the employer depending on the type of activities of the undertaking with or without the aforementioned powers an individual who is vested with the power to hire, transfer, suspend, layoff, assign or take disciplinary measures against employees and include professionals who recommend measures to be taken by the employer regarding managerial issues by using his independent judgment in the interest of the employer.

¹²⁷ See section 3.2 of this Article on categories of workers to learn about public enterprises further.

¹²⁸ Article 31 of the Constitution.

¹²⁹ According to article 55 (1) of Charities and Societies Proclamation no 621/2009, 'Society' means an association of persons organized on non-profit making and voluntary basis for the promotion of the rights and interests of its members and to undertake other similar lawful purposes as well as to coordinate institutions of similar objectives.

workers association established under this Proclamation is not a trade union and it is not entitled with the rights guaranteed under article 42 of the Constitution i.e the right to bargain collectively and the right to strike. These two significant components of trade union rights are neither provided nor regulated under the CSP.¹³⁰

5.2.5 Supplementary legislations

There are other legal regimes which regulate employment relations falling outside the ambit of the Labour Proclamation no 377/2003 and Civil Servants Proclamation no 515/2007. Most employees who are found under the government employment sector and who fall outside the scope of the above legal regimes are in the category of workers who are deemed to be engaged in either in the 'administration of the state' or they are 'senior civil servants' as defined by the ILO supervisory bodies. Under this category are found Government Officials, Judges, Prosecutors, members of the police and the defence force and prison wardens. Following are few of the legislations regulating this category of workers:

- Federal Courts Proclamation no 25/1996.
- Federal Prosecutor Administration Council of Ministers Regulations no 44/1997.
- Police
 - o Federal Police Proclamation no. 207/2000
 - o Federal Police Commission Proclamation no 313/2003
 - o Federal Police Administration Council of Ministers Regulation No. 86/2003
- Prison Wardens - Federal Prison Commission Establishment Proclamation no 365/2003 (Part Three)
- Defence Forces Proclamation no 27/1996.

These legislations do not recognize trade union rights. Despite the limitation placed on the collective bargaining rights of those employees who are 'engaged in administration of the state'¹³¹ and members of the police and army forces,¹³² the rights of all employees without any distinction to form/join trade unions is

¹³⁰ However, such association could still promote the interest of its members using methods such as demonstration and petition as provided under article 30 of the Constitution.

¹³¹ Article 6 of Cn no 98.

¹³² The state is given the discretion whether to recognize or not, the freedom of association rights of members of the police and defense forces. Article 9 of Cn 87.

guaranteed under Cn 87.¹³³ Therefore, together with the adoption of a legislation recognizing the trade union rights of civil servants, amending the above listed legislations so as to bring them in line with ILO conventions is another matter that should be deliberated upon by relevant government organs.

5. Prevailing patterns in practice

By virtue of Labour Proclamation no 377/2003 workers in the private sector and in public enterprises can form trade unions in their own respective institutions. Though it is not mandatory, currently, trade unions after joining federations become part of the Confederation of Ethiopian Trade Unions (CETU), which is the sole national centre for more than 370,000 workers in Ethiopia.¹³⁴The CETU is composed of nine industrial federations (Federation of Food and Beverage, Tobacco and Allied Workers; Ethiopian Federation of Metal, Wood, Cement and other Workers; Federation of Commerce, Technical Print, and other Workers; National Federation of Farm, Plantation, Fishery and Agro-Industry; National Federation of Tourism, Hotels and Generic Service Workers; Industrial Federation of Ethiopian Textiles, Garment and Shoe Workers; National Federation of Energy, Chemical, Petroleum Workers; Transport and Communication Workers; Ethiopian Banking and Insurance Industrial Federation) which are umbrella for 702 basic trade unions.¹³⁵

Trade union activities in general were assessed as being weak except for a relative strength of those formed by public enterprises.¹³⁶ Public enterprises including, financial public enterprises has been benefiting from trade union right entitlements.¹³⁷ However, the Supreme Court Cassation Division

¹³³ Article 42 of the Constitution however does not recognize the right of all government workers to freedom of association rather it categorically entitles this right only to lower level government employees whose work compatibility allows for it.

¹³⁴ 'Country Situational Report of the Confederation of Ethiopian Trade Unions (CETU)' actrav-courses.itcilo.org/en/a-1-05066/a-1-.../Ethiopia/at.../file (accessed on 25 August 2012).

¹³⁵ As above. See further National Labour Law Profile: Ethiopia (n 8 above).

¹³⁶ National Employment Policy and Strategy of Ethiopia (November 2009) 11.

¹³⁷ The case of Bole Printing Press and Shell Ethiopia trade unions who stood up for the right of their members to fair conditions of work and found them a favorable judgment is an important instance indicating the significant role trade unions play in the protection of the rights of workers. 2009 Country Reports on Human Rights Practices '2009 Human Rights Reports: Ethiopia'

Judgment delivered on the case National Bank of Ethiopia Trade Union (NBE) v Ministry of Labour and Social Affairs (MoLSA) has posed a threat and uncertainty as to this guarantee. This Judgment caused the dissolution of the NBE Trade Union which was functional for 33 years.¹³⁸ Despite the fact that the NBE argued its case citing ILO Convention nos 87 and 98, the Court simply disregarded the argument and missed an opportunity to make a case of implementation of international human rights standards at the local level. Rather, the Court justified its judgment by stating that the employees of the NBE are administered by Council of Ministers Regulation no 157/2008, by virtue of which they will be exempted from the Labour Proclamation no 377/2003 and fall within the list of employees regulated by special laws as per article 3 (2) (e) of the Proclamation. This seems a regression in the protection of one of the fundamental human rights. The ruling of the Court sets a bad precedent and legitimizes the act of taking away of the rights that is currently being enjoyed by trade unions recognized by the Labour Proclamation 377/2003 by simply adopting a special law that governs their employment relationship.

Apart from the above mentioned trade unions, there are organisations that basically fit the structure and nature of trade unions yet not legally recognized as such in Ethiopia.¹³⁹ The case of the Ethiopian Teachers Association (ETA) which is composed of workers (teachers) and which is instituted to promote the interest of its members is one good example. The Association was informally established in 1949 and got nationwide recognition in 1965 under the name 'Ethiopian Teachers Association'.¹⁴⁰ The ETA was primarily established with a view of supporting primary level teachers in career development, alleviating difficulties teachers face due to lower salary rate, improve quality education and other similar issues.¹⁴¹ Through time the

<http://www.state.gov/j/drl/rls/hrrpt/2009/af/135953.htm> (accessed on 3 November 2012).

¹³⁸ National Bank of Ethiopia Trade Union (NBE) v Ministry of Labour and Social Affairs (MoLSA) (22 Yekatit 2003 E.C.) Case no 55731.

¹³⁹ While the Association is only recognized as a professional association in Ethiopia, it is considered as a trade union by ILO for all practical purposes. This understanding emanates basically from Article 10 of Cn no 87 which asserts that the Convention applies to any organization of workers and employers instituted for the purpose of furthering and defending the interests of workers and employers.

¹⁴⁰ It used to be known as 'Teachers Union' at the time of its establishment. የኢትዮጵያ መምህራን ማህበር ልዩ እትም መጽሐፍት (ሰኔ 2000) 9.

¹⁴¹ As above.

Association evolved to an institution reaching beyond the need of its immediate members through its activism and started being at odds with the government on matters related to social, economic and political policies.¹⁴² The association was among the prominent actors who significantly contributed to the end of the monarchical and dictatorial regimes that existed in Ethiopia until the year 1991.¹⁴³ The story of ETA after 1991 is marked by an extended internal conflict between groups who alleged to be the legal representatives of the Association. After an extended court litigation that took more than 14 years, the Supreme Court Cassation Division ruled in June 2008 upholding the ruling of the lower courts by ordering the transfer of all property including bank asset and the name and logo of the Association from the group that was in control of the asset to the currently functioning ETA.¹⁴⁴ The group that lost the case has been trying in vain to register at the CSA under the name National Teachers Association (NTA) since 2008.¹⁴⁵

As for ETA, recently, the issue of teacher's salary scale improvement that took place after a long negotiation between the Association and the government were a point of debate. While the ETA 'welcomed and appreciated the decision made by the Government'¹⁴⁶ with regard to improvements on salary scale, the subsequent fallout between dissatisfied teachers on the one side and ETA and

¹⁴² The attempt of the Association to lobby the Government regarding the promotion of free health service and education in the country is an indication of its high involvement in areas wider than work place matters (n 140 above) 13.

¹⁴³ The 1974 revolution which ended up in the collapse of the monarchical regime is partly the result of the continuous demonstration by ETA against the Sector Review Program introduced by the regime which spread to students and other interest groups. (n 140 above) 12.

¹⁴⁴http://www.ethiopianteachers.org/index.php?option=com_content&view=article&id=64:the-long-standing-court-case-finalized&catid=34:eta-news&Itemid=1 (accessed on 3 December 2012).

¹⁴⁵ This has lead ILO to put Ethiopia in the list of 5 countries (the other countries being Argentina, Cambodia, Fiji and Peru) which has serious problems regarding freedom of association among 32 cases that has been reviewed.
http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_193200/lang--en/index.htm (accessed on 20 November 2012).

¹⁴⁶http://www.ethiopianteachers.org/index.php?option=com_content&view=article&id=95:teachers-salary-scale-increased&catid=34:eta-news&Itemid=1 (accessed on 20 November 2012).

the Government on the other side seems to put a question mark on the true representativeness of the Association.¹⁴⁷

At the end of the day ETA is a professional association deprived of all the legal tools available to it had it been a trade union i.e. collective bargaining, undertaking a legal strike action, protection from interference by the government in its activities and protection of its members from anti union discrimination.¹⁴⁸ There is no legal provision providing for trade union rights of teachers both under the public service and private schools in the country. The CFA expressed its concern over the matter and requested the government 'to amend its legislation so that teachers, like other workers, have the right to form organizations of their own choosing and to negotiate collectively' to no avail.¹⁴⁹

Not limited to the issue of teachers, ILO supervisory bodies have been making repeated comments on the situation of freedom of association rights of civil servants in Ethiopia. In its observation adopted in 1995, the CEACR commended the fact that the draft Constitution of 8th December 1994 granted civil servants the right to organize and to conclude agreements with their employers.¹⁵⁰ However, in its subsequent observations the CEACR repeatedly

¹⁴⁷ Most importantly, the silence of the Association with regard to the issue of teachers fired as a result of striking to express their dissatisfaction has raised eye brows among different critics and teachers themselves. 'መምህራን እና መንግስት ወዴት?' ሪፖርተር 23 መጋቢት 2004. www.ethiopianreporter.com/politics/295-politics/5779-2012-03-31-09-38-58.html (accessed on 15 December 2012).

¹⁴⁸ See section 3.1 of this article on the difference of professional associations and trade unions.

¹⁴⁹ (n 8 above).

¹⁵⁰ Since then the CEACR in its observations made in 1998, 1999, 2000 and 2001 relentlessly requested a report indicating the development on a law that implements the right of civil servants to organize. In the year 2001 the government reported stating that the 'legislation' is under consideration and the Federal Civil Service Commission is planning to adopt it in the near future pursuant to the civil service reform on which the country is embarking at the time. The government further asserted that the legislation will be adopted after concerned organizations provide their comments on the draft. However, after repeated call for report on progress the CEACR noted in its 2004 observation that Proclamation no 262/2002 adopted to govern the civil service do not provide for the right to organize of employees at all. The CEACR requested the government to 'ensure the recognition both in law and in practice' of the right to voluntary negotiation of employment conditions for public servants. Similarly, in the years 2005, 2007, 2008 and 2009 the CEACR made repeated call to the government to amend the civil service legislation.

expressed its concern on the fact that the country has not yet taken measures to facilitate the implementation of trade union rights of government employees. The Government, through its response, asserted that the country is not ready to fully cater for a framework that provides for a separate association in the civil service and the government itself has not developed the capacity to engage in a fully fledged bargaining process with civil servants.¹⁵¹ The Government further stated that the matter is to be presented for consideration once the Civil Service Reform program is successfully implemented in the country and the necessary national capacity is in place.¹⁵² The response of the government is a clear indication of the power balance between the civil servant and its employer, the Government. It seems to indicate that civil servants should wait to enjoy their right until the government is ready to deal with them. This is simply an unacceptable excuse to withhold a constitutionally guaranteed right.

Apart from ILO supervisory bodies the Committee on ESCR, expressed its concern in its Concluding Observations adopted following the state report submitted by Ethiopia regarding trade union rights of public servants:

The Committee is concerned that the right to form and/or join trade unions is not fully guaranteed in law and practice, and that public

In the year 2011, the government replied saying that the 'country is under a comprehensive civil service reform program designed to provide efficient and effective services to the public and that civil servants, as part and parcel of the executing body, have a key role to play in implementing the reformthe reform will have a significant role in strengthening democracy, ensuring good governance and guaranteeing the rights of all citizens in the country....within, this process, it commits itself to ensure the benefits of civil servants'. Despite the generalized response by the government, the CEACR stressed that 'the civil servants proclamation should be amended so as to ensure that civil servants, including teachers in the public sector, have the right to negotiate their conditions of employment through collective bargaining'. For further detail consult, Observation (CEACR)-adopted 2011, published 101st ILC session (2012)). Observation (CEACR) - adopted 1995, Published 82nd ILC session (1995).

http://www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO::P13101_COMMENT_ID:2698955 (accessed on 25 July 2012).

¹⁵¹ International Labour Conference, 100th Session, 2011 'Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution)'

http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_151556.pdf (accessed on 18 August 2012).

¹⁵² As above.

sector workers, in particular teachers, have allegedly experienced dismissals and transfers in connection with their trade union activities. It is also concerned that section 421 of the Criminal Code provides for imprisonment for public servants who have gone on strike.¹⁵³

The Committee on ESCR, recommended that Ethiopia should 'take steps to guarantee both in law and in practice, the right to form and/or join trade unions of workers including civil servants and to amend the Criminal Code so as to remove the sentence of imprisonment for public servants who have gone on strike'.¹⁵⁴

6. Concluding Remarks

To conclude, trade union right of government employees is a human right that is recognized by international human rights instruments and guaranteed by the Constitution. The Government has, both at the international and national level, an obligation to take steps towards ensuring that this right is practically enjoyed by government employees. It is obvious that adoption of enabling legislation is the first most important step to protect trade union rights. Government employees should be able to form or join trade unions of their choice with a view to promoting their economic or work related interests, by any means available to them including collective bargaining. The absence of a legislative framework implementing this constitutional right has resulted in denial of rights for employees in the government sector. Like all other human rights the government has the duty to respect and protect trade union rights of employees in the public sector.

The legislative void which rendered trade union rights of government employees practically inapplicable is a failure to respect and to protect both, of a constitutionally guaranteed fundamental human right and internationally accepted human rights standard. The constitutional status of trade union rights of government employees is an indication of the grave importance that lies in the same. The failure of the legislature to adopt legislation undermines its constitutionally imposed duty to ensure the observance of the Constitution in general and its bill of rights in particular. Not only the legislature yet both the judiciary and the executive failed as organ of the state with a duty to ensure observance of the Constitution as stipulated under article 9 (2) of the

¹⁵³ 'Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant, Concluding observations of the Committee on Economic, Social and Cultural Rights' E/c.12/ETH/CO/1-3 (May 2012) 3 para 12.

¹⁵⁴ As above.

Constitution.¹⁵⁵ By no means are they exhaustive yet following are few remarks on the way forward.

The primary step that should be taken is the adoption of a legislation identifying the category of government employees entitled to trade union rights as stipulated under article 42 of the Constitution.¹⁵⁶ The House of Peoples Representatives (HPR), the constitutionally mandated law making organ,¹⁵⁷ is the organ primarily responsible for adopting legislation as per the stipulation of article 42 (1) (c) of the Constitution. HPR undertakes its legislative mandate through enacting new laws and amending or repealing existing laws, ratifying international agreements and passing resolutions.¹⁵⁸ The initiative to adopt such a law could come from 1) the Government 2) Members of the House 3) Committees of the House 4) Parliament Groups 5) Other bodies authorized by law.¹⁵⁹ Among this list of organs that can initiate laws, the Legal and Administration Affairs Standing Committee (LAASC) which has also the function of 'following up and supervising the effective observation of the rights and freedoms enshrined in the Constitution' would be the relevant organ to initiate a law on trade union rights of government employees.¹⁶⁰ Trade union right of government employees is one of the rights and freedoms guaranteed by the Constitution and the initiation of a law which ensures the observance of the same is in line with the 'following up and supervision of effective observation' mandate of the LAASC. As for the civil service

¹⁵⁵ Article 9 (2) of the Constitution.

¹⁵⁶ Amending the Labour Proclamation no 377/2003 might not be a feasible option since the scope of right provided for private sector employees and public sector employees is different in some aspects i.e. collective bargaining and the right to strike of some government employees is limited. Amending the civil servants proclamation no 515/2007 might also bring difficulties since there are employees whose employment relationship is not governed by the same i.e. judges, prosecutors etc. Accordingly adopting a separate legislation dealing exhaustively with trade union rights of public servants is the most viable choice.

¹⁵⁷ According to article 55 (1) of the Constitution the HPR is the organ having the power to legislate all matters assigned by the Constitution to federal jurisdiction. Since matters of Federal Civil Servants fall under the jurisdiction of the federal government it falls within the mandate of the HPR to adopt legislation for the implementation of trade union rights of government employees.

¹⁵⁸ Article 49 of the House of the Peoples' Representative of the Federal Democratic Republic of Ethiopia Rules of Procedure and Members Code of Conduct Regulation no 3/2006.(Regulation no 3/2006)

¹⁵⁹ Article 50 of Regulation no 3/2006.

¹⁶⁰ Article 170 of Regulation no 3/2006.

employees at the regional level, Regional State Councils should take similar initiative to adopt legislation.

The other relevant organ for the purpose of presenting a draft law to the HPR is the MoLSA. Initiation of laws is one of the powers and functions allotted to Ministries according to article 10 1(a) of the Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation no 691/2010. MoLSA is the government organ having the power and duty to promote rights to work in general and trade union rights in particular.¹⁶¹ MoLSA could take up this task in collaboration with the Ministry of Civil Service (MCS), the organ which is entrusted with the regulation of the civil service sector at the federal level.¹⁶²

The MCS itself is also a relevant organ with regard to the task of initiating a draft law. As the name of the establishment indicates, it is the principal body mandated to follow up on matters related to the civil service and civil servants. For practical reasons, the MSC is better placed than MoLSA to take the responsibility of coming up with the draft legislation identifying civil servants entitled to trade union rights. However, there is no mention of a mandate given to the MCS related to trade union rights. For lack of such mandate, it is reasonable to assert the obligation of MoLSA to come up with a draft.

The Ethiopian Human Rights Commission (EHRC) is the organ with the duty of ensuring that human rights and freedoms provided within the Constitution and those enshrined in international agreements ratified by Ethiopia are ensured.¹⁶³ As it has been discussed throughout this article, trade union rights of government employees are human rights guaranteed both under the Constitution and international human rights instruments ratified by the country. One of the duties and powers of the EHRC is making recommendation for the revision of existing laws or enactment of new laws.¹⁶⁴ Accordingly, the EHRC should take the initiative of doing the same with regard to trade union rights of government employees.

Another important initiative that should be taken by EHRC and which again falls within its powers and duties is the translation of ILO instruments

¹⁶¹ Article 30 of the Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation no 691/2010. (Proclamation no 691/210)

¹⁶² Article 17 (1) of Proclamation no 691/210.

¹⁶³ Article 2 (5), 5 & 6(1) of the EHRC Establishment Proclamation no 210/2000.

¹⁶⁴ Article 6(5) of the EHRC Establishment Proclamation no 210/2000.

guaranteeing trade union rights ratified by Ethiopia.¹⁶⁵ So far the EHRC translated into various local vernaculars and effected the distribution of, core international and regional human rights instruments ratified by Ethiopia. However it has yet to translate any of the ILO conventions containing fundamental right to work guarantees in general and trade union rights in particular.

The government should not withhold or delay the enjoyment of a constitutional right; rather it has an obligation to take progressive measures to facilitate the full enjoyment of rights by the right holder. The Constitution, under article 13 (1) asserts the responsibility and duty to respect and enforce fundamental rights and freedoms enshrined under Chapter Three (Bill of Rights of the Constitution) of all Federal and State Legislative, Executive and Judicial organs at all levels. As Fasil Nahum indicated, there is a reason why labour rights are entrenched in the Constitution¹⁶⁶ and the Constitution itself demands that human and democratic rights of citizen be respected.¹⁶⁷ Finally, there is no justification viable enough to discriminate against government employees on matters of trade union rights based on their occupational status and a legislation recognizing this has being long overdue. It is not an option but an obligation of the relevant government organs to uphold trade union rights of government employees, for the Constitution says so.

¹⁶⁵ Article 6 (8) of the EHRC Establishment Proclamation no 210/2000.

¹⁶⁶ Nahum (n 13 above) 170.

¹⁶⁷ Article 10 of the Constitution.

THE LAW OF AFFIRMATIVE ACTION IN ETHIOPIA: A FRAMEWORK FOR DIALOGUE

By Wondemagegn Tadesse Goshu*

Introduction

It has been more than two decades since affirmative action (AA) was recognized in the FDRE Constitution.¹ The recognition has arguably underscored the urgency to accelerate the equality of the marginalized, discriminated and those subjected to historical injustice. General for immediate application, the provisions of AA in the FDRE Constitution have required the issuance of policies and laws that would allow implementation in specific instances. Hence, following the Constitution, few ordinary laws and policies on AA have been issued. Several international human rights instruments with both obligatory and permissive clauses of AA have been ratified. What is then AA (and its measures) in Ethiopia arising from these laws and instruments? That is the core issue of this article. By making a comparative analysis of national laws, international instruments, and where necessary the literature, the article provides the national legal framework of AA to assist dialogue on the subject.

By exploring the normative framework, the article seeks to achieve the following objectives: to outline the normative framework of AA, to initiate dialogue among policy makers on the implementation and reform of AA, to clarify ideas and programs of AA that may enrich the dialogue, and to lay a foundation for future empirical research presently lacking in the practice of AA in Ethiopia.

With these objectives in mind, the first section of the article provides skeletal definition of AA, which will be further elaborated in subsequent sections. Drawing on international and national instruments, sections 2 and 3 will outline the laws of AA in Ethiopia. Because of their significance to Ethiopia's human rights law, international human rights instruments adopted by Ethiopia

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¹ This is not to mean that the FDRE Constitution is the first to recognize AA in Ethiopia. For example, Article 36 of the 1987 Constitution of the Peoples' Democratic Republic of Ethiopia provides for AA for women to ensure equal participation of women with men in political, economic, social, and cultural affairs, particularly in education, training, and employment.