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The Right To Freedom of Association of  
Employees: A Comparative Analysis of  
International Standards And Pertinent Laws  
In Ethiopia

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International Human Rights Law

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# Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
CEASR	Committee of Experts on the Application of Conventions and Recommendations
CETU	Confederation of Ethiopian Trade Unions
ECHR	European Convention of Human Rights and Fundamental Freedoms
ECOSOC	Economic and Social Council
EI	Education International
ETA	Ethiopian Teachers' Association
FIET	International Federation of Commercial, Clerical, Professional, and Technical Employees
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICFTU	International Federation of Free Trade Unions
ICJ	International Court of Justice
ILC	International Labour Conference
ILCCR	International Labour Conference Committee on Conventions and Recommendations
ILO	International Labour Organization
UDHR	Universal Declaration of Human Rights
UN	United Nations

# Introductory Note

Employment law basically governs the private contractual relationship of an employee and employer. Reference to the practice of the early days of the industrial revolution demonstrates that the set of rules that govern employment relationships were totally left to the discretionary will of the parties, devoid of any direct or indirect intervention by governments. That had caused great moral, economic and health damages to employees, mainly because of the relative strength of employers in imposing working conditions that exclusively took account of their financial interest. Leaving the relationship to the private forces had exposed employees to extreme forms of exploitation such as long working hours, minimal pays, un safe, unhealthy, and inhuman working conditions, and absence of social welfare etc., which warranted that some form of legislative interference, setting the minimum conditions which every employment relationship is supposed to subscribe to, is morally, economically and politically necessary.

National and international standards and conditions of work have changed radically ever since. Better protection is afforded to employees by most national and international instruments. Various bodies in the UN and specially the International Labour Organization (ILO), a specialized UN agency created in 1919, have been very instrumental in establishing benchmarks for the provision of human and labour rights that would serve as a guide in framing new standards and in the implementation of labour policies in different countries, that enable employers and employees to better maintain industrial peace and work in the spirit of harmony and cooperation.

Promotion of the right of employees to form an association has always been the centre of focus in international norm setting endeavours, especially with in the ILO framework. Even though many of the international treaties and national laws recognize and guarantee freedom of association and the right of employees to organize, the precise parameters of such rights were far better elaborated and clearly set through the jurisprudence of the ILO supervisory bodies.

The concept of the right of association could have political, religious, industrial (labour), economic, professional, social, cultural etc. dimensions. People could set up organizations or could choose to associate themselves with established ones for a number of reasons. And the right of organization of workpeople to promote and protect their economic and social interests, which is an exercise of a socio-economic and civil rights, merely constitutes one segment of the right to freedom of association.

Accordingly, the central theme of this writing will be confined to surveying appropriate standards on the right to freedom of association of employees as developed and applied by the supervisory organs of the ILO, the UN and various regional bodies, and hold a comparative analysis with national laws. Extensive reference will be had to the pertinent provisions and authoritative interpretations of the ILO Constitution, ILO Conventions 87 and 98 on freedom of association and right to organize and collectively bargain, ILO recommendations, and in appropriate cases, to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and other pertinent regional instruments, and analyzed against the merits and backdrops of substantive protections extended by national legislations in Ethiopia - the Federal Constitution, the Labour Proclamation 42/93, and the 1960 Civil Code, as well as national practice as assessed by the ILO supervisory bodies.

The purpose of such a study is to highlight convention obligations and interpretations and thereby serve as a guide in the gradual harmonization of national law and practice with international labour obligations on the specified subjects, reflect on the limited legislative and other measures taken at the national level to implement such obligations, and contribute in the promotion of knowledge of such standards at the domestic level.

Ethiopia acceded to the International Covenants on Economic, Social and Cultural Rights and Civil and Political Rights on the 11<sup>th</sup> of June 1963. Being the first African member state of the ILO since 1923, it has ratified 19 conventions as at 2002, including Conventions 87(Freedom of Association and Protection of the Right to Organize Convention, 1948) and Convention 98 (Right to Organize and Collectively Bargain Convention, 1949) on 4<sup>th</sup> of June 1963.

By virtue of the supremacy clause of Article 9(4) of the Federal Constitution, all international agreements ratified by Ethiopia are an integral part of the law of the land. The Federal Government is empowered to negotiate and ratify international agreements<sup>1</sup>. As is the case with the legal traditions of continental Europe's civil law countries, a monist approach to public international law is adopted in Ethiopia as well, where by international treaties of legislative nature adopted by the government need not undergo through statutory transformation/incorporation before they can be enforceable in domestic jurisdictions, the two sources of law constituting part of a single system of law. A direct application of such instruments is

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<sup>1</sup> Article 51(8), Article 55(12) of the Constitution of the Federal Democratic Republic Of Ethiopia



envisaged once the appropriate organ, the House of Representatives (parliament) in this case, ratifies the agreement.

And yet, no provision in the constitution clearly describes the relative rank international agreements assume in the internal legal system. However, compromising the supreme status of the constitution, Art. 13(2) of the Constitution stipulates that the principles of the UDHR, international agreements, and other human rights covenants and international instruments are elevated to such a status as to serve as a guide in the interpretation of fundamental rights and freedoms incorporated in the Constitution, including, inter alia, the rights of association of employees under Art. 42. One can therefore rightly imply that the provisions of the Constitution dealing with the right to freedom of association have to be interpreted in the light of international developments and obligations Ethiopia has assumed under various treaty arrangements. And logically, since the latter are deemed to have overriding effect over inconsistent stipulations of the supreme law - the constitution, it is presumed that they produce the same results vis-à-vis similar national legislations.

While the UN is obviously not an organization dealing with the specificities of labour relationships, it has nonetheless adopted few conventions, namely the ICCPR and ICESCR, with some general, but important provisions that touch upon employment related rights. The ILO, a specialized UN agency, is rather the organ responsible for the development and promotion of international labour standards that cover the multi various rights of workers and employers, including a constant system of supervision. The first and second chapters will attempt to give a general background of the ILO institutions, conventions and methods of enforcement, the roles of the ILO and UN institutions in the developing appropriate norms pertaining to freedom of association, as well as the specific features and status of such norms in international law.

Freedom of association is a broad concept and the subject is addressed by various instruments in human and labour rights context. Even though what it could constitute at the minimum - the right to form and join an association, may not be contested in many cases, full and effective realization of such a right requires more sweeping safeguards without which the broader right may lose much of its meaningful impact. Such important constituencies include the right to operate without unreasonable interference in organization structure and administration, the right to be or not to be a member, freedom from discrimination for reasons of union membership, the right to legal personality of an association, guarantees against burdensome procedures of registration and arbitrary administrative suspension or dissolution, freedom from arbitrary interference in the internal affairs of an organisation, the right to affiliation and the right to trade union pluralism. Chapter 3 and chapter 4 discuss such

elements in depth, and compare international and national laws and practice.

The right of employees to form and freely associate themselves with others to safeguard their occupational interests is not how ever with out limitations. The provisions of the relevant international instruments that warrant restriction on the free exercise of the right are analysed in sufficient detail in each of the discussions on the constituent parts of the right to freedom of association.

The last chapter will deal with the conclusions and recommendations, and will specifically address the shortcomings of the national legislations and practices, and attempt to point out how Ethiopia might be able to make the best use of the achievements of the ILO institutional framework in the field of freedom of association.

# 1 CHAPTER 1

## 1.1 The role of the ILO in setting pertinent standards

International labour law, one category of international law, has developed within and outside the framework of the ILO. Many of the laws owe their existence to the numerous interstate treaties, conventions, declarations and tripartite arrangements involving governments and non-government organizations. Increasing number of bilateral and regional agreements has as well contributed substantially to the development of international labour standards encompassing a broad range of persons and subject matters.

### 1.1.1 The ILO: brief history

International labour standards are the central activities of the ILO. The first move towards international labour conventions dates back to the beginning of the 19<sup>th</sup> c. where prominent individuals in Europe put forward the idea of international regulation of employment matters through repeated appeals to governments of main European countries from 1845-1855. Private associations later took up the idea. There after, a number of proposals to promote international regulation of labour matters were made in the French and German parliaments.... leading to the convening of a conference in Bern, Swiss in May 1890.<sup>2</sup> Subsequent conferences were convened in 1905 and 1906 in Bern, where the first two international labour conventions relating to the prohibition of night work for women in industrial employment and prohibition of use of white phosphorus were adopted.<sup>3</sup>

As part of the peace settlement of World War I under the Treaty of Versailles, and up on the insistence of trade union organizations calling for improved conditions of workers, sections providing for the establishment of the ILO and the improvement of conditions of workers were included in the treaty.<sup>4</sup> The ILO was founded in 1919, with a blend of broad humanitarian, political and economic objectives targeting the achievement of social justice, peace and better living conditions. The only surviving League of Nations institution, autonomous and with its own constituency, it became the first specialized agency associated with the UN in 1946 through a special

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<sup>2</sup> International Labour Organization, Bureau of Workers' Activities, International Labour Law, available online at - <http://www.itcilo.it/english/actrav/telearn/global/ilo/law/lablaw.htm>

<sup>3</sup> Ibid

<sup>4</sup> Ibid

agreement. It is a tripartite organization: governments, employers' and employees' representatives take part in all its activities with equal status. Since 1919, the International Labour Conference, a once a year meeting of tripartite delegations of members states of the ILO, has met regularly except for a brief interruption during the WWII. As in October 2003, the ILO has a total membership of 177 states.

### **1.1.2 Objectives**

The General Conference of the ILO, meeting in its 26<sup>th</sup> session in Philadelphia on the 10<sup>th</sup> of May 1944 adopted a declaration of the aims and purposes of the institution and of the principles, which should inspire the policy of its members.

The Conference reaffirmed that the fundamental principles on which the organization is based, and in particular that;

Labour is not a commodity

Freedom of expression and association are essential to sustained progress

Poverty every where constitutes a danger every where

The war against want requires to be carried with unrelenting vigor with in each nation and by a continuous and concerted international effort in which governments, employers and employees representatives join and hold free discussions and democratic decisions for the promotion of common welfare

The Declaration has as well affirmed specific objectives of the organization including, inter alia, that all human beings, irrespective of race, creed, or sex, have the right to pursue both their material and spiritual development in conditions of freedom and dignity, of economic security and equal opportunity; to further among nations of the world programs which will achieve full employment and raise standards of living; adequate guarantees of facilities for training and transfer of labour policies with regard to wages and earnings, hours and other working conditions calculated to ensure just share of the fruits of the progress to all; effective recognition of the right to collective bargaining; the cooperation of labour and management in improving productive efficiency and in preparation and application of social and economic measures; extension of social security measures and medical care, child welfare, maternity protection, quality educational and vocational opportunities.

### **1.1.3 ILO standard setting and forms**

As stipulated in Art.2 (7) of the ILO Constitution, the permanent organization of the ILO consists of a General Conference of representatives of the members, a Governing Body composed of 56

persons - 28 representing governments, employers and workers representatives taking 14 each, and an International Labour Office controlled by the Governing Body.

The General Conference of representatives of members, the legislative body, holds meetings from time to time, and at least once every year. The Conference is the organ responsible for determining whether any proposal shall take the form of an international convention or a recommendation.<sup>5</sup>

Over the years, and especially since 1948, the tripartite members constituting the ILO have built up a marvellous system of international standards. The prime references to freedom of association and related labour rights include the preamble of the ILO Constitution, which expressly mention trade unions rights as tools for the improvement of the employment conditions, and the Declaration of Philadelphia, a document elaborating on the specific objectives of the ILO, annexed to the Constitution in 1946, which reaffirmed that freedom of association constitutes one of the 'fundamental' principles on which the organization is based. This was followed by the adoption of specific conventions on the subject, namely the Freedom of Association and protection of the right to Organize Convention, 1948 (No. 87), and Right to Organize and Collective Bargaining Convention, 1949 (No. 98), the conventions that would be the subject of intensive discussion in this writing, as well as other instruments that cover practically all employment matters, serving as a global model of employment rights and obligations.

Such conventions create a binding international obligation up on the states who formally undertake to ratify and there by make the provisions effective in law and practice. Communication of formal ratification to the Director General is required, whatever form it takes.

On the other hand, ILO recommendations, usually dealing with the same subject as conventions, are instruments that are not open to ratification, but merely lay down general or technical guidelines applicable at national levels. They usually supplement conventions or may provide guidelines on subjects, which are not covered by conventions.<sup>6</sup>

Apart from the duty to bring recommendations before competent national bodies for enactment of legislative or other appropriate actions, no further legal obligations rests on member states, but report to the Director General of the ILO on the extent to which effect

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<sup>5</sup> Article 19 of the ILO Constitution

<sup>6</sup> International Labour Organization, Glossary of terms related to international labour standards, 1996-2003, available at - <http://www.ilo.org/public/english/standards/norm/sources/glossry.htm>

has been given to the provisions of the recommendations and/or modifications found necessary.

Both conventions and recommendations are intended to have a concrete impact on working conditions, and practice in every country of the world.<sup>7</sup>

Other less formal standards include codes of conduct, resolutions, and declarations issued by the annual meetings of the International Labour Conference, as well as other ILO bodies. These documents are often intended to have a normative effect, but are not referred to as part of ILO's system of international labour standards.<sup>8</sup> Resolutions as well as conclusions differ considerably in their content. Some cover basic principles while others are of a technical nature. They also differ as to the weight given to them in practice...in general, resolutions and conclusions respond to specific situations and needs which makes them particularly valuable when planning the ILO's technical cooperation activities.<sup>9</sup> They can for example deal with the widespread use of forced labour in a particular member country, the role of the ILO in technical cooperation schemes, social protection and alleviation of unemployment, social development etc.

A careful glance at many of the ILO conventions demonstrates that there is some room for graduality in the implementation of the obligations. Even though states should normally harmonise and update national laws before ratification, this is hardly the case in practice. Only through a progressive process after ratification do many states adjust their internal system of law and practice to conform to international commitments. And this way, international labour standards are rather used to put pressure on legislatures to act, and to serve as a guide in formulating and implementing labour oriented policies domestically.

It is true that because of a wrong timing in ratification by some countries, lack of adequate economic resources in command, absence of effective means of incorporation of ratified conventions with in the domestic legal framework, or for reasons associated with the degree of commitment portrayed by governments, international labour instruments might not produce the required level of achievement domestically.

The greatest source of difficulty in the early days of the ILO was undoubtedly the tendency of some countries to accept standards for which there was little or no basis in national law and practice. To

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<sup>7</sup> International Labour Organization, what are international labour standards? , 1996-2003, available online at -

<http://www.ilo.org/public/english/standards/norm/whatare/index.htm>

<sup>8</sup> Ibid

<sup>9</sup> Ibid

these countries, ratification merely represented 'a declaration of sympathy with principles embodied in the convention', coupled at best with a desire to give effect to it in due course. Regardless of whether the government believed that it was acting in good faith, or whether it merely ratified a convention as a 'means of propaganda', the fact remained that the convention was not applied even if it entered in to force for the country concerned.<sup>10</sup>

Such problems are well taken in to account by the ILO for they call the whole system of the ILO into question. And yet, the ILO attaches due significance to initiatives by countries to ratify various conventions despite the fact that the situation on the ground remains unfavourable. Today, ratification of ILO conventions is regarded as an expression of solidarity with other member states in agreeing that international co-ordination of workers' rights and working conditions is appropriate. In this vein, it has been well accepted over the years.... and it is implied in the methods of enforcement used by the ILO, its member states, and employers and workers constituencies that implementation some time after ratification, after a period of adjustment under the terms of the convention is just as valuable and important as implementation prior to ratification of the convention.<sup>11</sup>

Coming back to forms, other less apparent sources of standards, and yet of no lesser significance, could be the set of principles and observations developed from the jurisprudence of the various supervisory bodies, specially the Committee of Experts and the Committee on Freedom of Association, with a tremendous amount of influence on domestic legislations and practice.

The ILO Declaration of Fundamental Principles and Rights at Work, adopted in 1998 by the participation of an overwhelming number of states, could as well be another source which expressly reconfirm that members of the ILO have an obligation arising from the mere fact of membership to respect, promote, and realize the principles concerning the fundamental rights which are the subject of Freedom of association and the effective recognition of the right to collective bargaining, and other basic rights. It was emphasised that despite the implications of the globalizing economy and the fact that changes in the global economic structure have compromised government control over conditions of work for workers in many countries, the ILO has taken the position that there are certain principles so fundamental to workers' protection that they must be protected whatever the country and the economic situation prevailing. The Declaration, an expression of commitment by governments,

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<sup>10</sup> The Effectiveness of International Supervision, E. A Landy, Oceana publications, Inc., 1966, pp. 83

<sup>11</sup> International Labour Organization, the model use of international labour standards, 1996-2003, available online at - <http://www.ilo.org/public/english/standards/norm/howused/model/index.htm>

employers' and workers' organizations to uphold basic human values - values that are vital to social and economic lives, also consists of a follow-up mechanism comprising two promotional reporting tools: the Annual Review of reports from governments describing the efforts made to respect the principles and rights relating to all unratified fundamental ILO Conventions, and comments from worker and employer organizations, and the Global Report, submitted by the ILO Director-General to the International Labour Conference, on the global picture of the situation with regard to one of the categories of principles and rights each year.

#### **1.1.4 Specific features of the ILO standards**

Unlike the negotiations in many interstate treaties that involve high level diplomatic representatives, ILO conventions are adopted within the institutional framework of the General Conference, constituted of governments, employers' and employees' representatives. The entire process of setting and elaborating international labour norms is characterized by the full involvement of all the bodies affected thereby. Tripartism, a unique procedure in international law making, is the central feature of the whole institutional set up.

As per art 3(1) of the ILO constitution, every member state sends four delegates, of whom two shall be government representatives while the two others respectively representing the employers and workpeople of each country. Every delegate is entitled to vote individually on all matters taken into consideration by the Conference.

A Conference considering any proposed convention or recommendation can adopt such instrument by a majority of 2/3<sup>rd</sup> of the votes cast by the delegates present. A complete consensus is therefore not required.

Apart from identification of the 185 ILO conventions in terms of the specific area they deal with (e.g. Employment, basic human rights, social policy, labour administration...), the Governing Body has placed eight conventions which deal with freedom of association, abolition of forced labour, equality, and elimination of child labour as 'fundamental', four others dealing with international labour institutions and policy formulation as 'priority' international labour standards, and a lot more as 'basic' (non fundamental) human rights conventions, while the rest falling in to twelve differing categories. While the ILO does not formally acknowledge the drawing of any hierarchy in terms of the relative importance of each of the conventions, the Governing Body decided that the so called 'fundamental conventions', which are regarded as extremely important to the rights of human beings at work, and preconditions for all others, must be ratified and implemented by all member states, regardless of the ideology and



level of economic development of a member country. While governments are required to report every five years on most other conventions, they must submit regular reports annually on fundamental and priority conventions.

Reservations to the ILO conventions are inadmissible. However, having regard to the divergent economic, social, and political systems adopted by member countries, Art.19 (3) of the constitution has allowed some room for modifications when found necessary in respect of some conventions.

Such flexibility clause comprise options regarding the following:

The obligation: possibility of choosing, at the time of ratification, the extent of obligations undertaken (for e.g. Social security Convention 102)

Scope: governments may decide for themselves, subject to certain consultations, what the scope of the convention shall be (for e.g. Conventions on minimum wage fixing machinery 26 and 29), or they may be permitted to exclude certain categories of employees or undertakings (Convention on night work 41 and 89), or the definition of persons covered may be based on a specified percentage of the wage earners or population of the country concerned (for e.g. Many of the social security conventions) or exceptions may be allowed for certain part of a country (for e.g. Conventions 24,25,62, 63, 77,78,81....) or governments may themselves define a certain branch, industry or sector (Convention 106)

Methods: states who ratified a convention shall take such action as may be necessary to make effective the provisions of such conventions, customs, administrative measures, or in certain circumstances, collective agreements.<sup>12</sup>

### **1.1.5 Methods of enforcement of ILO standards**

As the case is with some of the UN treaty bodies, the method of enforcement of the ILO standards is based on a system of reporting which states agree to submit on measures they have undertaken to give effect to provisions of the conventions they ratify, and the system of representation / complaints, submitted to the ILO office by associations of employees and employers, as well as members of the ILO, alleging failure of a member state in effectively securing any ratified convention within its jurisdiction.

The ILO has sought from the outset to establish methods of supervision that would work and be accepted by its member states. In this way, a system of supervision by consent has gradually

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<sup>12</sup> Supra note 2

evolved.<sup>13</sup> The ILO system of international supervision has been championed by many as more pragmatic and effective than the corresponding system in the United Nations.

#### **1.1.5.1 Submission and examination of reports**

Art. 22 of the ILO Constitution stipulates commitment of all member states to make annual reports to the International Labour Office. Unlike in the UN system, the obligation to report does not emanate from a particular convention.

Over the years, the ILO has developed 185 conventions with well over 6000 ratifications, thus making it impossible to stick to the constitutional requirement of Art. 22 calling for annual regular reports, because of the burden it puts on governments who prepare them, and the supervising organs who examine same.

Therefore, after a series of reforms in 1959, 1976, and 1994, adjustments were made by the Governing Body, whereby on certain particularly important conventions, such as those dealing with basic human rights, detailed reports were requested every year, while for other conventions, reports are normally made only at a five year interval.<sup>14</sup>

The reports should establish, among other things, whether national laws comply with the provisions of a particular convention, and when ever it is so required, the practical arrangements made to establish administrative or other machinery.... while as regards promotional conventions, the report must describe the measures taken towards the achievement of the goals of the convention and to overcome any obstacles in the way of its full application.<sup>15</sup>

#### **1.1.5.2 State reporting and supervisory bodies**

Examination of government reports is carried out in the first instance by the Committee of Experts on The Application of Conventions and Recommendations, composed of 20 independent experts of the highest standing with imminent qualifications in legal or social fields, and with knowledge of labour conditions and administration. Members of the committee are drawn from all parts of the world...and appointed by the Governing Body of the ILO ...in their personal capacity, for a renewable period of three years.<sup>16</sup> Their mode of appointment and chain of responsibility enables them examine cases objectively and with out any influence from governments.

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<sup>13</sup> International Labour Organization, Explanation of the regular system of supervision, 1996-2003, available online at - <http://www.ilo.org/public/english/standards/norm/enforced/supervis/regsyst2.htm>

<sup>14</sup> Ibid

<sup>15</sup> Ibid

<sup>16</sup> Ibid

A particularly important stipulation in the Constitution is that governments must send copies of their reports to national organizations of employers and workers, who then have the opportunity of commenting on them if they so wish. The governments must then communicate these observations to the ILO. It is clear, therefore, that one of the key features of an effective reporting system, the availability of critical information from other responsible sources, which is the weak point in the ICESCR, is fully provided for in the procedures of the ILO.<sup>17</sup>

Following examination of the report on the measures each member state has undertaken to apply conventions or recommendations, based on information in a state report, various official documents and other sources demonstrating state law or practice, the Committee of Experts renders its comments, which may take the form of 'observations', usually used in cases of serious failures to meet assumed obligations, published in the Committee's report on the application of conventions and recommendations, or 'requests', unpublished, and largely dealing with more technical matters such as small scale inconsistencies and insufficiencies on information provided through reports.

The Committee's observations are usually phrased in words that not only declare mere violations of standing obligations, but also pin point on measures that should be taken to rectify a particular situation.

The report of the Committee is submitted to each annual session of the International Labour Conference, where it is examined and discussed by a tripartite Conference Committee on the Application of Conventions and Recommendations. It comprises well over 150 members from the three groups of delegates and advisors...who often adopt its conclusions by consensus.<sup>18</sup> Therefore, one can observe a blend of technical and political forces in the process of supervision, crediting the whole system with an added value. The Committee also reports to the plenary conference. Participation of concerned non-governmental organizations in the examination of reports, and particularly in the discussions at the conference reflects more on the relative strength of the system.

The Conference examines the observations made by the Committee of Experts, and particularly a member state's failure in implementing a particular obligation and requests first hand briefings by government representatives on difficulties encountered. Once adopted by the Conference, the report of the Conference Committee,

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<sup>17</sup>The Universal Declaration of Human Rights, A common standard of achievement, Gudmundur Alfredsson and Asborn Eide, Kluwer Law International, 1999, pp.238

<sup>18</sup> supra note 13

along with the areas to which special attention for future action and report is required, is dispatched to governments.

After its general discussion, the Conference Committee turns to examination of individual observation of the conventions in each country. Governments mentioned in the Committee of Experts as not fully complying with a ratified convention may be invited to make a statement to the Conference Committee whose reports are finally summarised.<sup>19</sup>

This is therefore a system of international control, which, with the scrutiny of independent experts and the participation of organizations with separate sources of information, is far more effective than if it were operated exclusively by governments. Research has demonstrated that over one fourteen-year period, more than 1000 improvements in national practice resulted from the use of these procedures, and in the sphere of freedom of association alone, there were fifty-five cases in which discrepancies were eliminated.<sup>20</sup>

#### **1.1.5.3 Reporting on un ratified conventions and recommendations**

Art. 19(5)(e) of the ILO Constitution also states that the Governing Body, in the exercise of its discretion, and usually choosing a specified convention, may require member states to report, at appropriate intervals, the position of their law and practice in regard to a matter dealt with in a given convention, and show the extent to which effect has been given or is proposed to be given by legislation, administrative action, or other means. The purpose of such initiative is to solicit the tripartite bodies at the national level, through a continuous process of reporting, to consider ratifying a convention under consideration.

Besides, the Governing Body, at its 264<sup>th</sup> session in 1995, decided that all states that have not ratified the four fundamental conventions dealing with forced labour, freedom of association, discrimination, and child labour, should be requested through a letter to submit reports in cycles. Governments are in practice asked fewer and general questions primarily dealing with impediments for ratification, or on measures undertaken to overcome them, and future possibilities of ratification.

#### **1.1.5.4 Representations and complaints**

As per Art.24 of the ILO Constitution, representation may be filed by association of employees or employers alleging a member state's

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<sup>19</sup> supra note 13

<sup>20</sup> Supra note 17, at pp. 239

failure in meeting its obligations under a ratified convention, while a complaint under Art. 26 may be lodged by any of the members (government, employee or employer delegate) or by the Governing Body on its own motion.

If a representation is found to be receivable, it is communicated by the Governing Body to the government against whom it is lodged for a comment on the allegations. A tripartite Committee pulled from its own members is appointed by the Governing Body to study the allegations, and present a report in the form of conclusions and recommendations. The Governing Body may as per Art. 25 of the Constitution decide whether or not to publish the representation and any government reply.

Whether or not the Governing Body decides that it is satisfied with government's explanations, the question raised in a representation is followed up by ILO's regular supervisory machinery.<sup>21</sup>

On the other hand, in cases of complaints, the Governing Body has the discretion to communicate the same way as in above with a government against which it is lodged or appoint a Commission of Enquiry, who will consider the complaint and report back its findings,<sup>22</sup> as well as recommendations it may think proper as to the steps which should be taken to address the complaint.

Such a report, which is also published, can be contested by a government within three months, and the latter could pursue the matter before the International Court of Justice whose decision on the case shall be final.<sup>23</sup> The ICJ is the only competent body that can give an authoritative interpretation of the ILO conventions and recommendations pursuant to a power granted to it under the ILO Constitution.

The regular system of reporting and the supervision of the reports prove to be a practical source for acquiring up to date information on labour situations prevailing in a particular country, and initiatives undertaken to achieve compliance.

#### **1.1.5.5 Special procedures for freedom of association**

Because of the special importance attached to freedom of association principles, the ILO has established, in addition to the regular system of supervision, a separate machinery of enforcement. The need for the special machinery stemmed from the fact that if a

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<sup>21</sup> How to file complaints on human rights violations, a manual for individuals and NGOs, Klaus Hufner, edited by German United Nations Association, German Commission for UNESCO, UNAs of the European Union, 1998, also available on line at - [http://www.unesco.de/c\\_huefner/contents.htm](http://www.unesco.de/c_huefner/contents.htm)

<sup>22</sup> Articles 26 and 28 of the ILO Constitution

<sup>23</sup> Articles 29 and 31 of the ILO Constitution

state did not ratify these conventions, there would be no means of supervising their application. More over, the existing regular machinery did not permit expedited examination of complaints concerning infringements in practice.<sup>24</sup> This procedure has made supervision of the application of some of the conventions in such states possible.

The special procedure for complaints is the most widely used ILO procedure. The Committee on Freedom of Association, a tripartite body of ILO Governing Body, is responsible for examining the complaints alleging failure of member state to live up to the basic principles of freedom of association. Governments, workers' or employers' associations of member states can lodge complaints. Complaints may be submitted whether or not the country in question has ratified the ILO convention on the subject, thus differing from the previous procedures.

Another body, Fact Finding and Conciliation Commission on Freedom of Association, created by agreement with ECOSOC in 1950, also examines complaints on infringement of trade union rights referred to it by the ILO Governing Body in respect of countries who may have or have not ratified the freedom of association conventions; in respect of the latter, though, only with the consent of the country concerned. It is composed of nine independent members appointed by the Governing Body. The Commission establishes contested facts and attempts to reach on some form of amicable solutions.

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<sup>24</sup>International Labour Organization, Special Supervisory Mechanisms Concerning Freedom of Association, 1996-2003, available online at – <http://www.ilo.org/public/english/standards/norm/enforced/foa/index.htm>

## **2 CHAPTER 2**

### **2.1 Developments with in the UN and other regional arrangements to which Ethiopia is a party**

#### **2.1.1 The UN instruments and the right to freedom of association**

Even though there are a number of identified areas where the ILO and the UN bodies operate on the basis of cooperation, development of the relevant labour standards relating to the right to association seem to be left, by and large, to the ILO. This is demonstrated by the outstanding record of the latter in the protection of the right in its continuous process of formulating new and detailed standards, and the innumerable case law interpreting the various conventions, with out a comparable parallel development of the subject with in the UN system. It is no wonder that the UN bodies will not deal with the specificities of labour relationships in the view of the fact that, among other reasons, the UN has a specialized agency dedicated exclusively for the task. An agreement concluded in 1946 between the ILO and the United Nations explicitly recognized that the ILO should have prime responsibility in dealing with the details of labour matters.

And yet, a number of provisions that touch up on employment relationship are included in some of the UN instruments.

In the forefront of the UN instruments is the Universal Declaration of Human Rights (UDHR), adopted only few months after the Freedom of Association and the Right to organize Convention 87 (1948) of the ILO. Art. 23(4) of the UDHR, substantially similar to its counterpart in ILO Convention 87, specifically proclaims the right of every person to form and join trade unions for the protection of his interests, while Art. 20 entitled individuals a general right to freedom of peaceful assembly and association.

The Universal Declaration has ever been the moral foundation of many of the subsequent human rights developments within the ILO and the UN systems. As ILO's Committee of Experts on the Application of Conventions and Recommendations stated in a report of its 1997 session:<sup>25</sup>

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<sup>25</sup> Human Rights Law and Freedom of Association: Development through the ILO Supervision, Lee Swepston, International Labour Organization, 1988 pp. 169 Also

‘...the Universal Declaration is generally accepted as a point of reference for human rights through out the world, and as the basis for most of the standard setting that has been carried out in the United Nations and in many other organizations since then...the ILO standards and practical activities on human rights are closely related to the universal values laid down in the Declaration...the ILO standards on human rights, along with the instruments adopted in the UN and in other international organizations give practical application to the general expressions of the human aspirations made in the Universal Declaration...’

Such aspirations reflected in the Universal Declaration were converted in to more binding terms under various UN covenants in such a way that maintains legislative conformity<sup>26</sup> with the previously adopted ILO Convention 87. In what seems to be an attempt to emphasize that the right to association has not only socio economic aspects, but also a civil right component even in the context of labour relations, Art. 22 of the International Covenant on Civil and Political Rights, too, guarantees every individual ‘the right to freedom of association with others’ and ‘the right to form and join trade unions for the protection of their interests’. Similarly, but with much detail, Art. 8 of the International Covenant on Economic, Social and Cultural Rights imposed the obligation on state parties to ensure ‘the right of every person to form trade unions, join trade union of his choice, establish national federations of trade unions, the right to join international confederations, and the right to strike for the promotion and protection of economic and social interests’. The International Covenant on the Elimination of All Forms of Discrimination and the Covenant on the Rights of the Child have brief references to the right to freedom of association and the prohibition of discrimination in the enjoyment of such rights.

While it is admitted that the above provisions are not so ambiguous as they stand, they are formulated in a more general fashion, and the

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available online at -

<http://www.ilo.org/public/english/support/publ/revue/download/pdf/swepston.pdf>

<sup>26</sup> Both the ICCPR and ICESCR consist a savings clause under articles 22(3) and 8(3) respectively, designed to maintain legislative conformity with the ILO conventions. Manfred Nowak ( U.N Covenant on Civil and Political Rights: CCPR Commentary, N.P. Engel Publisher, pp.399) observed that in the controversy before the HRC and the 3<sup>rd</sup> Committee of the GA, the opponents of such a specific clause questioned its significance under international law emphasizing that references to specialized conventions were inappropriate in a general human rights convention, necessarily selective, and superfluous in light of the general savings clause principle. Despite these convincing arguments, art. 22(3) was adopted ... for cosmetic reasons in order to stress that the United Nations had not overlooked the successful efforts by the ILO to safe guard trade union rights. Nevertheless Art 22(3) has hardly any legal significance going beyond the general savings clause under art 5(2)...ILO Convention 87.... affords greater protection than art. 22.



subject is treated in much lesser detail than in the corresponding provisions of the ILO. They also allow for restrictions on the exercise of the rights, which are found necessary in a democratic society, in the interest of national security, or public order, and for the protection of the freedoms of others, limitations that do not exist, at least in explicit terms, in the ILO Convention 87 provisions.

As far as the provisions of the ICESCR are concerned, the constraints in developing appropriate labour standards could be twofold. The first relates to the legal nature of the provisions themselves. Arguments which assert that its provisions are mere formulation of objectives, incapable of immediate enforceability as legal rights before the courts of law, have been put forward with equal vehemence as the opposite view over-emphasizing that the provisions call for positive and negative obligations on state parties, some capable of implementation immediately, and others subject to progressive development over time. Whichever philosophy seems to be plausible, the continuous debate over the nature of the covenant provisions, and the impression it creates could have negative impact on the precise status of such rights, inhibiting state parties from vigorously endeavoring to implement them domestically.

Besides, it is unfortunate that the Committee on Economic, Social and Cultural Rights, established in 1986 by ECOSOC Resolution 1985/17, with a mandate of supervising the implementation of ICESCR provisions, can not deal with individual or collective complaints of abuses of protected rights - a procedure that would have given the Committee better opportunity to develop and further elaborate Art.8 and other provisions through its case law. To date international supervision is confined to the system of state reporting, a procedure that is far from effective by comparison, because of failure of states to regularly report, and the limited resource of the Committee to rid its report backlog in time, a problem shared by other human rights committees as well. Apart from this, Art. 8 has never been addressed by way of general comments, a procedure started in 1989, to assist and promote further implementation of the Covenant by state parties, and draw their attention to the insufficiencies disclosed by the reports.

In contrast, the Human Rights Committee, placed in a better position than its counterpart above, has a system of optional individual complaints procedure for victims of the rights set forth in the covenant. However, this could have only a limited value as many of the rights pertaining to freedom of association and the right to form unions have, in practice, an overwhelming collective,<sup>27</sup> rather than

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<sup>27</sup> Supra note 26, pp.387 Prof. Nowak argues that freedom of association is conceived as 'subjective right of the individual' to found an association with those like minded or to join an existing association...but it also covers the 'collective right of an existing association' to perform activities in pursuit of the common interests of

individual dimension. Any way, it has to be admitted that the case law of the Human Rights Committee under the Optional Protocol has not dealt with Art. 22 so much as to affect the development of appropriate labour rights by way of elaboration, interpretation or application of the provision in its case law or general comments. Inquiry made by the writer in to HRC Sessions from number two in 1985 to its 74<sup>th</sup> Session in 2001 on the views and decisions of the Committee as well as its general comments adopted within the above time frame work demonstrated no significant reference to, and elaboration of the contents of Art. 22.<sup>28</sup>

Therefore, despite the binding obligation the UN conventions impose on state parties, the role of the UN bodies in setting pertinent international labour standards particularly pertaining to the right of organization and trade union formation have been minimal. The UN human rights system has been so sluggish in coming to grips with such rights, much attention focusing on other 'pressing' problem areas such as torture, disappearance, war crimes, extra judicial killings, arbitrary arrest, fair trial, and ethnic/indigenous issues. It is no wonder, therefore, that future discussions would by and large be confined to developments within the ILO framework.

### **2.1.2 The African Charter**

Another source of standards on the right to organize worth referring to in the Ethiopian context could be the African Charter on Human and Peoples Rights of 1981. Art. 3 of the Constitutive Act of the African Union stipulated that one of the objectives of the organization is to 'promote and protect human and peoples rights' in accordance with the Charter and other relevant human rights instruments.

The relevant provision of the Charter, Art.10, entitles every individual 'the right to free association' and 'the right not to be compelled to join an association'.

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its members...state parties are thus obligated not to prohibit or otherwise interfere with the founding of associations or their activities... because groups of persons usually seek to pursue their longer term interests in a legally recognized form (usually as juridical persons), states parties are also under a positive duty to provide the legal framework for founding juridical persons...and protect the formation or activities of associations against interference by private parties.

<sup>28</sup> The only notable exception to the assertion where in art. 22 was invoked alone or in conjunction with other provisions could be *Jong Kyu Sohn v Republic of Korea* com.no. 518/1992 case; *Delia Saldias de Lopez v Uruguay*, com.no. 52/1979; *M.A and M.A v Italy*, com.no. 117/1981; and *J.B et al v Canada*, com.no. 118/1982. Even in these proceedings, because of the different nature of the complaints and arguments, little or nothing was said about the substantive protection offered by Art. 22.

The African Commission on Human and Peoples' Rights, a body set up to oversee the application of the Charter provisions, is empowered to receive and consider communications submitted by states, individuals, and organizations alleging violation of guaranteed rights, and to periodically review reports on measures adopted by states in achieving application of the rights.

Developments elsewhere, especially in Europe under the European Social Charter, so far the most comprehensive instrument adopted by the Council of Europe, dealing in depth with socio-economic rights such as the right to work, organize and collectively bargain, along with its impressive records of jurisprudence and state reporting procedures, as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms, mainly focusing on civil and political rights, and yet touching up on so many rights that fall under international labour law, such as freedom of association and the right to form trade unions, will be considered in the forthcoming topics only in so far as such developments are found appropriate for comparative analysis.

# 3 CHAPTER 3

## 3.1 Aspects of freedom of association and protection of the right to organize: establishment of organisations

While the purposes for which associations are set up may vary, it has been widely acknowledged that the right to freedom of association under the various regional and international treaty arrangements apply only to organizations that are established by virtue of private laws, thus excluding those established and governed by national public laws. Much emphasis has been put on the fact of whether or not an organization is the result of free association of the members who constitute it. Nowak asserts that while religious societies, political parties, commercial undertakings, trade unions, cultural or human rights organizations...are protected under art 22 of the ICCPR, ... not included are juridical persons under public law, since they are not founded as a result of a declaration of the will of individuals, but rather by law or administrative act (e.g., public corporations, chambers, institutions and foundations of public law).<sup>29</sup>

In European Human Rights Court practice, freedom of association has been defined as 'a general capacity for the citizens to join in associations in order to attain various ends, with out interference by the state,'<sup>30</sup> It may there fore be assumed that this freedom includes any voluntary association by several natural and/or legal persons, for a considerable time, with a given institutional structure, and for common ends. A professional organization established by the government and governed by public law, which as a rule is intended not only to protect the interests of members, but also certain public interests, is not an association in the sense of Art. 11.<sup>31</sup>

### 3.1.1 Trade union rights and basic civil/political rights: interdependence

As was pointed out previously, the fundamental right to freedom of association is incorporated in a number of international and regional human rights instruments and further developed through the practice of various treaty supervising organs. Freedom of employees to organize-the right of workers to freely choose whether or not to group

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<sup>29</sup> U.N Covenant on Civil and Political Rights: CCPR Comments, Dr. Manfred Nowak, N.P.Engel, publisher, pp.386-387

<sup>30</sup> Theory and Practice of the European Convention on Human Rights, P. Van Dijk and G.J.H Van Hoof, Kluwer Law and Taxation Publishers, pp.432

<sup>31</sup> Ibid

themselves for better protection and promotion of their working conditions, is but only one form of the exercise of the right to freedom of association. It constitutes the basis of employees' right under international law. Whether or not trade union freedom is as such recognized in explicit terms under a given convention, it is assumed that such a right forms an aspect of a broader right of association.

This basic right cannot be thought of as standing in isolation, but only in conjunction with other related rights. The complete respect of the right demands that other civil liberties that are endowed in every person are protected and respected domestically. The interdependence between trade union rights and civil liberties is demonstrated by the obvious fact that effective exercise of employees rights to organize can not be realized in a system that disregards, de jure or de facto, the basic civil/ political rights such as right to security, fair trial, freedom of expression, freedom of assembly and opinion, and fair trial.

In 1970, the International Labour Conference reaffirmed this essential link by adopting a resolution concerning trade union rights and their relation to civil liberties. Considering, inter alia, that there exists firmly established, universally recognized principles defining the basic guarantees of civil liberties which should constitute a common standard of achievement for all peoples and all nations, it recognized that rights conferred up on workers' and employers' organizations must be based on respect for those civil liberties, which have been enunciated in particular in the Universal Declaration of Human Rights and the ICCPR, and the absence of these civil liberties removes all meaning from the concept of trade union rights.<sup>32</sup>

### **3.1.2 Brief survey of national laws on freedom of association**

Inspired by the development of global human rights protection, the Federal Constitution of Ethiopia replicated, almost verbatim, the contents of many provisions of the Universal Declaration, the ICCPR and some provisions of the ICESCR. Art. 31 of the Constitution explicitly guarantees 'the right of every person to freedom of association for any cause or purpose' within legislative framework, while its more specific provision, Art. 42, granted factory and service workers, farmers, farm labourers, other rural workers, and government employees below a certain level of responsibility, the right to form associations, to improve their conditions of employment and economic well being by forming trade unions and other associations. Ethiopia has as well committed itself to honour workers'

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<sup>32</sup> Freedom of Association and Collective Bargaining, Trade Union Rights and Civil Liberties, General Survey (1994) para.25, available online at- <http://www.ilo.org/ilolex/english/surlist.htm>

rights by ratifying all the major UN, ILO, and regional human rights instruments, which constitute, upon ratification, a part of the laws of the land.

Other legislations are also put in place intended to further implement the provisions of some of the international instruments. Notable among these, and one that deals with the specificities of employment relationship, is the Labour Proclamation 42/93. It has several provisions dedicated to establishing the procedures for the exercise of the right to freedom of association and formation of trade unions. However, as we shall observe in the forthcoming discussions, its application is limited only to certain category of employees.

Another notable source of law regulating such a right is the 1960 Civil Code. While Art.404 of the Code allows the formation of any grouping for the purpose of obtaining a result 'other than securing or sharing profits', Art. 406 prescribes that associations thus formed with a view to defending the financial interests of their members, or to representing a particular calling, shall be subject to the special laws concerning trade unions, unless such laws do not exist in respect of some category of workers. Since the Labour Proclamation has excluded a number of workers from the purview of its coverage, without putting in place a substitute law that governs their rights, the Civil Code provisions on the right to form associations will fill the lacuna thus created.

Freedom of industrial association, a broad phrase as it is, is constituted of different but intimately interrelated elements, the denial of each of which may easily frustrate meaningful exercise of the basic right as such. The present chapter will try to elaborate the specific bounds of the right, by making reference to the progressive interpretations of the pertinent human and labour rights instruments, and the domestic legislations and practice.

### **3.1.3 The right to freedom of association: constituents**

#### **3.1.3.1 The right of association: positive and negative freedoms**

To ensure and protect their economic and social interests, workers need to be entitled with the right to participate in the formation of local, national, or international organizations, or join existing unions. Recognition of this right is a prerequisite for the exercise of all other rights that are attached to it. As demonstrated in state practice, recognition of such a right is not as such a problem, and much of the intricacies are related to actual implementation of the right domestically, and with the ability of states to swiftly adopt legislative, administrative and other measures that give effect to the right so recognized.

Surveying once more few of the global instruments that stipulate the right to freedom of association, Article 20(1) and (2) of the UDHR affirm the right 'to freedom of association with others and the right not to be compelled to belong to an association', while Art.22 of the ICCPR, Art.8 of the ICESCR, Art. 5(e)(2) of the International Covenant on the Elimination of all forms of Discrimination, entitle every person with 'the right to form associations, along with others, and the right to join trade unions'. On the other hand, Art.2 of the ILO convention 87, Art.11 of the European Convention of Human Rights and Fundamental Freedoms, Art.5 of the revised European Social Charter, and Art. 10 of the African Charter grant individuals 'the right of free association'.

Similarly, articles 42 and 113 of both the Federal Constitution and the Labour Proclamation 42/93 respectively, and the 1960 Civil Code further introduce the right with in the domestic law frame work, with more details as to the conditions and procedures of its exercise.

The right of employees to establish and join organizations is not however as simple a concept as it seems, and raises a number of issues related to the exercise of positive and negative trade union freedoms, union security clauses and trade union pluralism on shop floor.

The concept of positive freedom of association is widely used as denoting the right to participate in the formation, the right to remain to be a member, or the right to join industrial or other organizations, subject to their internal procedural requirements, while negative trade union freedom implies the right not to join an organization, withdraw from one, or freedom from coercion when quitting membership.

In the positive sense, the right to freedom of association under Art.22 of the ICCPR is conceived as 'subjective right of the individual' to found an association with those like minded or to join an existing association.... but it also covers the collective right of an existing association to perform activities in pursuit of the common interests of its members.... State Parties are thus obligated not to prohibit or otherwise interfere with the founding of associations or their activities... because groups of persons usually seek to pursue their long term interests in a legally recognized form, (usually as juridical persons); states parties are also under a positive duty to provide the legal framework for founding juridical persons...and protect the formation or activities of associations against interference by private parties.<sup>33</sup> In the specific context of trade unions, the freedom guarantees the ' the right to join an existing trade union of one's choosing, to found a new trade union, or to decide not to organize in a trade union'.<sup>34</sup>

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<sup>33</sup> Supra note 29, pp.387

<sup>34</sup> Ibid pp.389

In a general observation of the Committee outlining the obligation of state parties under Art 5 of the European Social Charter protecting the right to form national and international associations for the protection of economic and social interests, states were required not to give effect to any legislation, regulation or administrative practice which impairs the freedom of workers or employers to form or join their respective organizations.

The Federal Constitution recognised the freedom of association of every person, for any cause or purpose, under Art. 31. But, to show the weight attached to the basic right, a specific provision on the right to association of employees in various sectors, is also introduced under Art. 42. On the other hand, Art. 113 and Art.114 of the Labour Proclamation further guarantees the right of employees to form trade unions, federations, and confederations to defend their interests. Art. 404 of the Civil Code of the 1960 also permits the right to form associations, including trade unions, to certain categories of employees not covered by pertinent labour laws. One can therefore assert that positive freedom of association is amply recognised under Ethiopian laws.

By virtue of Art.6 of the ILO Convention 87, the guarantees under Art.2 to form or join an organisation of one's own choosing apply not only to basic unions, but also to higher level organizations such as federations and confederations, which may be established by organisations engaged in similar industries, or merely by those situated in the same area or region, regardless of the nature of the industry. The same legal protections and responsibilities accorded to basic organisations are also extended to higher-level associations.

It is not uncommon for national laws to impose various restrictions on the rights of federations and confederations, contrary to the clear stipulation of the Convention. Some laws allow that only one federation be set up in a given industry or region, or only one confederation at a national level. Others allow that only certain category of employees be organized under such associations, or that they undertake only a limited range of activities.

The Labour Proclamation, in a bid to rid the shortcomings of a previous legislation, has opted for a decentralized organisation of trade unions, putting no legal limit on the number of federations or confederations employee organisations may wish to establish. But, distinctions are made in terms of the respective functions they may assume. Even though it is not clearly indicated, Art. 115 cum. 124 and 125, grant the power to conclude collective negotiations only to first level trade unions, subsiding the role of upper level organisations in the process. Besides provisions pertaining to strike are framed in such a way that only affected trade unions may have a right to take



industrial measures of such kind, thus effectively blocking those in similar industries, and specially federations and confederations, from recourse to calling sympathy style strikes or other industrial actions to further the cause of a specific union, or even the higher organisations themselves.

While almost all the major international and regional human rights instruments referred to in the preceding paragraphs explicitly recognize a positive trade union freedom or right of association, the question remains if they could be interpreted as implying a guarantee of the right to negative trade union freedom as well, in view of the fact that many of the conventions are framed in phrases that abstain from expressly recognizing such a right. Only Art 20(2) of the UDHR, Art 10(2) of ACHPR expressly recognize 'a right not to be compelled to belong to an association', while Art. 2 of Convention 87 and Art 8(1) (a) of the ICESCR merely entitle employees with a right to join organisations of 'their own choosing', whatever message that conveys, whereas Art 1(2)(a) of Convention 98 prohibit to make the employment of a worker subject to the condition that 'he shall not join a union or shall relinquish trade union membership'.

One important contention area as regards the issue of negative trade union freedom concerns the relationship between trade union security clauses and freedom of association. Obviously, many trade union security clauses pose problems vis-à-vis the exercise by an employee of the discretion not to belong or withdraw from a trade union. The most common union security arrangements practiced in many countries include:

The closed shop practice: a scheme included in a collective agreement or an arbitral award where by membership in a trade union or compulsory payment of union dues is put forward as a precondition for obtaining an employment, thus giving preference in employment only to members over non members,

Union shop: an arrangement that grants an employer the right to employ any person he chooses to, but subject to the condition that he joins a union with in a prescribed duration,

Agency shop: which requires all employees, regardless of whether they are union members or not, to pay union contributions with out making union membership a condition of employment,

Yellow dog contracts: agreement under which an employee enters an obligation not to become trade union member, or not to remain a trade union member

Art. 2 of the ILO Convention 87 affirms that workers and employers, without distinction whatsoever, shall have 'the right to establish' and, subject only to the rules of the organization concerned, 'to join organizations of their own choosing' without previous authorization, while Art. 1 of Convention 98 guarantee that workers shall enjoy adequate protection against 'acts of anti-union discrimination' in respect of their employment, and that such protection shall 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'; or 'cause his dismissal or otherwise prejudice a worker by reason of union membership or because of participation in union activities'.

The ILO Committee on Freedom of Association and the Committee of Experts have time and again acknowledged that while Art. 2 of the Convention has recognized the positive right to establish or join an organization, freedom to refrain from joining is not addressed by the instrument.

It was stated that negative trade union freedom and union security clauses are distinct issues, and that the conventions on Freedom of Association and the Right to Organize and Collective Bargaining, protect the positive right to organize, and 'do not deal' with the right 'not to join an occupational organization'.... Art. 2 of the Convention leaves it to the practice and regulations of each state to decide whether it is appropriate to guarantee the right of workers not to join in an occupational organization, or on the other hand, to authorize, and where necessary, to regulate the use of union security clauses in practice...In other words, under Convention 87, it is acceptable either to adopt the prohibition of trade union security clauses in order to guarantee the right not to associate, or to authorize and regulate the practice which restrict or cancel this negative right.<sup>35</sup>

Emphasising on the positive aspect of the right, the Committee went on to assert that these clauses are compatible with the convention provided, however, that they are the result of free negotiation between workers organizations and employers. However, when the law itself imposes union security clauses, the right of workers to set up and join organizations of their own choosing is compromised. Legislation which makes it compulsory to join a union, or which designate specific trade union as a recipient of union dues, or which achieves the same aim through regulation of the system of compulsory union dues...is not compatible with the convention.<sup>36</sup>

Where as the ground on which the ILO Committees distinguish trade union security clauses and right of association as separate issues is far from clear, it makes little practical difference whether security

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<sup>35</sup> Supra note 25, pp.183, also available online: General Survey, 1994, Right of Workers and Employers, at <http://www.ilo.org/ilolex/english/surlist.htm>

<sup>36</sup> Ibid

clauses are the result of free negotiation between parties concerned, or a legislative imposition. In either case, they run counter to the basic notion of individual freedom of choice of belonging or not belonging to any type of association. The writer believes that the right not to be compelled in any way to be a member of an association is but only a natural corollary of the positive right. Freedom of association, an individual right by its own under a number of international conventions, is highly compromised or challenged, if a person does not have legal guarantees against any prejudice from the employer or other sources when he chooses not to positively exercise it. Without doubt, union security clauses, however they are established, unduly restrict one's individual freedom of choice. It is believed that union security clauses not only have direct relationship with negative freedom of association, but also that Convention 87, and specially Art. 1 of Convention 98 should be understood as implying a guarantee of the right not to belong to an association.

The European Court of Human Rights, applying a similar provision as the one in Convention 87, and caught with determination of the issue of whether freedom of association as such as recognized under Art. 11 of the European Convention of Human Rights and Fundamental Freedoms, also includes freedom not to join or withdraw from an association, has decided in the affirmative in a number of specific occasions.

In the landmark case of *Sigurdur A. Sigurjonsson v. Iceland*, Mr. Sigurdur<sup>37</sup> alleged a violation of Article 11 of the Convention, that the obligation incumbent on him to be a member of 'Frami' on pain of losing his driving licence constituted a violation of Article 11 of the Convention.

The Court noted that the membership obligation of Mr Sigurdur A. Sigurjonsson was 'imposed by law'. Under Articles 5 and 8 of the 1989 Law, and Article 8 of the 1989 Regulation applicable in Iceland, he had to be a member of a specified association – Frami, in order to satisfy the licence conditions, and it was not possible for him to join or form another association for that purpose. A failure to meet this condition could entail revocation of the licence and liability to pay a fine. It was observed that compulsory membership of this nature, which concerned a private-law association, does not exist under the laws of the great majority of the Contracting States. On the contrary, a large number of domestic systems contain safeguards, which, in one way or another, guarantee the negative aspect of the freedom of association, that is the freedom not to join, or to withdraw from an association.<sup>38</sup>

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<sup>37</sup> *Sigurdur A. Sigurjónsson v. Iceland*, European Court of Human Rights, para. 26, application number 00016130/90, 30/06/1993, Hudoc reference: REF00000429, also accessible online from <http://hudoc.echr.coe.int/hudoc>

<sup>38</sup> *Ibid*, para.34-35

The Court reasoned that a growing measure of common ground has emerged in this area also at the international level. As observed by the Commission, in addition to... Article 20(2) of the Universal Declaration, Article 11(2) of the Community Charter of the Fundamental Social Rights of Workers provides that every employer and every worker shall have the freedom to join or not to join professional organisations or trade unions without any personal or occupational damage being thereby suffered by him. Moreover on the 24<sup>th</sup> of September 1991, the Parliamentary Assembly of the Council of Europe unanimously adopted a recommendation, amongst other things, to insert a sentence to this effect into Article 5 of the 1961 European Social Charter. Even in the absence of an express provision, the Committee of Independent Experts, set up to supervise the implementation of the Charter considers that a negative right is covered by this instrument, and it has in several instances disapproved of closed-shop practices found in certain States Parties, including Iceland. The Court concluded that Article 11 must be viewed as encompassing a negative right of association.<sup>39</sup>

In the case of *Young, James, and Webster v the United Kingdom*<sup>40</sup>, the applicants contended that the enforcement of a section of a certain labour legislation, allowing their dismissal from employment when they objected on reasonable grounds to joining a trade union, interfered with their freedom of thought, conscience, expression and association with others. A substantial part of the pleadings before the Court was devoted to the question of whether Article 11 guarantees not only freedom of association, including the right to form and to join trade unions, in the positive sense, but also, by implication, a 'negative right' not to be compelled to join an association or a union. The government submitted that Article 11 did not confer or guarantee any right not to be compelled to join an association and that the right had been deliberately excluded from the Convention as demonstrated by the following passage in the travaux préparatoires:

'...on account of the difficulties raised by the 'closed-shop system' in certain countries, the Conference in this connection considered that it was undesirable to introduce into the Convention a rule under which 'no one may be compelled to belong to an association' which features in Article 20 par. 2 of the United Nations Universal Declaration'.<sup>41</sup>

The Court recalled, however, that the right to form and to join trade unions is a special aspect of freedom of association, and that the notion of the freedom implies some measure of freedom of choice as

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<sup>39</sup> Ibid, para. 35

<sup>40</sup> *Young, James, and Webster V The United Kingdom*, European Court of Human Rights, application number 00007601/76 ; 00007806/77, 13/08/1981, also accessible from <http://hudoc.echr.coe.int/hudoc>

<sup>41</sup> Ibid, para. 51

to its exercise. Assuming for the sake of argument that, for the reasons given in the above-cited passage from the travaux préparatoires, a general rule such as that in Article 20 par. 2 of the Universal Declaration of Human Rights was deliberately omitted from, and so cannot be regarded as itself enshrined in the Convention, it does not follow that the negative aspect of a person's freedom of association falls completely outside the ambit of Article 11, and that each and every compulsion to join a particular trade union is compatible with the intention of that provision. To construe Article 11 as permitting every kind of compulsion in the field of trade union membership would strike at the very substance of the freedom it is designed to guarantee. The situation facing the applicants clearly runs counter to the concept of freedom of association in its negative sense.<sup>42</sup>

Proceeding on its reasoning and taking a bipolar stand on the matter, the court stated that 'compulsion to join a particular trade union may not always be contrary to the Convention'. However, a threat of dismissal involving loss of livelihood is a most serious form of compulsion and, in the present instance, it was directed against persons engaged by British Rail before the introduction of any obligation to join a particular trade union. In the Court's opinion, such form of compulsion, in the circumstances of the case, strikes at the very substance of the freedom guaranteed by Article 11. For this reason alone, there has been an interference with that freedom as regards each of the three applicants.<sup>43</sup>

In sum, while the court abstained from holding on a general rule that Art. 11 also prohibits the closed shop practice under all circumstances, limiting itself to the question of whether the specific provision was violated in the particular case, it was confirmed that certain forms of compulsion non the less run counter to the right guaranteed under Art. 11. So far, the development of case law implies that it is not possible to conclude that the Convention protects every incident of freedom from compulsion to join an association.

Under Art 5 of the European Social Charter, the Committee held that the negative aspect of the right to organize is also protected, and that the system of closed shop constituted a limitation on the right to association. It held that Art. 5 does not rule on the admissibility of union security clauses or practices.... however any form of compulsory unionism imposed by law must be considered incompatible with the obligation arising under this article of the Charter.... it should be underlined that.... to interpret the provision as permitting every kind of compulsion in the field of trade union

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<sup>42</sup> Ibid, para. 52

<sup>43</sup> Ibid

membership would strike at the very substance of the freedom it is designed to protect.<sup>44</sup>

The UN forums do not array a formidable jurisprudence on the contents of the right to association. Nowak however argues that Art. 22 of the ICCPR emphasizes the right to freedom of association, and this formulation can be traced to Art. 20 of the UDHR...this means that the formation of and membership in association must be voluntary. Every type of compulsory membership such as in public law corporations is therefore not permissible for associations protected by Art. 22. Of course this also applies to direct and indirect sanctions tied to membership or non-membership in association. Although motions.... in the 3<sup>rd</sup> Committee of the GA to set down an express prohibition on compulsory membership modelled on Art. 20(2) of the UDHR were defeated in both organs, the discussions surrounding them made it clear that negative freedom of association was protected as well.... the reasons why this prohibition was not adopted have solely to do with considerations for the interests of trade unions.<sup>45</sup>

On the other hand, Art 10(2) of the African Charter on Human and Peoples Rights expressly recognizes that no one might be compelled to join an association.

Many countries have adopted express legislations or otherwise developed jurisprudence that expressly recognizes negative freedom of association.

The Basic Law of Germany explicitly guarantees every individual the right not to join a collective industrial organization. All agreed arrangements that restrict the individual's right to organize...such for example as provisions in the individual contract of employment placing the employee under an obligation not to join a trade union, or closed shop clauses where by an employee undertakes to hire only employees who are union members, are invalid.<sup>46</sup>

The right of the individual not to be obliged to join an association does now however prohibit recruitment activities to attract new members or the grant of internal benefits to members, such as provision of strike pay by the unions. It does however prohibit the extension of unfair pressure, for instance by denying them privileges that are not purely internal to the organization.... one such example is

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<sup>44</sup> Fundamental Social Rights: Case Law of the European Social Charter, council of Europe Publishing, pp. 117-118

<sup>45</sup> Supra note 29, pp. 387-388

<sup>46</sup> European Foundation for the Improvement of Living and Working Conditions, Freedom of Association, Right to Organize (Germany), available online at- <http://www.eurofound.eu.int/emire/GERMANY/FREEDOMOFASSOCIATIONRIGHTTOORGANIZE-DE.html>

a differential treatment clause in a collective agreement under which privileges granted by employers are reserved for union members only.... The federal court has held such clauses as unlawful since they violate the fundamental right of positive and negative freedom of association.<sup>47</sup>

On the other hand, in France, the preamble of the Constitution of the 5<sup>th</sup> Republic of 1958, referring to the 1946 Constitution, states that any person can defend his rights and interests by taking part in the activities of a union of his choice...from this text are deduced the constitutional guarantees to join and permit union activity for every body, as well as the freedom not to join...and trade union pluralism.<sup>48</sup>

In Ethiopia, Art.31 and Art.42 of the Federal Constitution and Art. 113 of the Labour Proclamation dealing with freedom of association and right to organize in trade union are couched in similar phrases as many of the international human rights instruments, guaranteeing explicitly positive freedom of association, but not necessarily implying that they do not deal with the negative right, that being left for the pertinent organs to elaborate. But Art.14 (2)(d) of the Labour Proclamation clearly makes it illegal for an employer to coerce any worker by force or in any other manner to join or not to join or to cease to be a member of a union. Although the provision seems to guarantee the right only once employment relationship is established, it is at least partially in congruence with the ILO Convention 98 Art. 1, which forbids all 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, or cause the dismissal of or otherwise prejudice a worker by reason of union membership. The Proclamation contains no specific provision that prohibits the employer or any other organization from making non-membership of a union a condition of obtaining employment. In any event, the legislative provision extends an employee already recruited with the possibility of free exercise of the right to join or not to join, thus giving recognition to negative freedom of association.

Arguments for and against the recognition of the right not to belong to an association are not forwarded with out a practical relevance. The purpose transcends beyond mere conceptual analysis, and has a lot to do with the determination of the legality of the extension of preferential privileges to employees solely based on membership of a

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<sup>47</sup> European Foundation for the Improvement of Living and Working Conditions, Negative Freedom of Association, (Germany), available online at - <http://www.eurofound.eu.int/emire/GERMANY/NEGATIVEFREEDOMOFASSOCIATION-DE.html>

<sup>48</sup> International Labour Organization, Bureau of Workers' Activities, Report on six national case studies in the field of freedom of association, Prof. Marco Biagi, para. 64, available online at - <http://www.itcilo.it/english/actrav/telearn/global/ilo/LISTS/MARCO.HTM>

union. As revealed in many statistics, usually only few or limited numbers of employees become members of industrial associations, paying regular union fees, and participating in union activities. Only some choose to exercise the positive right of association and the fruits there of. This raises the question of how far unions may be able to solicit membership by extending special privileges to their members, with out at the same time transgressing the negative trade union freedom of others, and where this is not possible, what compensatory mechanisms there are available to make sure that the union remains attractive to employees who should not be discouraged by equal treatment with non union members.

In Germany, a court confronted with the issue of balancing between positive trade union freedom backing the union in increasing its attractivity, and negative trade union freedom backing the non union members in their desire not to be tempted to join a union by its increased attractivity, was resolved in favour of the later. By using the instrument of collective agreement, unions tried to establish clauses which would lead to the effect that some additional payments would be made to union members, and not to non union members.... such clauses granting privileges to union members in comparison to non-members were held to be void.<sup>49</sup>

When we refer the relevant legislation in Ethiopia, which unfortunately is not so specific, Art. 14(1)(f) of the Labour Proclamation, a non discrimination provision, makes it unlawful for the employer to discriminate between employees on the basis of nationality, sex, religion, political opinion or 'any other condition'. It could be argued that preferential treatments of trade union members based merely on their membership status could be regarded as discrimination between workers based on 'an affiliation to an industrial organization' which could rightly be regarded as falling under 'other conditions'. It may also be regarded as an indirect form of coercing an employee to join an association against his free will, which is prohibited under Art.14 (2)(d). Besides, Art. 134(1) of the same legislation stipulates that every collective agreement shall be applicable to 'all parties covered by it',<sup>50</sup> with out specifying what the basis would be for extending the fruits of a collective agreement to non members as well, thus effectively blocking the chance of any arrangement between a trade union and an employer for discriminatory extension of benefits to members and non members of a union. It seems to advocate that such arrangements unduly

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<sup>49</sup> Ibid, para.95

<sup>50</sup> Since collective agreements are concluded between a labour union and an employer, and since the former naturally represents not all employees, but only the interest of its constituencies, a narrower, but not necessarily logical, construction of the provision might imply that the 'parties covered' by a collective agreement are only the employer and the union representing those employees who choose to organise under it.



influence, indirectly, non union members who choose to stay away from union activity, to be members against their will merely for financial reasons.

### **3.1.3.2 Trade union monopoly/ pluralism and freedom to choose**

Another closely related problem area associated with the right to freedom of association concerns the issue of trade union monopoly and pluralism. Recognition of the right of employees to join an industrial association of their own choosing, at the least, presupposes that it must be possible for employees to have an opportunity of choosing, amongst alternatives, when they so wish. This should cover all levels of associations – basic trade union at a plant level, federations and confederations. Country experience on the matter varies although the current trend, which follows the wave of socio economic and political changes around the globe, following the demise of the cold war, points towards legislative recognition of decentralization and pluralism.

The issue of trade union monopoly arises when certain legislations explicitly prescribe a single trade union system for first level organizations, by allowing the establishment of only one such organization for all the workers in an enterprise, a public body, an occupation or branch of activity; in other countries, unity is imposed at all levels of trade union organization. In such cases, generally speaking, only one first level organization and one national trade union may be established for a given category of employees, or only one federation for each category or region. These organizations must or may in turn join a single national confederation or central organization, which is some times specifically designated in the law.<sup>51</sup>

Notable among other instruments, Art.10 of the African Charter, Art.2 of the ILO Convention 87, and Art.8 of the ICESCR have express provisions entitling employees to join organizations of ‘their own choosing’; but not in any way implying that a similar protection is not afforded under the ICCPR or European legal frameworks.

Under the ICCPR, it has been argued that freedom to join and form an association also implies a second aspect: the freedom to choose the organizations to which one wishes to belong. When a country has only one organization for promoting human rights, but I am not in agreement with its methods and objectives, my freedom of association is not exhausted simply because I am not forced to join this organization. On the contrary, Art. 22(1) also guarantees my right to found a second human rights organization with other, like-minded

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<sup>51</sup> Freedom of Association and Collective Bargaining, Right of workers and Employers to establish and Join Organizations, General Survey (1994) para.92, available online at-

<http://www.ilo.org/ilolex/english/surlist.htm> OR  
[http://training.itcilo.it/ils/foa/library/general\\_surveys\\_en/25943.htm](http://training.itcilo.it/ils/foa/library/general_surveys_en/25943.htm)

persons, corresponding more to my liking. In other words, when a state party creates an association, with or without compulsory membership, in a certain economic, political, cultural, etc field, it has in no way fulfilled its duties under Art. 22(1). ...it must make it legally and factually possible for all persons to choose between existing (state and private) organizations and, should none of these appeal to them, to found a new one.<sup>52</sup>

Under the European Social Charter, the Committee approaching the question from a general stand point, pointed out that 'all workers and all trade union organizations should, in principle, be free, under Art. 5 of the Charter, to decide to which trade union, professional or technical association they wish to belong'.<sup>53</sup>

With in the ILO, this right has been regarded as one of the most important aspects of the concept of freedom of association, and the supervisory bodies have time and again reiterated its crucial importance in their case laws.

Although it was clearly not the purpose of the ILO convention to make trade union diversity an obligation, it does at the very least require this diversity to remain possible in all cases. There is a fundamental difference between, on the one hand, a trade union monopoly established or maintained by law, and on the other hand, voluntary groupings of employees or unions which occur without pressure from the public authorities or due to the law, because they wish, for instance to strengthen their bargaining position, or coordinate their efforts to tackle ad hoc difficulties which affect all their organization. It is generally to the advantage of workers and employees to avoid proliferation of competing organizations, but trade union unity directly or indirectly imposed by law runs counter to the standards expressly laid in the convention.<sup>54</sup>

Other indirect forms of trade union monopoly include when legislation attributes trade union functions to specifically designated trade union committee; or fixes a percentage for membership which makes it impossible to establish several organizations; when establishment of a trade union is subject to the approval of an already existing trade union; when first level organizations must conform to the constitution of a single existing central organization; when an organization is obliged to affiliate to a single central organization on penalty of remaining illegal; if the law gives competent authorities a discretionary power to refuse registration on the belief that an already registered organization adequately represents the workers

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<sup>52</sup> Supra 26, pp.388

<sup>53</sup> Supra note 44, pp. 108

<sup>54</sup> Supra note 51, para. 91

concerned, and when the law institutionalises mere factual monopoly.<sup>55</sup>

While Art.114 (1) of the Labour Proclamation authorizes the formation of only one trade union at a plant level, there is no legal obligation requiring that there should be a limited number of federations or confederations, or that trade unions be affiliated to only some of the national organizations and not the other. So trade union unity is compulsory at the basic level, while the organization is decentralized at the upper hierarchies. Despite the absence of legislative impediment, however, through out the years, there has been de facto centralization, with only nine national federations, each representing similar category of industries, and one confederation at the central level.

The ILO supervising bodies have lambasted Ethiopian legislation denying trade union pluralism at plant level in a number of instances as not conforming to Art.2 of Convention 87. The Committee of Experts and the ILCCR, in a series of Individual Observations<sup>56</sup> concerning Convention 87, commented that section 114 of the labour legislation, which allows formation of only one trade union in an undertaking, runs counter to the provisions of the convention, and urges the government to take the necessary measures in order to guarantee that trade union diversity remains possible under all circumstances.

The Worker Member of Ethiopia, referring to the comment of the Committee of Experts regarding Art. 2, asserted that although he did not object to the principle in the Convention regarding trade union diversity, his organization, the Confederation of Ethiopian Trade Unions, was of the view that more than one union in an enterprise would undermine the unity of workers...and therefore did not support the Observation of the Committee regarding this point.<sup>57</sup>

On the other hand, the Government Representative stated that Ethiopian labour law permitted the possibility of forming multiple industrial federations and confederations, but the formation of only one trade union per enterprise because of limitations that had origins in the history of trade union movement in Ethiopia, and the Government's lack of experience with regard to the possibility of having multiple unions at the enterprise level. He also asserted that consultations made on the issue revealed that trade unions believed

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<sup>55</sup> Ibid, para. 94-95

<sup>56</sup> ILCCR: Examination of Individual Case Concerning Convention No. 87, Freedom of Association and Protection of the Right to Organize, Ethiopia, published 2000, 2001, 2002, ILO

<sup>57</sup> ILCCR: Examination of Individual Case Concerning Convention No. 87, Freedom of Association and Protection of the Right to Organize (Ethiopia), 88<sup>th</sup> Session of the International Labour Conference, para. 8, published 2000, ILO.

that the current legislation made them stronger, and that introducing multiple unions in an enterprise would weaken their collective bargaining position.... The employers' organizations in Ethiopia also supported this long standing practice and considered that it helped maintain industrial peace in the country, the law reflecting both positions and practices of the social partners, thus not necessitating any modification of the legislation in this regard. He asserted that the Government, not opposed to the possibility, in principle, would hold tripartite discussions to determine the appropriateness of amending the law to bring it in to conformity with the Committee's comments.<sup>58</sup>

The Ethiopian government, in what seems to be an attempt to keep some of the provisions of the labour law in conformity with internationally assumed obligations, especially under the ILO conventions, have been holding tripartite consultations with the social partners- employees and employer's organizations. A draft labour law has already been worked out. Art. 114(1) of the proposed draft effectively removed the limitation imposed by the previous law which authorises that only one trade union may be set up at an enterprise level.

The ILO, fearing that excessive fragmentation of trade union organizations may weaken the trade union movement and ultimately prejudice the interest of workers, has commented that in order to establish a proper balance between imposed trade union unity and multiplicity, legislation which establishes the concept of the most representative union, granting a variety of rights and advantages, is not in itself contrary to the principle of freedom of association, provided that this is determined in accordance with objective, pre established criteria, and that the distinction is generally limited to the recognition of certain preferential rights such as for purposes of collective bargaining, consultation by the authorities or the designation of delegates to international organizations.<sup>59</sup>

The Committee overseeing application of the European Social Charter, commenting on the system of granting of 'negotiating licences' dismisses the ILO assertion stating that the presence of a high number of trade unions does not necessarily entail a weakening of the labour movement as long as trade unions are in a position to organize 'horizontally' and 'vertically' to defend their interests.<sup>60</sup> The ILO position may have some logic, but needs to be applied with due care.

Art. 115(1) of the draft labour law stipulated that when there are more than one trade unions in an undertaking, only the union that gains the support of at least 51% of 'all employees' is authorised to negotiate

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<sup>58</sup> Ibid, para.1

<sup>59</sup> Supra 51, para. 97

<sup>60</sup> Supra 44, pp.108

collective agreement with the employer, to hold bilateral consultations with the government, and get registration licence with the pertinent body. Thus while the draft law on the one hand allows multiplicity of unions at a plant level, it effectively rendered the existence of unions that acquired less than 51% membership devoid of any meaning for they can neither register nor collectively bargain, making it hard to contemplate how such associations could serve in protecting the interest of their constituencies. Any ways, the draft law as it stands seems to be in congruence with the conclusions of the ILO, at least to the extent that it allows union diversity at a plant level.

### **3.1.3.3 The right to organize: persons covered**

The precise scope of the category of employees covered by the various instruments, and if covered, the extent of restrictions that can be imposed on the exercise of the right, has always been the subject of intensive debate and differing legislative consideration. The instruments vary not only in terms of the phrasing of the pertinent provision dealing with the right, but also in terms of the relative nature of the jurisprudence they developed on the scope and nature of the employees entitled to exercise this basic right.

The most important sources of appropriate laws in the Ethiopian context include the ICCPR, the ICESCR, the African Charter, the ILO conventions 87 and 98, the Federal Constitution, the Labour Proclamation and the 1960 Civil Code.

Art. 22 of the ICCPR recognizes that everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. It also explicitly recognizes that states shall have discretion in imposing lawful restrictions on ‘members of the armed forces and of the police’ in their exercise of this right. Besides, an important innovation is found in sub art.3 of the same provision, also available in the ICESCR, which cautions signatories that Art. 22 shall not in any way authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures ‘which would prejudice’, or ‘to apply the law in such a manner as to prejudice’, the guarantees provided for in that Convention, thus calling for a complete conformity of the UN instruments with the ILO convention.<sup>61</sup>

Similarly phrased like Art.22, Art. 8 of the ICESCR also reiterates that States Parties to the Covenant undertake to ensure ‘the right of everyone’ to form trade unions and join a trade union of own choice for the promotion and protection of economic and social interests.

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<sup>61</sup> For the relationship between the two conventions, see footnote 26 of this same work.

But Art.8 (2) of the Covenant granted states with the discretion of imposing lawful restrictions on the exercise of the right not only by the armed and police forces, but also 'members of state administration', with out specifying who is represented under the latter category.

It has to be noted that even with the case of the armed and police forces, as well as members of state administration, the limitations under both Covenants merely constitute a ground for state interference on the exercise of the right, and not a total deprivation of the right to form trade union or other forms of association.

Confirming this interpretational result is the fact that Art. 22 (for example) provides for restrictions on the 'exercise' of freedom of association and trade unions, i.e. not on their 'existence'. The Travaux Préparatoires show that the delegates in the HRCComm did not intend a total prohibition, but rather only several restrictions on the right to join certain associations, as well as on the exercise of such trade union activities as the right to strike.<sup>62</sup> Many states also restrict the political activities of the police and the military in order to prevent the armed forces from impermissibly meddling in the political affairs of the civilian constitutional organs.<sup>63</sup>

While the writer could not find any HRC jurisprudence or general comment elaborating on the contents of these provisions, it has to be noted that the ICCPR provision provides no limitation on the purposes for which an association may be created, be it political, economic, social, cultural, or professional, where as the right under the ICESCR is confined for purposes of pursuing economic and social objectives.

As for the personal scope, subject only to certain limitations in appropriate cases, Art. 2 of both Covenants confirm that the rights under the instruments apply to 'all individuals with in a state party's territory and subject to its jurisdiction', without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, save in cases where a state enters a reservation limiting the rights of aliens of associating for purposes of political activities or other purposes.

The African Charter for Human and Peoples Rights guarantees 'every individual' with the right of free association, subject only to the need to abide by the law. No categorical limitation is imposed in respect of the range of employees entitled to exercise such a right under the Charter.

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<sup>62</sup> Supra 29, pp.398

<sup>63</sup> Supra 29, pp. 397

When we refer to the ILO, Art. 2 of Convention 87 recognizes that workers shall have, 'with out any distinction whatsoever', the right to establish and join organizations of their own choosing. Art. 10 of the same Convention clarifies that the term 'organization' is not necessarily limited to trade unions, and that it could imply any form of organization that is used to 'further and defend' the interests of employees. Here it has still to be noted, from the terms used, that the right of association guaranteed under the Convention pertains to occupational purposes, a proper subject of the ILO, and not a general right of association, which normally falls under the competence of other international organizations.

There fore, save the limitations under Art. 9, which allow states to determine the extent to which the guarantees of the Convention shall apply to armed forces and the police, it is possible for all employees, regardless of the category of industry they are engaged in, and whether their employer is the state or the private sector, to form and defend their interest through an association. This is obviously at variance with the scope of coverage of many national labour legislations drawing various distinctions as regards public servants, executive and managerial staffs in private and public companies, domestic workers, judges, and prosecutors.

The Committee of Experts on the Application of Conventions and Recommendations (CEACR)<sup>64</sup> pointed out that the 'with out any distinction whatsoever' expression in convention 87 does not refer to the legal status of workers, and can not in any case be restricted to the concept of employees as usually understood in national labour legislations, and consequently, all workers, irrespective of the juridical nature of the employment relationship, are covered by the Convention.

The International Labour Conference,<sup>65</sup> which saw the issue from a slightly different angle, further affirmed that in adopting the phrase 'with out any distinction whatsoever', which is considered a more suitable way in which to express the universal scope of the principle of freedom of association than a list of prohibited forms of distinction, emphasized that the right to organize should be guaranteed with out distinction and discrimination of any kind as to 'occupation', sex, color, race, creed, nationality or political opinion.

Country experience in terms of legislative conformity with Art.2 of the Convention vary widely. Many laws draw distinctions, by and large

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<sup>64</sup> CEACR: Individual Observation Concerning Convention 87, Freedom of Association and Protection of the Right to Organize (Ethiopia), ILO, published 1989, also available online at

<http://www.ilo.org/ilolex/english/newcountryframeE.htm>

<sup>65</sup> Supra note 51, para.45

based on the juridical status of the employer and the nature of the employment relation ship.

In the forefront of such a distinction almost always appears the issue of the right of public servants, a phrase that is far from clear, and usually denoting different category of people in different countries. The Law and Practice report prepared by the ILO provides that public servants and officials should be covered by the convention: 'the guarantees of the right to association should apply to all employers and workers, public or private, and there fore, to public servants and officials, and to workers in nationalized industries. It has been considered that it would be inequitable to draw any distinction as regards freedom of association, between wage earners in private industry and officials in public services, since persons in either category should be permitted to defend their interests by becoming organized.'<sup>66</sup>

The Committee's view regarding the position of public servants has as well been consistent: 'any exclusion of such employees from the right guaranteed by the convention is a violation'. It asserted that:

'...given the broad wording of Art. 2 of Convention 87, all public servants and officials should have the right to establish occupational organizations, irrespective of whether they are engaged in state administration at the central, regional or local level, or are officials of bodies which provide important public services, or employees in state owned economic undertakings.... all workers regardless of their status in various categories of public services, are covered by the Convention.'<sup>67</sup>

In fact, it may some times be hard to see a community of interest between senior public officials and personnel in lower levels, thus leading to a certain degree of limitation on the right of association of those holding managerial or supervisory positions beyond certain limits.

When legislation allows such categories a right of association only provided that they do not join an association of public servants of a lower grade, or a trade union of other category of public servants, such a bar is not necessarily incompatible with freedom of association.<sup>68</sup>

Other category of employees concerns the police and the armed forces, the only exceptions to the exercise of the right of freedom of association the Convention authorized, and largely due to the special

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<sup>66</sup> International Labour Conference, 30th Session, 1947, Report VII, Freedom of association and industrial relations, p. 109, ILO

<sup>67</sup> Supra note 51, para.49

<sup>68</sup> Ibid, para.57



responsibility they assume vis-à-vis the maintenance of peace, order and national security. Here as well, country experience is different, but in any event, the convention provision Art 9 does seem to leave the regulation of this matter to the discretion of states that may wish to grant only limited right of association.

There are numerous other categories of employees who are denied the right of association because they are excluded from the scope of pertinent labour laws protecting such a right. In particular, the Committee has noted that this is often the case with domestic staffs, persons working at home or in family workshops, workers in informal sectors, in charitable institutions, seafarers, workers in export processing zones, managerial staffs in private sectors etc... Since however Convention 87 does not exclude these categories, they should all be covered by the guarantees it affords and should have the right to establish and join occupational organization.<sup>69</sup>

Another group of employees whose rights are restricted under many national legislations concerns non-nationals. It is not uncommon for countries to make citizenship a condition for the exercise of the right of association, especially those established for certain types of purposes.

The Committee considers that such a restriction may in particular prevent migrant workers from playing an active role in the defense of their interests, especially in sectors where they are the main source of labour. The right of workers, with out distinction whatsoever, to establish and join organizations implies that any one legally residing in the territory of a given state benefits from the trade union rights provided by the Convention.<sup>70</sup>

Similarly affected are also managerial staffs in both government and privately owned undertakings. Usually, such categories are excluded from the coverage of labour legislations because of the apparently conflicting interest they stand for in their relations with labour, as representatives of capital. In many cases, the contention is not only as to whether or not such groups should in fact be excluded or their rights to organization be restricted, but also what degree of managerial responsibility an employee should assume to be regarded as a member of the management.

Such legislations that prohibit workers' unions from representing managerial staffs or authorize an employer to require a person appointed or promoted to a managerial position to withdraw or refrain from joining a worker's union.... both in the public and private sector...are compatible with freedom of association, provided that two conditions are met: first that persons concerned have the right to

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<sup>69</sup> Ibid, para.59

<sup>70</sup> Ibid, para.63

form their organizations to defend their interests; and second, that the category of executive and managerial staff is not so broadly defined as to weaken the organizations of other workers in the enterprise or branch of activity, by depriving them of a substantial proportion of their actual or potential membership.<sup>71</sup>

Besides, legislation which allows for the granting of fictitious promotions to unionized workers without actually according them management responsibilities, thereby effectively placing them in the category of 'employers' to whom the right to organize is not permitted, is not in accord with the Convention, since in effect, it denies the right of association and artificially reduces the size of the bargaining unit.<sup>72</sup>

When we examine pertinent laws in Ethiopia, Art. 31 of the Federal Constitution guarantees 'every person' a general right of association, for any cause or purpose, subject to the obligation to respect the appropriate laws, while Art. 42, a more specific provision guaranteeing labour rights, entitles factory and service workers, farm labourers, other rural workers, government employees whose work compatibility allows for it and who are below a certain level of responsibility<sup>73</sup> the right to form association to improve their conditions of employment and economic well being, including the right to form trade unions, and other associations. As to government employees referred to above, sub art. 1(c) provides that legislation will determine 'which employees are eligible to exercise such a right'. No express mention of the exclusion or inclusion of the armed and the police forces.

No doubt, the Constitution has guaranteed the basic right of organizing for a bulk of the employees, including civil servants<sup>74</sup>, and other members of the state administration governed by special laws, while leaving the regulation of the procedures for the exercise of the right as such to future legislations. As is the case with many similar documents, constitutional provisions lay down only basic rights whose contents and scope shall be clarified and whose exercise is regulated by detailed legislations.

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<sup>71</sup> Ibid, para.87

<sup>72</sup> Ibid, para.66

<sup>73</sup> Most probably this refers to public servants occupying high level managerial, supervisory positions with decisive role in deciding and implementing commercial strategies and options or major policy guidelines; or those engaged in positions of trust, as well as their collaborators, who by virtue of the position they assume, have access to confidential information; or employees in fire service and prison.

<sup>74</sup> A slight incompatibility of the Constitution with the Convention could how ever be detected in art 42 in respect of government employees beyond certain level of responsibility, prohibited from organizing while no such a distinction exists under the Convention.

There are few legislations enacted that are particularly relevant in the context of the subject under discussion. The first is the Labour Proclamation of 1993, so far the most comprehensive law governing right of association of certain category of employees. It has several provisions explicitly enumerating the type of workers entitled to the rights under the proclamation, and governing the procedures for the formation and operation of trade unions.

Art. 113 of the Proclamation recognizes that workers shall have the right to establish and form trade unions and actively participate there in.

However, the rights of the Proclamation can be exercised only by 'the category of employees covered' by this particular legislation. As per Art.3 (1), the law's application is limited to employment relationships based on a contract of employment that exists between an 'employer and employee'; and who may be regarded as employee or employer for the purposes of the Proclamation has been specifically determined. Accordingly, sub art. 2 enumerates the list of employment relationships excluded from the coverage of the law, which includes, inter alia, contracts relating to persons holding managerial posts who are directly engaged in major supervising functions of an undertaking owned privately or by the state, contracts of personal service for non profit making purposes, contracts relating to persons such as members of the armed forces, police force, employees of state administration, judges of courts of law, prosecutors, and others whose employment is governed by special laws, and contracts relating to independent contractors.

Whatever rational lies behind such a clean-sweep-out of protected categories, the Proclamation has effectively excluded many employees that are properly covered by Art. 2 of Convention 87, both UN covenants, as well as the national Constitution, which established the right of association under Art.31 and Art.42.

Save the case of armed and police forces, a blind exclusion of all employees engaged in state administration, executive staffs in public and private undertakings, and employment contracts of judges and prosecutors is certainly contrary to the stipulation of the ILO convention and the UN instruments unless a separate law addresses the issue.

It seems how ever that the Labour Proclamation, primarily concerned with employment relationships in undertakings run for economic gain, is not meant to govern every type of employment relationship. There are a number of separate legislations dealing with specific types of workers, such for example as employees in the civil service. It is probably due to the fact that the right of association of such category

of persons will be addressed in a separate law that the labour legislation excluded many employees from its scope of application.

However, apart from Art 404 of the Civil Code, which grants a general right of association, the writer is not aware of the existence of any law that specifically grant or indirectly deal with the right of association of the above excluded category of employees. Over the years, the Civil Code provisions have been a very important legal basis pursuant to which many employee associations, including employees in some sections of the civil service such as teachers, seeking to further their occupational interests, have been established. Though without detailed rules necessary to regulate the establishment and operation of occupational organizations, the Civil Code will continue to govern the right of association with regard to excluded sections of employees in respect of whom no special law exists. And yet, because of the generality of the Civil Code provisions, many employees in several occupations still remain unable to effectively exercise their right of association.

Since its report to the ILO in 1994, the Government of Ethiopia has been promising that, apart from the somewhat 'arguably sufficient' guarantees under the Constitution, a new law was being developed to address the concerns with respect to the denial of the right of employees in state administration, judges, prosecutors, and others to establish and join organizations for the promotion of their occupational interest. The Government conceded<sup>75</sup> that what had been lacking previously were the procedures and regulations determining the manner in which civil servants exercised these rights...and that these procedures and regulations were under consideration for a long time... and on the verge of completion...probably to be adopted by the end of the year 2000. Previously, the Committee noted that despite being informed by the Government in its report of 1994 that a new law was expected to be adopted 'in the very near future' to address the concerns that had been raised by the Committee with respect to the exclusion of state administration officials, judges, and prosecutors from Proclamation 42/1993, the Government had not since provided any information on the progress of the law...and asked the Government to indicate whether these categories are entitled to associate to further and defend their occupational interests.<sup>76</sup>

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<sup>75</sup> Supra 57, and CEACR: Individual Observation Concerning Convention 87, Freedom of Association and Protection of the Right to Organize (Ethiopia), ILO, published 2002, also available online at <http://www.ilo.org/ilolex/english/newcountryframeE.htm>

<sup>76</sup> CEACR: Individual Observation Concerning Convention 87, Freedom of Association and Protection of the Right to Organize (Ethiopia), ILO, published 2000, also available online at <http://www.ilo.org/ilolex/english/newcountryframeE.htm>

And yet, as late as in 2002 and 2003, the proposed law far from being ripe, the Government merely reported that a draft law had been submitted to different stakeholders for their comments. The Federal Civil Servants Proclamation No. 262/2002, enacted only as recently as in 2002, and regulating the rights and obligations of employees in the civil service, made no reference whatsoever to the right to associate of civil servants or those employed in various offices of state administration, or the procedures for the exercise of the rights they acquire under the Constitution. The CEASR, in its Individual Observation on Convention 87 for the same period<sup>77</sup>, requested the Government to forward any draft legislation governing teachers association and other government employees....and indicate whether state administration officials, judges and prosecutors are entitled to associate to further and defend their occupational interests, and if they will be covered by the proposed draft legislation.

### **3.1.3.4 Establishment**

#### **3.1.3.4.1 'Without previous authorization': formal requirements**

The ICESCR recognizes the right of everyone 'to form trade unions'; where as the ICCPR and ECHR grant everyone the right to 'freedom of association with others', including the right 'to form trade unions', while the African Charter entitles the individual the right 'to free association'. Only Art.2 of the ILO Convention 87 expressly stipulated that workers are entitled to do so 'without previous authorization' from the administrative authorities, even though it does not necessarily follow that a similar protection is not foreseen in the aforementioned instruments.

It has to be noted that usually there are certain minimal prerequisites that need to be complied with by every association before it can operate legally.<sup>78</sup> In many cases, this includes deposit of the by laws of the organization containing certain particulars, used for monitoring compliance with labor law prescriptions, and to check if the objectives of the organization are lawful, the requirement of registration, acquisition of personality and publicity. Art. 8 of Convention 87 clearly asserts that in exercising the rights provided for in the Convention, workers and their respective organizations, like other persons or organized collectives, shall respect the law of the land, which obviously includes pertinent regulations putting forth conditions for the establishment of an organization. The phrase 'with out any authorization' can hardly be understood as implying absolute

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<sup>77</sup> Supra 75

<sup>78</sup> In some countries, workers' associations.... can be set up with out being subject to any legal formality such as registration; this is the case for example in Belgium, Denmark, Germany, Iceland, Italy, Luxembourg, Norway, Sweden and Switzerland: (Freedom of Association: An International Survey, International Labour Office, Imprimerie Vaudoise, 1975 pp.12)

freedom from such a requirement. It only guarantees employees that they need not receive the blessing of the public officials before they could set up their association to defend their socio-economic interests.

However, sub art. 2 of the same provision also puts forth a reciprocal obligation on the state: the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention. Accordingly, when certain formalities need to be fulfilled, legislation should define clearly the precise conditions required for registration or legal recognition, and these should be governed by specific statutory criteria. It would not be compatible with the principle laid down in the Convention for the right to establish an organization to be subject to authorization given by the public authorities at their sole discretion, or for the approval of the rules of the organization to be within the discretionary powers of the authorities, or for meetings called to set up an organization to be subject to undue restrictions or outright prohibition.<sup>79</sup> Besides, such formalities, when required by law, should not be complex and subject employees to lengthy procedures, which will give the authorities in practice discretionary power to refuse the establishment of organizations. Provisions should also be made for the possibility of judicial appeal against administrative decision of this kind to an independent and impartial body, which would re-examine the substance of the case.<sup>80</sup> The latter should grant remedy to organizations that are victim of illegal and unwarranted decisions of the authorities. And naturally, such a body, preferably a court of law, must be competent to demonstrate objectivity in its decisions, and able to review the reasons given for refusal to register, and see to it that such grounds are not contrary to the stipulation of the Convention.

Art. 7 of the ILO Convention 87 also provides that the acquisition of legal personality of employees' association shall not be made subject to conditions of such a character as to restrict the application of the provisions of the Convention.

Legislation is therefore compatible with the terms of the convention if it automatically confers legal personality on the organization in question at the time of establishment, be it without formalities being observed, when the bylaws are deposited, or following a registration procedure, or other formalities that are compatible with the Convention. However, when legislation makes acquisition of legal personality a prerequisite for the existence and functioning of organizations, the conditions for acquiring legal personality must not be such that they amount to de facto requirement for previous authorization to establish an organization. Legal personality should

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<sup>79</sup> Ibid

<sup>80</sup> Supra 51, para.106

not be denied to organizations once they have met the legal requirements.<sup>81</sup>

The idea of compulsory registration or licensing of trade unions is not forbidden even under the European Social Charter case law, even though many member states adopt national laws that allow the establishment of organizations without the necessity of meeting formal pre requisites. According to the Committee, the organ in charge of the case laws under the Charter, the principle of compulsory registration of trade unions is not incompatible with Art. 5, so long as the persons concerned have adequate administrative and jurisdictional protection against abuse of the power to refuse to register a trade union; and to assess compliance in cases where registration of trade union is compulsory by law, the Committee has inquired into the criteria adopted by administrative authorities when granting or refusing registration and asked for information on any court decision on the refusal of registration.<sup>82</sup>

Coming back to Ethiopian laws, Art.31 and Art.42 of the Federal Constitution require that organizations should be established in compliance with appropriate laws, and that laws enacted for the implementation of such rights shall establish procedures for the formation and regulation of trade unions.

One such a procedure is established under the Labour Proclamation. Organizations established pursuant to the provisions of the labour law need to have a constitution that comprises such particulars as name, address, date of formation, emblem, financial or property administration, qualification for leadership, disciplinary measures etc. While it has not been indicated anywhere in the law that organizations should acquire previous authorization from the public officials before they can be set up, no organization can perform the activities set forth in the Proclamation or in its by laws unless it deposits, upon establishment, the constitution of the organization, and gets registered.<sup>83</sup> The pertinent government office who is under obligation to examine the by laws and related documents, and ascertain that they are duly completed, gives the association certificate of registration within fifteen days. Failure to notify its decision within the period specified above will result in automatic registration of the association.<sup>84</sup>

The conditions required for registration are neither ambiguous nor lengthy. The provisions are not framed in such a way as to grant wide discretion to the ministry in charge of registering associations. Specific statutory stipulations determine whether or not he should

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<sup>81</sup> Ibid, para.76

<sup>82</sup> Supra 44, pp.109

<sup>83</sup> Art. 118(2), 118(5) Labour Proclamation

<sup>84</sup> Art.118 (3) Labour Proclamation

refuse registration. The range of broader objectives for which trade unions may be set up has been elaborated in some detail that the ministry has no choice but to register an organization with objectives fitting those provided for in the law. One possible exception may be Art. 119(2) granting the office the power to refuse registration when the 'objectives and the constitution of an organization are illegal'. Apart from enumerating the possible role and responsibility of associations in generally promoting occupational interests of their constituencies, the law does not explicitly provide for the type of activities or objectives that may be regarded impermissible as to allow the ministry refuse registration, thus in effect leaving it for the office to elaborate on what permitted and prohibited activities or objectives of organizations really constitute.

When the ministry refuses registration, the right of appeal to a competent court is reserved to organizations that wish to challenge the decision of the office.<sup>85</sup>

The Civil Code too has some provisions governing occupational organizations that are not covered by the labour law, and in respect of whom no special laws exist.

Similarly, such associations are required to draw up and deposit statute of organization with the competent office.<sup>86</sup> Such entities assume legal personality that is distinct from the persons they are composed of.<sup>87</sup>

#### **3.1.3.4.2 The right to formulate union constitution and rules in full freedom**

Art. 3 of Convention 87 entitles workers' organizations with four fundamental rights intended to guarantee their free and autonomous functioning, namely that they shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes. While the need for respecting appropriate national laws in the exercise of the right is emphasized under Art. 8, the public authorities shall refrain from any interference, which would restrict this right or impede the lawful exercise thereof. Only a limited degree of intervention is therefore foreseen, mainly to control that organizations are operating within the confines of the law.

With respect to the right to draw up their constitutions and rules, in order for the right to be fully guaranteed, two basic conditions must be met: national legislation should only lay down formal requirements

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<sup>85</sup> Art.122 Labour Proclamation

<sup>86</sup> Art.409, 413 Civil Code of 1960

<sup>87</sup> Art.451 Civil Code of 1960



as regards trade union constitutions; secondly, the constitutions and rules should not be subject to prior approval at the discretion of public authorities. Thus, legislation which does not contain any provision respecting the content or approval of the constitutions and rules of organization is compatible with Convention 87.<sup>88</sup> Model constitutions and rules intended to serve as guidelines to trade unions may also be included in this category, provided that there is no legal obligation to accept them or any pressure exerted for this purpose. However...any legislative provisions concerning the preparation, content, amendment, acceptance or approval of constitutions and rules of occupational organizations which go beyond these formal requirements may hinder the establishment and development of organizations and constitute interference contrary to Art. 3 (2) of the Convention.<sup>89</sup>

Such interference may take different forms: for example, a first level trade union may be required to conform to the constitution of a single federation; the constitution of a new trade union may be subject to approval by the central administration of the existing organization; the sole central organization or higher level organizations specified by the law may have the exclusive right to elaborate the by-laws of first level trade unions; the constitution may have to be drawn up by the public authorities; trade unions may be required to follow a model constitution which contains more than a purely formal clauses or to use such a model as a basis.<sup>90</sup>

Art. 117 of the Labour Proclamation authorises employee associations to draw up their own constitutions in full freedom, which must contain certain particulars such as name, address, purpose of the organization, date of formation, emblem, meetings, election procedures, qualification for leadership, etc., largely constituting mere formal requirements which hardly pose an impediment on the exercise of their right. It is explicitly provided for under the legislation that the relevant ministry has no discretion but to register the organization when it deposits, among other things, its constitution.<sup>91</sup> Only if the objectives and the constitution of the organization are found to be 'illegal' may the office have a ground for refusing registration. The authorities do not have a wide discretion in examining the contents of the constitution since what should be included in the constitution is clearly specified under the law. An exception may however be that, no other specific regulation has provided for in detail some basic elements such as what kind of

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<sup>88</sup> Freedom of association and collective bargaining: Right of workers' and employers' organizations to draw up their constitutions and rules, to elect their representatives in full freedom and organize their administration and activities, General Survey (1994), para.110, available online at [http://training.itcilo.it/ils/foa/library/general\\_surveys\\_en/25944.htm](http://training.itcilo.it/ils/foa/library/general_surveys_en/25944.htm)

<sup>89</sup> Ibid, para.110-111

<sup>90</sup> Ibid, para.111

<sup>91</sup> Art.118 Labour Proclamation

qualification the leadership of the union should possess, the amount of contribution levied on members, what procedures they should follow in elections and meetings, on financial and property administration and the like, thus in effect leaving it to the office to decide on these subjects, even though this has not caused real difficulty in practice. Besides, as discussed previously, what may be regarded as 'illegal' objective under the constitution may vary according to subjective appreciation of the ministry, possibly opening a way for some discretion whether or not to register an association. Otherwise, employees may choose to adopt a model constitution of other organizations, such for example as federations or confederation, if they so wish, or create their own, without any influence from any source, and no law subjects them to a condition of approval by the public authorities with unregulated discretion.

With regard to associations established pursuant to the Civil Code provisions, while the associates may still draw their constitution freely, which must also be signed by at least five members, a distinction is made in respect of standard model statutes approved by the ministry, in which case the requirement of signing need not be complied with.<sup>92</sup>

#### **3.1.3.4.3 Requirement of minimum number of members**

None of the international instruments provide that an organization shall have a certain minimum number of membership before it can be set up and function legally. It is for the respective organs to elaborate on the conformity of national laws with international obligations where the former sets, as one of the formal requirements, that there should of necessity be a specified number of founders. Limitations of this kind could have a negative impact on the right to freedom of association when they are unreasonably excessive.

Under the European Social Charter, the Committee touched up on this issue in an indirect manner when examining the condition imposed in Ireland for the granting of a negotiating license to trade unions, since one of these conditions was for the union to have at least 500 members. The Committee held that the condition of size for a trade union infringed 'the freedom of forming or joining trade union'. The Committee's view that the requirement of a minimum number of members is incompatible with Art.5, as it can be a restriction of the liberty to constitute workers' and employers' organization is clearly shown in the conclusion adopted for Portugal. The Committee stated that legislation according to which the minimum number of workers required to form a trade union was 10% of the total 2000 workers ...did not comply with the provisions of the Charter.<sup>93</sup>

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<sup>92</sup> Art. 411, 412 Civil Code of 1960

<sup>93</sup> Supra 44, pp.109-110

Applying Convention 87 provisions, the International Labour Conference (ILC), while acknowledging that country experience on this matter varies immensely, and that such a requirement is not in itself incompatible with the Convention, stated that the number should be fixed in a reasonable manner so that the establishment of organizations is not hindered; the minimum number may vary according to the particular conditions in which a restriction is imposed. And in cases in which it has considered that the minimum number fixed by national legislation is too high, the Committee has requested that it be reduced to a reasonable level.<sup>94</sup>

The Labour Proclamation provided that a trade union may be established in an undertaking where the number of workers is twenty or more, and when only less than twenty employees work in undertaking, they must form a general trade union along with others similarly situated.<sup>95</sup> In one of the sessions on examination of individual case concerning Convention 87, the Worker representative of Ethiopia expressed its support for the views of the Committee of Experts of the ILC which concluded that the minimum number set out in the law of workers needed in an enterprise for the establishment of a trade union should be reduced from twenty to ten.<sup>96</sup> The legal limitation has in fact effectively barred many employees in small-scale enterprises from defending their rights through association.

If the draft labour law is promulgated the way it is at the moment, it will bring conformity, at least with Convention 87 articles as interpreted by the Committee of Experts, as regards the requirement of minimum number of associates needed for establishing a trade union. Art. 114 of the draft requires only ten founding members.

On the contrary, an association formed pursuant to the Civil Code provisions can commence its activities with a membership of only two persons.<sup>97</sup> It must be noted that the Civil Code is a not a typically labour oriented law, and its pertinent provisions deal merely with a general right of association, for non profit purposes, of those not covered by the labour law and in respect of whom no special law exists.

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<sup>94</sup> Supra 51, para.80

<sup>95</sup> Art. 114 Labour Proclamation

<sup>96</sup> ILCCR: Examination of Individual Case Concerning Convention 87, Freedom of Association and protection of the Right to Organize Convention (Ethiopia), ILO, Published 2001

<sup>97</sup> Art. 404 Civil Code of 1960

# **4 CHAPTER 4**

## **4.1 Aspects of freedom of association: Functioning of organisations**

Another dimension for considering issues associated with the right to freedom of association will target the functioning of trade union organizations, and specially emphasise on such aspects of the right as activities and functioning of occupational organisations, the range of legitimate objectives they may pursue, autonomy of trade unions in their operations, and legal guarantees against other forms of interference by public official and employers in the exercise of the right of association.

## **4.2 The right of unions to organize their administration, programs and activities**

### **4.2.1 Objectives and activities of associations**

#### **4.2.1.1 General**

Trade unions are set up to defend the social and economic interests of their constituencies. Usually, labour legislations provide for the major functions which employees' associations at plant, regional and national levels are supposed to undertake. This includes observing respect of work conditions set forth under applicable laws, represent employees in collective negotiations and labour disputes, publicize labour laws, regulations and directives to members, initiate laws pertaining to work conditions, participate actively in their preparation, represent employees in national and international forums, and perform other acts necessary to achieve their purposes, in accordance with their constitutions.

And usually, this function is attained through a continuous process of collective bargaining with employers, and by taking industrial actions such as strikes. There is hardly a big issue that arises in respect of such traditional domains of occupational organizations.

While it is true that there is a very intimate relationship between the right to freedom of association, the right to collective bargaining and the right to strike, it is not the intention of this writing to discuss the details of the latter two, despite their practical significance for the effective exercise of the right of association, mainly because of the extremely wide scope they cover and the complexity of the issues

involved. It suffices to note that collective bargaining and strike actions constitute some of the legitimate activities of trade union organizations in effectively implementing the rights inherent in association.

#### **4.2.1.2 Collective bargaining**

One of the most important roles union organizations play in the defense of the interests of their members is the conclusion of collective agreement on various conditions of work. This is achieved through a continuous process of collective negotiations between an employer and employees' organizations. The primary goal of collective negotiation is to achieve an agreement on specified or general conditions of employment. The process provides employees with important benefits. One of the reasons why employees choose to organize in unions is that it gives them the opportunity to echo their group, rather than individual, voice that warrants them the opportunity to engage in collective managerial decision making on matters that affect various conditions of work, and better protect their socio-economic interests. Today, in almost all countries, collective negotiations constitute the cornerstone of national labour relations policy, with varying degree of importance. Different measures should be adopted at the national and international levels to encourage and promote the full development and utilization of the machinery for voluntary negotiation between employers and workers' organizations.

The right of employees to engage the employer to a table of collective negotiation is expressly and impliedly recognized under various international instruments. It indeed constitutes an essential element of freedom of association. National laws further elaborate on the rules that govern the procedures of negotiation, the organs entitled to represent the parties, subject matters covered, the respective rights and obligations of the parties in the process, and protections against interference by the employer and the authorities. It is hard, if not impossible, to protect the best interests of employees through a collective bargaining where there is no established union. In this regard, union organisations play an important role. Any interference, which would restrict the right or impede the lawful exercise collective bargaining, offends the principle that workers' should have the right to organize their activities and to formulate their programs.

The right of employee organizations to bargain with the employer is expressly recognized under the Labour Proclamation. The law has set forth not only the right, but also the institutional framework within which it is undertaken, and the procedural rules that govern its conduct.

#### 4.2.1.3 Strike actions

It is not uncommon for employers and employees to be held in dead lock during a collective bargaining. Such labour disputes are usually followed by a strike, or other collective measures of employees that produce similar impact. A strike constitutes a temporary stoppage of work by some or all of the work force, by virtue of a collective decision making, aimed at obtaining new changes of conditions of work or with holding already existing ones. Organizing strike actions is one of the traditional domains of workers' organizations. Concerted as such a measure need to be, it cannot be thought of unless employees are organized under some association.

Like the right to collective bargaining, the right to strike too is protected under a number of international and regional instruments. National laws set out the category of employees permitted to engage in such activities and the preconditions workers' organizations shall meet before they can embark on legally protected industrial actions.

Laws enacted to regulate industrial actions such as strikes will usually have a direct impact on the potential activities of trade unions in furthering and defending the interests of their constituencies. Since the right to strike is one of the essential means available to workers and their organizations in achieving the above goals, caution should be taken as regards the restrictions applied on the exercise of such a right.

Surveying international standards on the subject, Art. 8(1) of the ICESCR entitles employees the right to strike, provided that it is exercised in conformity with the laws of the particular country. The right is not however expressly recognized under any of the ILO conventions, even though the ILO documents have been mentioned in a number of instances as the primary sources.

However several resolutions of the International Labour Conference, regional conferences and regional committees refer to the right to strike, or the measures to guarantee its exercise.<sup>98</sup>

In the absence of an express provision on the right to strike in the basic texts, both the ILO supervisory bodies, the Committee on Freedom of Association within the framework of the special procedure set up to examine complaints of violations of freedom of association, and the Committee of Experts under the terms of articles 19 and 22 of the Constitution, have had to determine the exact scope of protection of the subject under the Conventions.

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<sup>98</sup> Freedom of Association and Collective Bargaining: The Right To Strike, General Survey (1994), Para.142 available online at - [http://training.itcilo.it/ils/foa/library/general\\_surveys\\_en/25945.htm](http://training.itcilo.it/ils/foa/library/general_surveys_en/25945.htm)

The Committee on Freedom of Association affirmed the principle of the right to strike as an essential element of trade union rights...and stressed that in most countries, it is recognized as legitimate weapon of trade unions in furthering their members' interests.<sup>99</sup>

The Committee of Experts on the other hand expressed in its General Survey the view that the prohibition of strikes by workers other than public officials acting in the name of the public powers...may sometimes constitute a considerable restriction on the potential activities of trade unions ...there is a possibility that this prohibition may run counter to Article 8, paragraph 2, of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87); a general prohibition of strikes constitutes a considerable restriction of the opportunities opened to trade unions for furthering and defending the interests of their members and of the right of trade unions to organize their activities.<sup>100</sup>

The right to strike is one of the essential means available to workers and their organizations for the promotion and protection of their economic and social interests. These interests not only have to do with better working conditions and pursuing collective demands of an occupational nature, but also with seeking solutions to economic and social policy questions and to labour problems of any kind which are of direct concern to the worker.

The Committee's reasoning is therefore based on the recognized right of workers' and employers' organizations to organize their activities and to formulate their programmes for the purposes of furthering and defending the interests of their members (Articles 3, 8 and 10 of Convention No. 87). The words 'activities and ... programs' in this context acquire their full meaning only when read together with Article 10, which states that in this Convention, the term 'organization' is defined as including any organization 'for furthering and defending the interests of workers or of employers'. The promotion and defense of workers' interests presupposes means of action by which the latter can bring pressure to bear in order to have their demands met. In a traditional economic relationship, one of the means of pressure available to workers is to suspend their services by temporarily withholding their labour, according to various methods, thus inflicting a cost on the employer in order to gain concessions. This economic logic cannot be applied as such to the public sector, although, here again, the suspension of labour services is the last resort available to workers. The Committee therefore considers that the ordinary meaning of the word 'programs' includes strike action, which led it very early to take the view that the right to strike is one of the essential means available to workers and their organizations to promote their economic and social interests.<sup>101</sup>

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<sup>99</sup> Ibid, para.146

<sup>100</sup> Ibid, para.147

<sup>101</sup> Ibid, para.147-148

Country experience varies not only in terms of recognition of the right as such, but also the scope the right. In some countries, the right of recourse to strikes as a means of solving industrial disputes is recognized under a law, subject to varying degree of restrictions, while in others, it may just be a ground for termination of a contract of employment.

Taking note of the important roles unions may play in furthering the occupational interest of employees in various sectors, both Art. 42 of the Constitution and Art.157 of the Labour Proclamation have provided for the legal and institutional framework that govern the conduct of strike actions.

The Constitution guaranteed the right to all factory and service workers, farmers, farm labourers, rural workers, and government employees whose work compatibility allows for it and who are below certain level of responsibility, while leaving it for it for future legislation to specify government employees entitled to exercise such a right. Even though no legislation was enacted to that effect, from the various reports the Government submitted to the ILO bodies, and from the conclusions and recommendations of the convention supervising bodies, one can imply that this was intended to include civil servants as well.

The Labour Proclamation, which excludes a number of categories from its coverage<sup>102</sup>, has provided for detailed provisions that govern the conditions and procedure of the right to strike.

The most important aspect of the labour law that has attracted particular attention of the ILO forums had been Art. 157, which prohibited recourse to strike by employees in essential services, an industry that comprises a considerable category of industries, including air transport, railway services, electric power, water and sewage services, inter and intra city bus transport, gas refill stations, hospitals, clinics, banks, fire services, postal and telecommunication services. One can observe that almost all the major industries are included with in the exclusionary framework. The excuse underlying such a sweeping exclusion may have been the essential nature of the services whose interruption may pose substantial damage to the basic interest of the community. The effect is that employees engaged in such undertakings cannot embark on a strike action to compel an employer submit to certain labour disputes.

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<sup>102</sup> Contracts for educating or training other than as apprentice, management levels of certain extent, contracts of personal service for non profit purposes, contracts relating to members of the armed forces, police, state administration, judges, prosecutors, and others whose employment is governed by special laws, independent contractors are among the excluded categories of employment relationships.



In its Individual Observation on Ethiopia,<sup>103</sup> the Committee of Experts noted that the labour law contains broad restrictions on the right to strike, namely, that the definition of essential services contained in Art. 136(2) is too broad, and in particular, that it should not include air transport, railway services, urban and inter urban bus services, filling stations, bank and postal services. In the discussion before the ILCCR<sup>104</sup>, the Worker member of Ethiopia suggested that the concept of essential services should be restricted to those whose interruption would endanger the lives of persons....while the Employer members from different countries asserted that their view is different from that of the position of the Committee of Experts in that while the right itself should not be denied as such, it was not provided for under the conventions, and that they any way believed the definition of essential services should not be restricted only to those services whose interruption would endanger human life, but to such other services as teaching as well.

While it is true that special account must be taken of the over all impact of a particular strike action in a given industry, the restrictions laid on some industries can hardly be justified by reference to the underlying rationale for the imposition of such limitations in the first place: considerable danger posed to the public's life, personal security, or health upon interruption. The law could even have set the system of minimum services in respect of certain industries to meet basic needs of the community and avoid damages which are irreversible or out of proportion during strikes, as an alternative to a total prohibition. Nor has the law provided for some compensatory mechanisms to employees denied of a right to recourse to strikes to have their terms of negotiation given due consideration by the employer, except the regular arbitration and conciliation procedures, which are available to other employees as well. It is commendable that the new draft labour law, in what seems to be a partial response to the comments of the ILO committees, has removed from the category of essential services such industries as railway services, urban and intra city bus transport, banks, postal services, and oil filling station services.

As regards the status of public servants, Convention 87 guarantees the right to organize to workers in the public service. However, their corollary right to strike may be either limited or prohibited.... The Committee noted that while it is futile to try to draw up an exhaustive and universally applicable list of categories of public servants who should enjoy the right to strike, those denied such a right should be only public servants exercising authority in the name of the state.<sup>105</sup>

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<sup>103</sup> Supra note 75

<sup>104</sup> Ibid

<sup>105</sup> Supra 98, para.156

Another soft spot of the labour law on strikes in cases when such action is permitted concerns the purposes for which strikes may be launched. Art. 134(5) defines a strike as the temporary cessation of workforce by any number of workers acting in concert in order to 'persuade their employer' to accept certain labour conditions in connection with 'a labour dispute' or 'influence the outcome of the dispute'. Therefore, no employee may embark on a strike action unless there is a particular labour dispute between the employer and employees. The objective of the industrial action is limited towards influencing the achievement of a particular solution to an existing collective dispute between the parties.

Therefore, the law impliedly excludes purely political strikes, sympathy strikes or general strikes, or other forms of industrial measures intended to express solidarity or otherwise influence the policy and laws of the government.

The Committee has always considered that strikes that are purely political in character do not fall within the scope of freedom of association.<sup>106</sup> It however noted that a difficulty that arises from the fact that it is often impossible to distinguish between the political and occupational aspects of a strike, since policy adopted by a government frequently has immediate repercussions on employees.<sup>107</sup> Workers' organizations should not be prevented from striking against the social and economic policy of the government in particular where the protest is not only against that policy, but also against its effects on some provisions of collective agreements.<sup>108</sup>

As regards sympathy strikes, which the Committee noted are becoming increasingly frequent because of the move towards the concentration of enterprises, the globalization of the economy and the demoralization of work centers, a general prohibition could lead to abuse and that workers should be able to take such action, provided that the initial action they are supporting is itself lawful.<sup>109</sup>

#### **4.2.1.4 International affiliation**

The interest of workers is protected more effectively where the law and practice allows unions to affiliate with international labour organizations from whom they may draw better experience and assistance. Restrictions on the exercise of such a right could have a negative impact on the freedom of employees at all levels to organize their activities and administration.

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<sup>106</sup> Ibid, para.165

<sup>107</sup> Ibid

<sup>108</sup> Ibid, para.166

<sup>109</sup> Ibid, para.168

Art. 5 of the ILO convention 87 expressly guarantees that workers' organizations shall have the right to establish and join federations and confederations, and any such organization, federation or confederation shall have the right to affiliate with international workers organizations. Similarly, Art. 8 of the ICESCR recognized the right of trade unions to establish national federations or confederations, and the right of the latter to form or join international trade union organizations. Thus the right to establish international solidarity is provided for all levels of employee associations and in all sectors.

In some countries, legislation restricts the right of international affiliation by limiting it to certain organizations, by requiring prior authorization by the public authorities, or by permitting it only under certain conditions established by the law. As regards measures of assistance resulting from international affiliation, legislation in some countries prohibits trade unions from receiving financial aid or subsidies from foreign organizations.<sup>110</sup> Such legislations may create serious difficulties with regard to the Convention.

Unlike the previous law that guaranteed the right to international affiliation merely to a single central organization, Art 114 of the Labour Proclamation gave this right to employee federations and confederations, but still barring basic unions from establishing direct links with the aforementioned organs. Even though it does not necessarily imply an absolute exclusion, Art. 116, describing the functions of various levels of organizations, stipulated that federations and confederations should have the responsibility of representing their organizations in international conferences. One can therefore conclude that the right of affiliation under Art. 5 of the Convention is not recognized for all workers' organizations.

A related topic in the context of the international activities of employee organizations could be the right to freedom of expression of union leaders and delegates at various levels. Trade unions could hardly pursue their activities in freedom if the law does not guarantee them the basic rights such as the freedom of assembly and expression.

The ILO Committee on Freedom of Association considers that the full exercise of trade union rights calls for a free flow of information, opinions and ideas, and that workers' organizations... should enjoy freedom of opinion and expression in their meetings, publications and in the course of their other activities. A question of particular interest for the ILO is the freedom of speech of delegates to the

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<sup>110</sup> Freedom of Association and Collective Bargaining: Right of Organizations to Establish Federations and Confederations and to Affiliate with International Organizations, General Survey (1994), Para.197, available online at - [http://training.itcilo.it/ils/foa/library/general\\_surveys\\_en/25947.htm](http://training.itcilo.it/ils/foa/library/general_surveys_en/25947.htm)

International Labour Conference. The functioning of the Conference would be considerably hampered and the freedom of speech of the workers' delegates paralyzed if they were to be threatened with prosecution based, directly or indirectly, on the contents of their speeches at the Conference.<sup>111</sup> In this respect, notice should also be taken of the privileges and immunities extended under the ILO Constitution to delegates of ILO conferences.

#### **4.2.1.5 Political activities**

As was discussed above, freedom of association implies a wide range of rights: the right of workers to organize their activities, formulate their programs, the right to hold union meetings, collective negotiations, strikes, and right to international affiliation.

Apart from the aforementioned responsibilities, it is not clear what other activities union organizations may embark on to defend the same interests. And especially, leaving aside the issue of what actually constitutes a political engagement, the question of whether or not trade unions may be involved in political activities, and if so, how far they can take part in such activities to pursue the defense of their interest through such means, is not addressed in a similar fashion under various legislations. Until few years back, it was not uncommon for legislation in many ex-communist countries to actively encourage trade unions to take part in national politics, often remotely related to the defense of occupational interests of workers, and usually in a subservient position, propagating the ideology of a single 'proletariat party'

On the other hand, in some countries, trying to maintain their autonomy and independence, unions are restricted from engaging in some political activities, by, for example, forbidding them from making financial contributions to a political party or candidate, while in others, there is a total ban of political activity by trade unions.<sup>112</sup>

With out denying that some of the traditional means unions employ to achieve their goals, such as meetings, collective negotiations, protests, and strike actions etc. still constitute lesser forms of political activism, it is hard to imagine that they can succeed in protecting and promoting their socio economic positions appropriately and comprehensively, with out engaging, one way or the other, formally or informally, in serious political activities. Obviously, the subject must be addressed clearly and cautiously under appropriate national laws, for it would otherwise give an excuse to administrative authorities who may harass, suspend or cancel workers

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<sup>111</sup> Supra note 25, pp.128

<sup>112</sup> Supra note 88, para.130

organizations under the disguise of 'illegitimate' activity, not allowed under pertinent law or constitution of the organization.

During the preparatory work on Convention 87,<sup>113</sup> it was pointed out that trade union activities can not be restricted solely to occupational matters since a government's choice of a general policy is usually bound to have an impact on workers (remuneration, leave, working conditions, functioning of the enterprise...) This relationship is obvious in the case of a national economic policy (for example the impact of wage restrictions, structural adjustment policies etc.) although it may also appear in the form of broader political or economic options (for example, bilateral or multilateral trade agreements, the application of directives of international financial institutions etc.) Although the promotion of working conditions by collective bargaining remains a major feature of trade union movement...workers' organizations must be able to voice their opinions on political issues in the broad sense of the term, and in particular, to express their views publicly on the government's economic and social policy.<sup>114</sup>

The subject of trade union independence was so important that the International Labour Conference, the ultimate body within the ILO framework, passed a resolution in 1952 on the subject.<sup>115</sup>

According to the resolution, where trade unions choose to establish relations with a political party, or to undertake constitutional political action as a means of advancement of economic and social objectives, such political relations or actions should not be of such a nature as to compromise the continuance of the trade union movement or its social and economic functions. Furthermore, in order to guarantee the independence of the trade union movement, governments should not transform trade unions into an instrument for the pursuance of political aims.

From the above statement, the Committee concluded that both legislative provisions, which establish close relationship between trade union organizations and political parties, and those, which prohibit all political activities for trade unions give rise to serious difficulties with regard to the principles of the Convention.<sup>116</sup> Some degree of flexibility in legislation is therefore desirable, so that a reasonable balance can be achieved between the legitimate interest of organizations in expressing their point of view on matters of economic or social policies affecting their members and workers in

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<sup>113</sup> Ibid, para.131

<sup>114</sup> Ibid

<sup>115</sup> Ibid, para.132

<sup>116</sup> Ibid, para.133

general, on the one hand, and the separation of political activities in the strict sense of the term and trade union activities, on the other.<sup>117</sup>

The Labour Proclamation, unlike the previous law, neither prohibits nor explicitly enumerates the range of permissible, active political activities employee organizations may embark on, or may include in their by-laws as one of the strategies for achieving their goals. It will be for the authorized ministry and for the courts to elaborate on whether trade unions have the right to legitimately include in their article of association such provisions as may allow for formal association or informal collaboration with political parties, or engage vigorously in all rounded political activities as one of the means for defending their socio economic interests.

#### **4.2.2 The right to free election of representatives**

A free functioning organization presupposes, among other conditions, that the election and decision making procedures of its leadership must conform the principles of democratic process. This in turn implies that the organization has a formal constitution that contains appropriate standing rules, which govern the procedures for electing the governing organs of the association, and a process that guarantees a voting system which is free from all forms of influence. Only this can warrant the autonomy of organizations in the real sense, and freedom of association in the wider context. Public officials must abstain from any activity that stifles the right of employees to elect, re-elect or remove their leaders.

Legislation in various countries varies as regards the scope of the right granted and the detail of the regulation governing the right to elect trade union officials in freedom. While some laws merely state that the constitution of organizations should indicate particulars as regards the qualification of leaders, meetings and election procedures, with out setting before hand the appropriate laws against which such particulars may be gauged, others provide explicitly that democratic principles should guide election procedures, and that the whole process should conform with specific regulations put in place to that effect.

Legislation which goes beyond the objective of ensuring the proper conduct of the election process as to enable the authorities to interfere in the right of organizations to elect their representatives in full freedom, for example, that which establishes very precise rules on the subject of trade union elections, thus constituting a kind of a priori control over the electoral procedure, and enabling the public authorities to interfere in the voting process, or provisions which allow supervision by administrative authorities or the single trade union organization, or the election procedure requiring the presence

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<sup>117</sup> Ibid

of labour inspectors or representatives of administration, or acceptance or approval of elections or their results, is contrary to the Convention.<sup>118</sup>

Who may be elected as leaders of a union may as well be the subject of legislative consideration. Many laws make distinctions between employees eligible to stand election, based on various grounds such as current employment status, previous criminal involvement, nationality, and political views or activities.

Art. 3 of the ILO Convention 87 entitles employee organisations with a right to elect their representatives in full freedom, and requires public officials to refrain from any interference which would restrict this right or impede the lawful exercise thereof.

According to the Committee of the ILO, a legislation which requires that all candidates for trade union office to belong to the respective occupation, enterprise, or production unit, or to be actually employed in this occupation either at the time of candidature or during a certain period before election, are contrary to the guarantees set forth in Convention 87<sup>119</sup>...Provisions of this type infringe the organization's right to elect representatives in full freedom by preventing qualified persons such as full time union officers or pensioners from carrying out union duties, or by depriving unions of the benefit of the experience of certain officers when they are unable to provide enough qualified persons from among their own ranks...In order to bring such legislation in to conformity with the Convention, it would be desirable to make it more flexible either by admitting as candidates persons who have previously been employed in the occupation concerned, or by exempting from the occupational requirement a reasonable proportion of the officers of an organization.<sup>120</sup>

Some individuals may also be barred from holding trade union offices because of their political views or activities, or previous criminal involvement and conviction of particular intensity.

Provisions on ineligibility on political grounds are sometimes directed against activities of an allegedly subversive nature, activities in specific political party, or movement, or the defence of ideological principles of a prohibited party or association whose activities are deemed contrary to national interest and whose registration has been cancelled or suspended<sup>121</sup> The practice of giving a broad interpretation to legislation which prohibits the exercise of trade union functions solely on the grounds of political belief or affiliation is not

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<sup>118</sup> Ibid, para.115

<sup>119</sup> Ibid

<sup>120</sup> Ibid, para.117

<sup>121</sup> Ibid, para.119

compatible with the right of organization to elect their representatives in full freedom.<sup>122</sup>

As regards criminal conviction, noting that some laws contain disqualifying provisions regardless of the nature or gravity of the offence, and that conviction for some offences might result in the loss of all civil and political rights a candidate need to possess to stand for election, the Committee considered that conviction for an act the nature of which is not such as to call into question the integrity of the person concerned and is not such as to be prejudicial to the performance of trade union duties should not constitute a ground for disqualification from trade union office.<sup>123</sup>

Art. 117 of the Labour Proclamation requires that a constitution of an organization should include, among other particulars, the qualification needed for union leadership, and the procedures for holding meetings and elections. The law does not however set what the content of these requirements shall be that all unions need to comply with, such as what the eligibility requirements of leadership are, or what type of procedures they shall apply during elections etc, thus leaving it for the associations to adopt one. Usually, unions will have such issues appropriately addressed in their constitution or bylaws with sufficient detail, often reflecting on democratic principles, at least in form, hardly causing controversy vis-à-vis the ministry who controls if the necessary particulars are included, and that no ineligible person has held a union post. Art. 38 of the Federal Constitution could be of some help in this respect, requiring that elections to positions of responsibility to 'political organizations, labour union, trade organization, or employers' or professional associations shall be conducted in a free and democratic manner.' Apart from this issue, there is no provision in the law that urges the election process to be held in the presence of central union officers or administrative representatives, or that subjects the outcome to subsequent approval by such bodies. In this respect, it could be argued that the law as it stands maintains a complete conformity with the Convention provisions.

When we refer to the issue of who may assume union leadership roles, however, the law has left it in blank, probably on purpose. None of the provisions prohibit or expressly allow unions to use the services of persons who are already pensioned, belong to a different enterprise or occupation, or who are not at all employed. All that the legislation requires is that the constitution of the organization shall contain 'the qualifications of leadership', and that up on establishment, it shall submit to the ministry a document containing 'the names, addresses and signature of its leaders', with out mention of where such leaders might be pulled from. As a matter of fact,

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<sup>122</sup> Ibid

<sup>123</sup> Ibid, para.120



however, many unions use the services of those employees in their own ranks, while securing substantial advisory and other forms of assistance from third parties as well as central organs such as federations and the confederation to whom they are affiliated. It is not easy to contemplate what the reaction of the registering office would be if a union comes up with document bearing the name of union officers some of whom are not employees of the very undertaking they represent.

As regards the qualification of individuals who may assume union leadership posts, the law has put forth but only one limitation: 'those who have been convicted and punished, with in the last ten years, of serious, non political offences' are not eligible to lead a union, and if elected, the ministry is granted with the power to refuse registration of such organisation unless the union substitutes them, and where the election takes place after registration, for similar reasons, the ministry may 'arguably' cancel the registration. No other ground of ineligibility is stipulated. The political offence exemption clause thus entitles every ex-convict of any serious political crime, let alone those persons with different political views or affiliation, the right to stand for election.

What constitutes serious non-political offence is difficult to settle on. It is not clear if the seriousness should be determined by reference to the gravity of the act or the severity of the punishment it attracts. Serious crimes usually include homicide, rape, child molesting, wounding, arson, drugs trafficking, and armed robbery. The law prohibits all ex-convicts from running for union offices with out allowing the need for drawing any relationship between the nature of the offence committed and its bearing on the integrity of the person. And this may run counter to the Convention unless it is argued that every person convicted of a crime of such intensity, ipso facto, loses the moral integrity that would make him fit for such responsibilities as leading union organization.

Commission of certain offences prohibited under the Penal Law of Ethiopia can result in permanent or temporary forfeiture of the civil rights, particularly the right to vote, to take part in any election, to be elected to a public office or office of honour. Obviously, election for trade union offices is one manifestation of the exercise of a civil right. A sentence of death or rigorous imprisonment carries with it the deprivation of all civil rights.<sup>124</sup> The law makes no distinction between the nature and gravity of the various crimes.

The relevant part of the Civil Code in the context of the above discussion is Art.427, which requires that the directors who lead an association need to be elected only from among the members of the association. The general meeting, the supreme organ of the association, has the powers to appoint, control their activity or

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<sup>124</sup> Art. 122, 123(2) Penal Code

remove directors from office. There is no specific provision that provides for any ground of disqualification from holding leadership positions. A rather odd provision of the law is that the office of associations may be represented by an observer in all general meetings of an association to ensure its good functioning, and may impugn before courts such decisions of the meeting which are contrary to law or its statutes.<sup>125</sup> Since the general meeting elects the persons that manage an association, this could give way to unpredictable decisions by the administration since what is 'contrary to law' is not clearly defined anywhere. Decisions in a general meeting are taken by a majority of the members present.<sup>126</sup> As is the case with the Labour Proclamation, such matters are left to the regulation of the respective constitutions of the organisations.

Generally speaking, the problems with the application of the right to elect union representative in full freedom is rather associated with the practice, than with the law, and it mainly concerns the meddling of administrative authorities either in the election process, or by way of applying favouritism, discriminatory measures and divisive tactics that usually end up in the creation of a thug or pro-government organisation who claim equal right of representation. In a number of occasions, the ILO Committee on Freedom of Association has concerned itself with this issue.

The Committee pointed out its grave concern over the trade union situation in Ethiopia in the light of the allegations brought before it. In one of its individual observations,<sup>127</sup> it concluded that the forced removal of elected trade union leaders and the nomination by the administrative authorities of members of the executive committees of the Federation of Commerce, Technical and Printing Industry Trade Unions (FCTP) and of the Ethiopian Teachers' Association (ETA) constitutes a violation of Art.3 of the Convention. Noting also that a judgement rendered by the Court of Ethiopia (later on appealed to) has upheld the claims made by ETA's elected leadership that they represent Ethiopian Teachers, the Committee requested the Government to comply with the decision.

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<sup>125</sup> Art. 473, 475 Civil Code of 1960

<sup>126</sup> Art. 446 Civil Code of 1960

<sup>127</sup> CEACR: Individual Observation Concerning Convention 87, Freedom of Association and Protection of the Right to Organize (Ethiopia), ILO, published 1999; also available online at <http://www.ilo.org/ilolex/english/newcountryframeE.htm>

In its conclusion on a complaint lodged before the ILO,<sup>128</sup> where the complainants alleged, among other issues, that the Government had applied discriminatory measures and had interfered in the inter-union rivalry between two union executive committees, the conservatives and liberals, the Government denied that it created any problems or showed favouritism to one of the executive committees, whereas the Committee underlined that in the event when the representation of an organisation is in issue, governments are urged to refrain from showing favouritism towards or discriminate against any given trade union, and adopt a neutral attitude in their dealings with organisations so that they are placed on equal footing.<sup>129</sup> The competent court to whom the case was referred to on the question of who is the real representative of ETA concluded in 1994 that this is a matter to be left to ETA's General Assembly decision and that the court did not have jurisdiction, but rejected the view of the Ministry of Internal Affairs that ETA, led by Dr. Woldesemayat, had lost its legitimacy.

The International Confederation of Free Trade Unions (ICFTU), an association of trade unions world wide, an organ who may not necessarily be objective in its analysis, concluded in its 2003 report that the Government blatantly interferes in trade union affairs in all sectors, and that many trade union leaders have been removed from their posts and/or forced to leave the country.

The issue of the right of organisations to choose their representatives with out interference was also the centre of the deliberation in one of the ILCCR sessions in 2001, where tripartite representatives from member states take part.

At the session, the Worker members from various countries pointed out that an ICFTU mission visited Ethiopia in 2000 who noted that the interference by the Government in internal trade union affairs was ongoing...and that the environment was not conducive for the functioning of an independent and democratic trade union movement, and wished for the conclusions and recommendations of the Committee of Experts and the Committee on Freedom of Association to be reflected in a special paragraph.<sup>130</sup> A Worker member of Zimbabwe emphatically shared the view of entering a

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<sup>128</sup> Complaint Against the Government of Ethiopia presented by Education International (EI) and the Ethiopian Teachers' Association (ETA) Report No. 323, Case(s) No(s). 1888, para.192, ILO 2002; also available online at - <http://www.ilo.org/ilolex/cgi-lex/pqconv.pl?host=status01&textbase=iloeng&chspec=30&hitdirection=1&hitstart=0&hitsrange=999&highlight=&context=&query=%28Ethiopia%29+@ref&chspec=3%2C17%2C21&query0=&query1=Ethiopia&query2=&year=&title=&query3=&submit=Submit+query>

<sup>129</sup> Ibid

<sup>130</sup> ILCCR: examination of Individual Case Concerning Convention 87, Freedom of Association and the Right to Organize Convention, 1948 Ethiopia, published 2001, ILO

special paragraph asserting that the Government of Ethiopia had got rid of elected leaders of unions when they contested government policy, and actively supported groups favouring the Government to reorganize and recognize them.<sup>131</sup> The Committee reflected that it too is seriously concerned, like the Committee on Freedom of Association, over the trade union situation in Ethiopia and made an urgent appeal to the Government to put an end to all violations to the Convention both in law and practice.<sup>132</sup>

### **4.2.3 Administrative and financial autonomy**

Art 3 of Convention 87 also guarantees the right of workers' unions to organise their administration and activities, and requires the public authorities to refrain from any interference that would restrict this right or impede the lawful exercise thereof. Similarly, Art. 2(1) of Convention 98 provides that workers' organisations shall enjoy adequate protection against any acts of interference by employers' organisations, not only in their establishment, but also in their 'functioning or administration'. It specifically prohibits any acts of interference, which are designed to support workers' organisation by financial means with the object of placing such organisations under the control of employers or their organisations.<sup>133</sup> This is intended to achieve the free and efficient functioning of the organisations. Unions should operate their affairs with out unreasonable hindrance, financially or administratively.

A law intended to protect the rights of members and to ensure sound and efficient management which requires trade union rules to include provisions concerning the sources of the organisation's funds, the use of its funds, its internal financial administration, or the distribution of assets in the event that the organisation is dissolved, wound up or merged, or legislation which provides for the external supervision of the financial reports of trade unions are in general compatible with the Convention ....supervision limited to the obligation of submitting periodic financial reports or if there are serious grounds for believing that the actions of the organisation are contrary to the rules or the law.... or to investigate a complaint or if there have been allegations of embezzlement, constitutes no infringement of the Convention.<sup>134</sup>

On the other hand, when the law establishes the minimum contribution of members, specifies the proportion of union funds that have to be paid to federations, or requires that certain financial operations such as receipt of funds from abroad be approved by

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<sup>131</sup> Ibid

<sup>132</sup> Ibid

<sup>133</sup> See sections 3.5 of same work on acts of interference by an employer

<sup>134</sup> Supra note 88, para.124

public authorities etc, it gives rise to problem of compatibility with the Convention.<sup>135</sup>

Legislative provisions that are intended to maintain the administrative and financial autonomy of organisations are usually few and of a general character, often phrased in such a manner as to prohibit acts of interference with the free exercise of such rights. This may probably be because many trade unions are assumed to be too competent to address such issues in sufficient details in organisation by laws, and safeguard them, despite the Convention obligation to adopt specific legislative measures of protection. The Labour Proclamation requires that the constitution of organisations need comprise particulars regarding contribution of its members, financial and property administration of the organisation, and conditions for dissolution. This has been put as one of the formalities that should be complied with for registration purposes. Once again, even though it is clear that the law stipulated such a requirement for the purpose of regulating the proper functioning of the unions, no subsidiary law has been enacted to deal with what type of acts are legitimate and which ones are not so as to warrant refusal of registration. No provision, for example, sets the amount of union contribution that is deemed reasonable and lawful, or if the ministry need to be informed when unions receive donations.

The Civil Code has rather detailed provisions that govern the management of the associations, even though even in such cases, much of the particular issues are addressed through the organisations' statute. Among other things, the Code addresses the modality of payment of fees, a requirement that the office of associations has to be informed when an organization receives donation or legacy of a certain amount, the obligation to submit a balance sheet annually, and the grounds and the procedures for dissolution and liquidation of an association. Besides, the relevant administrative body is granted with a wide authority to take any measure it thinks fit with a view to placing his office to exercise efficient control of organizations,<sup>136</sup> which power, undefined as it is, may some times transcend the objective for which it was conferred.

### **4.3 Freedom from administrative dissolution or suspension**

Art. 4 of the ILO Convention 87 provides that workers' organisations shall not be liable to be dissolved or suspended by administrative authorities. Under Art. 6, this guarantee is extended to federations and confederations as well. Administrative measures that have, in effect, the impact of suspending unions from pursuing their normal

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<sup>135</sup> Ibid, para.126

<sup>136</sup> Article 479 Civil Code of 1960

activities, or dissolving them for good are regarded as unwarranted forms of interference by authorities, prohibited under the Convention. Therefore, if there is a serious ground for embarking on such a course of action, it must be undertaken by judicial organs, with all the legal guarantees required.

Country experience as regards which organ has the authority to dissolve or suspend organizations for allegedly violating pertinent laws varies. In some countries it is purely an administrative task, while in others, only courts are entrusted with such a responsibility.

It is preferable for a legislation not to allow dissolution or suspension of workers'.... organisations by administrative authority, but if it does, the organization affected by such measures must have the right of appeal to an independent and impartial judicial body, which is competent to examine the substance of the case,<sup>137</sup> to study the grounds for the administrative measure, and where appropriate, to rescind such measure; more over, the administrative decision should not take effect until a final decision is handed down.<sup>138</sup> Therefore, it is not enough that a right of appeal from an administrative decision is provided for under legislation.

According to the ILO Committee of Experts, certain measures which can not be described as dissolution or suspension by administrative authority in the strict sense of the term, could still have similar effects on organizations... for example such measures may consist in the loss of essential advantages to the carrying out of their activities, or a condition up on which their existence depends: arbitrary cancellation of registration by an administrative authority, or annulment or suspension of legal personality.. or depriving financial resources etc. All of the measures described above involve a serious risk of interference by the authorities in the very existence of organizations and should therefore be accompanied by all the necessary guarantees, in particular judicial safeguards, in order to avoid the risk of arbitrary action.<sup>139</sup>

The guarantee against administrative dissolution or suspension should be seen in the light of the obligation Art. 8 of the Convention imposes on organisations. All associations have the duty to respect laws of the land applied to every citizen, which shall not themselves be of such a nature as to impair the rights under the Convention. Associations cannot therefore claim immunity from the application of

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<sup>137</sup> The court's power should not be limited to merely evaluating if the relevant law has been correctly applied.

<sup>138</sup> Freedom of association and collective bargaining: Dissolution and Suspension of Organizations by Administrative Authority, General Survey (1994), para.185, available online at [http://training.itsilo.it/ils/foa/library/general\\_surveys\\_en/25946.htm](http://training.itsilo.it/ils/foa/library/general_surveys_en/25946.htm)

<sup>139</sup> Ibid, para.184

ordinary laws, and may not invoke the provisions of the Convention in defence of violation of domestic laws.

The power of cancelling or suspending occupational organizations by administrative authorities has often been the source of numerous court proceedings in many national jurisdictions. The instances in which governments maintain an approach of favouritism to trade union movements who support national political and economic policies, while neglecting or otherwise harassing those who are opposed to the implementation of such measures are not rare. Many cases pending before the ILO bodies amply demonstrate the above assertion. The situation is especially worse in developing countries with little experience in pluralist democracy and independent trade union movement.

In the Ethiopian context, the object of controversy between trade unions and the government has for long been the grant of first instance power of cancellation of registration to administrative offices, the same organ who registers associations, rather than a regular court of law. Under Art.120, the ministry may cancel a certificate of registration where it is obtained by fraud, mistake, or deceit, or where one of its objectives, the constitution, or activities is found to be illegal under the proclamation. Decisions of cancellation of registration could be challenged before the courts of law.<sup>140</sup> However, the provision grants an administrative body, an organ that may not necessarily be objective in its assessment of facts, too much control over organisations, not to mention that some of the grounds for cancelling registration are open to subjective interpretation. It must be noted that cancellation of registration effectively prevents an organization from performing any of the activities set forth in the law, leading to the legal presumption that the organisation shall be deemed as dissolved for all practical purposes.<sup>141</sup>

The ministry has exercised its powers of cancelling registration of organizations in a number of occasions, usually under very controversial grounds, and in most cases, vehemently challenged before the national and international forums of adjudication. The most notable ones include the cancellation of the national trade union centre - the Confederation of Ethiopian Trade Union (CETU) and the Ethiopian Teachers Association (ETA). Complaints challenging the legitimacy of the measure have been pending before the ILO forums for quite some time.

In a complaint lodged to the ILO against the Government of Ethiopia by Education International (EI) and the ETA,<sup>142</sup> the complainants alleged, among other things, that the Government refused to continue to recognize the ETA despite a court ruling to that effect,

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<sup>140</sup> Article 122 Labour Proclamation

<sup>141</sup> Article 123 Labour Proclamation

<sup>142</sup> Supra 128,

and froze its assets. The ETA, one of the leading associations in Ethiopian trade union movement since 1949, obtained legal recognition in 1968, for an indefinite period, and has ever since been active at the national level in the promotion and protection of teachers' occupational interest. The Government responded in the proceeding that after 1991, government, and later, ETA were restructured along settlement patterns of nationalities, a move opposed by some, but not all members of the ETA executive committee, leading to the souring of relationships with in the association, and with the government, and the creation of rival factions: the conservatives and the liberals. The liberals, who endorsed the structure adopted by the Government, organized themselves in every region, and the new executive committee was registered and given legal recognition as the new ETA by the Ministry of Interior, who revoked at the same time, the previous registration. A series of court proceedings, appeal and counter appeals were launched to establish the legitimate representative of teachers' association. Even though it is hard to precisely point out where the fault lies due to the complexity of the factual and legal issues involved in the matter, the ILO Committee on Freedom of Association concluded that the bank account and other assets had been transferred to the new executive committee under instructions from the Government. It also concluded that the case addressed a very serious allegations of violation of freedom of association, and underlines that all these events took place in the context of bitter inter union rivalry.... both claiming to be truly the representative organisations of Ethiopian teachers.... and that in such cases, importance should be attached to the 1952 Resolution concerning the independence of trade union movement which urges governments to refrain from showing favouritism towards, or discriminating against any given trade union...and to adopt a neutral attitude in its dealings with organisations so that they are all placed on an equal footing.<sup>143</sup>

In a previous report,<sup>144</sup> the Committee had concluded that it had taken note that according to the High Court decision of December 1994, the Court indeed rejected the view of the Ministry of Internal Affairs that the previous ETA had 'lost its legality'.

In a broader context, the Committee underlined that the trade union situation in Ethiopia has been discussed several times during the last eight years by the Conference Committee on the Application of

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<sup>143</sup> Ibid, para.192; also available in 'Digest of Decisions and Principles of the Committee on Freedom of Association' para305, ILO, 4<sup>th</sup> edition,1966

<sup>144</sup> Complaint Against the Government of Ethiopia presented by Education International (EI) and the Ethiopian Teachers' Association (ETA) Report No. 316, Case(s) No(s). 1888, para.494, ILO 1999; also available online at - <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=946&chapter=3&query=%28Ethiopia%29+%40ref&highlight=&querytype=bool&context=0>



Standards, and the ETA's case in particular have been discussed during three consecutive years by the Conference Committee which expressed its deep concern.<sup>145</sup> The Committee noted that the information provided by the Government on the legal framework of freedom of association in the country and its application in practice is at a considerable variance with the latest allegations submitted by the complainants, and that it should seriously consider 'initiating some positive steps to resolve the dead lock and ensure that not only the letter of freedom of association is respected, but also that freedom of association principles are applied in practice, which implies, inter alia, the existence of true workers' associations, freely chosen by their members'.<sup>146</sup>

The second important case concerns the cancellation of the national trade union centre, CETU. Two complaints were lodged against the Ethiopian Government, one by the International Federation of Commercial, Clerical, Professional and Technical Employees (FIET) and the CETU itself, and another by the Organization of African Trade Union Unity<sup>147</sup> in 1995 and 1996 respectively, challenging the legality of cancellation of registration and confiscation of property.

The complainants submitted that the Government have been taking illegal measures aimed at decapitating the CETU and domesticate the trade union movement; and argued that the government and its respective departments have succeeded by manipulating first level unions and putting pressure on individuals and unconstitutional congress in turning seven of the nine federations affiliated to CETU into pro-government organizations; that the decision of the Ministry to cancel the registration of the CETU on the 6<sup>th</sup> of December 1994, up on a request by some members, and setting up of a committee to administer its funds are illegal. It was also submitted that as the law stands, up on dissolution of the organisation, only its general assembly has to authority to decide how to dispose of its assets; that CETU has appealed the decision for cancellation, so that according to Art. 123 of the Labour Proclamation, 'it does not cease to exist and remains so' pending confirmation of the Ministry's decision by the competent court.

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<sup>145</sup> Supra note 128

<sup>146</sup> Complaint Against the Government of Ethiopia presented by Education International (EI) and the Ethiopian Teachers' Association (ETA) Report No. 327, Case(s) No(s). 1888, para.587, ILO 2002; also available online at - <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=1157&chapter=3&query=%28Ethiopia%29+%40ref&highlight=&querytype=bool&context=0>

<sup>147</sup> Complaint Against the Government of Ethiopia presented by Education International (EI) and the Ethiopian Teachers' Association (ETA) Report No. 300, Case(s) No(s). 1821, (1995) ILO 2002; and Complaint Against the Government of Ethiopia presented by Education International (EI) and the Ethiopian Teachers' Association (ETA) Report No. 306, Case(s) No(s). 1908, (1997), ILO 2002.

The Government responded that as dispute broke out between the executive committee members of the confederation which posed a serious threat to the unity of the CETU, the Ministry did all it can to help the parties to the conflict to reconcile their positions but to no effect. The situation reached to such a point that it was impossible for the CETU to function normally and that although legal action was taken to allow the CETU to solve its internal problem, no viable solution could be found, making it clear that the organization has 'failed to meet the requirement of Labour Proclamation and of its own statutes', leaving no option to the Ministry but to cancel the registration of the organization in accordance with Art. 121.

As regards the administration of the assets, the proposal of appointment of a trustee was made in good faith in order to protect the CETU assets, but it was up to the affiliated federations to decide whether to accept the proposal or to make some other arrangement.

The ILO Committee deplored the Government for cancelling CETU's registration through administrative channels. The Committee draws the Government's attention to the fact that the cancellation of a trade union organisation's registration by administrative authority because of an internal dispute-which in fact implies the suspension of its activities is a serious infringement of the principles of freedom of association, and in particular Art. 4 of Convention 87 which provides that workers' associations are not liable to be dissolved by administrative authority.

The Committee emphasised that in cases of conflict, judicial intervention would permit clarification from the legal point view for the purpose of settling questions concerning the management and representation of the trade union federation concerned, and another possible means of settlement would be to appoint an independent arbitrator to be agreed on by the parties concerned.

It also required the Government to take the necessary measures to annul the administrative decision cancelling the registration of the CETU.

The new draft labour proclamation seems to take the controversies that arise in this connection into consideration when it vested the power to cancel the certificate of a registered organization for any one of the reasons mentioned previously only with the competent courts, up on application by the ministry.

The Civil Code, too, has some provisions governing occupational organizations that are not covered by the labour law, and in respect of whom no special laws exist. An association can be dissolved by the office of associations where its objectives or activities are 'unlawful or contrary to morality', grounds far from clear and open to subjective appreciation; and an appeal over such decision may be lodged only with a concerned ministry of the government. A court can

as well dissolve an organization up on a request made by its management or one fifth of its associates.<sup>148</sup> The Civil Code could as well pose the same problem as the Labour Proclamation, and can affect the activities of some organizations, like the ETA, established pursuant to its provisions.

#### **4.4 Protection against anti union discrimination**

Many laws guarantee the freedom of workers to form or join occupational organizations for better protection of their interests. Such a guarantee can hardly be of any impact unless it is accompanied by additional, and naturally, specific securities which secure every employee that she would not be victimized or otherwise prejudiced by an employer for invoking or exercising any of the rights associated with unionization and union activism. Employees cannot have the courage and initiative to exercise union freedoms in full and without fear unless some guarantees are put in place and applied during their term of office or for a specified period following its expiry. It has to be emphasized that such legal protection constitutes an important aspect of the right to freedom of association.

Art. 1 of Convention 98, specifically addressing the problem, provided that workers shall enjoy protection against acts of anti union discrimination in respect of their employment, both at the time of entering employment, and during the employment relationship. Such protection shall in particular apply 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; or 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, with in working hours.

As regards protection against acts of an employer designed to make an employment conditional on the non exercise of the right to join a union, or other wise relinquish existing membership, the subject has been discussed at length in the preceding chapter in the context of negative and positive freedoms of the employee to organize. It would suffice to merely note that while the ILO has time and again reiterated that the issue of trade union security clauses shall be addressed through national laws, and that the ILO conventions neither allow nor prohibit such a practice, union security arrangements, compulsory payment of union fees, as well as collective bargaining cost sharing schemes applied on employees who are not members of a union raise serious complications as regards the exercise of positive and negative trade union freedoms.

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<sup>148</sup> Article 461 Civil Code of 1960

The discussions in the present section will be confined to other forms of anti union discriminatory acts of an employer.

Legislations promulgated to discourage anti union discrimination vary in terms of the period covered, scope of employees they affect, the nature of safeguards and amount of compensation when there is a breach of the obligation by the employer.

Convention 98 has made it clear that protection against acts of anti union discrimination shall apply both at the time of entering and during the course of employment relationships. Difficult as it will usually be for the employee at a recruitment stage to prove that she has been unjustly victimized because of her inclination or past experience in unionization, the law nonetheless, guarantees that she will not be put in a vulnerable position merely by virtue of such deeds.

According to the Committee, a practice involving the establishment and use of 'blacklisting' of trade union officials<sup>149</sup> constitute a threat to the free exercise of trade union rights and that governments should take stringent measures to combat such practices.<sup>150</sup>

Under the Labour Proclamation, there is no specific provision that may be invoked in defense of the right of the employee against systemic measures of anti union discrimination at the recruitment stage. Many of the provisions that prohibit anti union discrimination are framed in such a way as to have effect only after the employee has concluded a contract of employment. This leaves the remedy of the employee to such general laws that imply a right to work and equal opportunities in employment.

Persons covered by specific provisions dealing about anti union discrimination vary. Some are by their nature applicable to every employee, regardless of union membership or activity status, while others specifically target those already assuming active union duty or involved in union activities. Art. 14(1), for example, applies to all workers, rendering it unlawful for the employer to impede 'the worker' in any manner in the exercise of his rights, or take measures against him because he exercises his rights, or coerce 'any worker' by force or in any other manner to join or cease to be a member of a trade union, or to vote for or against any given candidate in elections for trade union offices, where as rights of 'union leave' under Art.82 or special remedies of reinstatement and compensation under Art. 43(1) apply only in respect of an employee who is a union member, or who

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<sup>149</sup> Apparently referring to those who had been working elsewhere in such positions.

<sup>150</sup> Freedom of association and collective bargaining: protection Against Anti-Union Discrimination, General Survey (1994), para.211, available online at - [http://training.itcilo.it/ils/foa/library/general\\_surveys\\_en/25948.htm](http://training.itcilo.it/ils/foa/library/general_surveys_en/25948.htm)

has been participating in unions, or has sought to hold office as workers' representative, or submitted any grievances or other proceedings against an employer.

Other provisions of the labour law that prohibit employers from taking adverse measures against employees because they take part in unions include Art. 18 which urges the employer to maintain the employment contract and grant the employee a leave of absence while he is holding office in trade unions or other social services; Art. 26(2) which makes it illegal for the employer to terminate a contract of employment because of his membership or participation in a trade union or his interest to hold trade union offices; and Art. 29 which requires that union officers be granted relative privilege during mass reductions.

Dismissal for economic reasons has specially been used as a pretext by many employers to fire employees that are not particularly favored, including trade union leaders and members. Instigated by the possibility of future abuse on the part of the employer, the Labour Proclamation has provided for some objective order of retirement, which the employer must necessarily comply with, when he undertakes mass reduction of work force compelled by organizational or operational requirements of an undertaking. Employee representatives are listed among the last to be dismissed, but subject to the condition that they demonstrate comparable skill and higher rate of productivity.

It is unfortunate that there is no a general provision applicable to every scenario of anti union discrimination, thus limiting the redress of employees only to those expressly provided for under the law. Even as regards some of those specifically provided for, like for example art. 14(1) which made it illegal to coerce a worker to be a member or cease membership, the law has not provided for what happens if the employer embarks on such acts.

Besides, it could be said that no effective mechanism has been put in place under national laws as regards the appropriate machinery contemplated by Art.3 of the Convention 98 for remedying acts of anti union discrimination.

The forms of appropriate measures addressing cases of anti union discrimination vary under different jurisdictions. In some cases legislation establishes preventive machinery by requiring that certain measures taken against trade union representatives or officers must first be authorized by an independent body or public authority (labour inspectorate or industrial tribunals), a trade union body or the works council. In most legislation, however, the emphasis is laid on compensation for the prejudice suffered. The bodies authorized to rule on such cases are the ordinary courts or specialized bodies

hearing cases dealing with industrial relations. Sometimes the measure taken by the employer against the worker is suspended until the competent authority has ruled on the matter. Whether the machinery is based on prevention or compensation, experience has shown that similar problems arise in practice and concern in particular the slowness of the proceedings, the difficulties relating to the burden of proof and the possibility for the employer to acquit himself by paying compensation which bears no proportion to the seriousness of the prejudice suffered by the worker. The Committee therefore emphasized the necessity of providing expeditious, inexpensive and impartial means of preventing acts of anti-union discrimination or reducing them as quickly as possible.<sup>151</sup>

In the Ethiopian law context, union members and leaders have little or no means of redress that are specifically designed for them, and they may merely recourse to such other remedies as are available to the rest of the workers. It has to be noted that employer measures of anti union discrimination do not take only such forms as suspension and dismissal, but also demotions, transfers and similar prejudicial acts, even though the former are the most usual ways. One notable mechanism the law has established in the case of dismissal of an employee is the provision of a special safeguard under Art. 43(1), which grants an employee unjustly dismissed for reasons of participating in union activity the right to reinstatement or compensation, which ever he chooses, a right granted to other employees as well dismissed on unrelated grounds, but without the right to choose which remedy should be available to them. This is consonant with the view of the Committee who considered that legislation that allows the employer to terminate the employment of a worker on a condition that he pays compensation in all cases of unjustified dismissal, when the real motive is his trade union membership or activity, is inadequate under the Convention.

Even when laws provide for general and specific provisions dealing with anti union discrimination, employees often face the challenge of proving their allegations before competent authorities.

Legislation in several countries has therefore strengthened the protection of workers by placing on the employer the onus of proving that the act of alleged anti-union discrimination was connected with questions other than trade union matters, and some texts expressly establish a presumption in the worker's favor. Since it may often be difficult, if not impossible, for a worker to prove that he has been the victim of an act of anti-union discrimination, legislation or practice should provide ways to remedy these difficulties, for instance by using the methods mentioned above.<sup>152</sup>

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<sup>151</sup> Ibid, para.216

<sup>152</sup> Ibid, para.220

The Labour Proclamation has not provided for any where in its text that victims of anti union discrimination may have to go through a less cumbersome evidentiary procedures or exonerating them from certain responsibilities in this respect, thus urging them to utilize ordinary avenues set for the purpose which may be cumbersome in some instances.

When we refer to the ILO cases, one can notice that the issue of anti union discrimination has been the subject of constant complaints against the Ethiopian Government. The Government has been found in violation of pertinent standards of the Conventions in a number of occasions.

In the case still pending between the Education International, Ethiopian Teachers Association v Ethiopia,<sup>153</sup> after hearing the views of both parties to the litigation, the Committee strongly urged the Government to take the necessary measures to ensure that the leaders and members of the ETA are reinstated in their jobs, if they so desire, with compensation for lost wages and benefits. The Committee concluded that workers should enjoy adequate protection against acts of anti union discrimination, and noting with serious concern that these conditions did not exist at the time in Ethiopia, it is incumbent upon the Government to ensure that these rights and principles are respected in law and practice. Previously,<sup>154</sup> the Committee noted that given that all the leaders of the ETA were dismissed, it could only conclude that they have been punished for trade union activities and have been discriminated against.

## 4.5 Right to personal security

Anti union discriminations in the form of demotions, transfers, firing, and withholding benefits are not the only forms trade union members are harassed for alleged involvement in union activities. Other prejudices, largely emanating from government officials, could have a far-reaching impact on the personal security of individual unionists. It is not uncommon for union activists to face physical assaults, disappear with out a trace, arrested arbitrarily, murdered, exiled, or

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<sup>153</sup> Complaint Against the Government of Ethiopia presented by Education International (EI) and the Ethiopian Teachers' Association (ETA) Report No. 321, Case(s) No(s). 1888, (2000) ILO 2002, available online at - <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=1021&chapter=3&query=%28Ethiopia%29+%40ref&highlight=&querytype=bool&context=0>

<sup>154</sup> Complaint Against the Government of Ethiopia presented by Education International (EI) and the Ethiopian Teachers' Association (ETA) Report No. 308, Case(s) No(s). 1888, (1997) para.345, ILO 2002, available online at - <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=841&chapter=3&query=%28Ethiopia%29+%40ref&highlight=&querytype=bool&context=0>

their movements curtailed. While many countries have appropriate laws that specifically address the right to freedom of security of a person, usually, particular problems associated with this issue rather concern the application of the rights so recognized in actual practice. No doubt, the right to freedom of association would lose its content if there are no sufficient substantive and procedural safeguards for its effective implementation.

The Committee had been caught with the issue of the security of trade union members and officials in a number of circumstances, and time and again, it has affirmed that the normal exercise of trade union rights necessarily presupposes that the right to freedom and security of a person be guaranteed, since this fundamental right is crucial to the effective exercise of all other rights, in particular, freedom of association.

In its examination of some of the complaints, the Committee on Freedom of Association has stated that a climate of violence in which the murder and disappearance of trade union leaders go unpunished constitutes a serious obstacle to the exercise of trade union rights and that such acts require that severe measures be taken by the authorities.<sup>155</sup>

It has also stressed that, when disorders have occurred involving loss of human life or serious injury, the setting up of an independent judicial inquiry is a particularly appropriate method of fully ascertaining the facts, determining responsibilities, punishing those responsible and preventing the repetition of such actions. Judicial inquiries of this kind should be conducted as promptly and speedily as possible, since otherwise, there is a risk of de facto impunity which reinforces the climate of violence and insecurity, and which is therefore highly detrimental to the exercise of trade union activities.<sup>156</sup>

Similar comments were also made in respect of other prejudicial acts suffered by union members who violate the guarantees of trade union freedom and weaken union movements.

The Federal Constitution, national laws, and a number of other international human rights instruments to which Ethiopia is a party have expressly recognised the right to freedom of security of a person.

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<sup>155</sup> Freedom of association and collective bargaining: Trade Union Rights and Civil Liberties, General Survey (1994), para.29, available online at - [http://training.itcilo.it/ils/foa/library/general\\_surveys\\_en/25942.htm](http://training.itcilo.it/ils/foa/library/general_surveys_en/25942.htm)

<sup>156</sup> Ibid



And yet, several, but very serious allegations have been submitted to the ILO supervising bodies alleging death, disappearance, harassment and detention of trade union leaders and members.

In the case of EI, ETA v Ethiopia,<sup>157</sup> the committee urged the Government to provide precise information of arrested leaders of the Ethiopian Teachers Association, and urges the Government to take the necessary measures to ensure that all the ETA members and leaders detained or charged are released and all charges withdrawn, and to ensure that in future, workers are not subject to harassment or detention due to trade union membership or activities.

In the case of CETU V Ethiopia,<sup>158</sup> where the attack of the treasurer of one of the existing federations was alleged, the Committee, after hearing the views of both parties, requested the Government to ensure that an independent investigation is carried out immediately in to the alleged attack so as to identify and punish the guilty party, and to be informed of the outcome of the investigation.

In 2002, before the ILCCR,<sup>159</sup> the Committee, expressing its serious concern over the trade union situation in Ethiopia in consecutive years, especially insisted that trade unions rights be fully respected both in law and in practice, and reminded the Government that respect of civil liberties was essential to the exercise of trade union rights, and recourse to grave measures unacceptable.

## **4.6 Protection against acts of interference by the employer**

Guarantees against interference should not be limited to acts of anti union discrimination. Of equal consideration are other forms of interference by the employer that can effectively stifle the independence and activities of trade unions.

Art.2 of Convention 98 provides that Workers' and employers organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration, and that, in particular,

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<sup>157</sup> Supra note 128, para.200

<sup>158</sup> Complaints against the Government of Ethiopia presented by the International Federation of Commercial, Clerical, Professional and Technical Employees (FIET) and the Confederation of Ethiopian Trade Unions (CETU) Report No. 306, Case(s) No(s). 1908, (1997), para.458, ILO 2002, available online at - <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=798&chapter=3&query=%28Ethiopia%29+%40ref&highlight=&querytype=bool&context=0>

<sup>159</sup> ILCCR: Examination of individual case concerning Convention No. 87, Freedom of Association and Protection of the Right to Organize Convention, 1948 (Ethiopia) Published: 2002, ILO

acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations, shall be deemed to constitute acts of interference within the meaning of the provision.

It is common for employers in many jurisdictions to grant union leaders a continuous leave with pay, certain physical facilities for union offices, and financial assistance as a matter of legal obligation, or a mere gesture of solidarity with the social partners. The issue of interference arises when any of such activities is aimed at, or have the effect of, putting the unions effectively under the control of an employer or otherwise subject them to a subordinate position.

According to the view of the Committee of Experts, acts of the employer which may tantamount to interference include the existence of two executive committees within a trade union, one of which is allegedly manipulated by the employer, the presence of a parallel trade union which has allegedly been set up under pressure from the management, dismissal of trade union officers prejudicing the existing trade union and promoting the establishment of another trade union, and a member of the government who also becomes a leader of a trade union representing several categories of workers employed by the state.<sup>160</sup>

There is no express legislative provision in the Ethiopian labour law that prohibits an employer from interfering in the affairs of unions, and thus falls short of the Convention's protections. Usually, though, collective agreements will work on the details of the type of partnership and cooperation that shall be forged between the employer and unions, even though this does not in any way guarantee employees that they will not fall under the domination of the employer and thereby become victims of violation of Art.2 of the Convention.

## **4.7 Inviolability of trade union premises and property**

While freedom from constant harassment such as search, occupation, closure, seizure of union materials, and sealing of working premises is no doubt very essential for the effective exercise of the right of association, unions can not claim a differential status

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<sup>160</sup> Freedom of Association and Collective Bargaining: Protection Against Acts of Interference, General Survey (1994), Para.231, available online at - [http://training.itcilo.it/ils/foa/library/general\\_surveys\\_en/25949.htm](http://training.itcilo.it/ils/foa/library/general_surveys_en/25949.htm)

other than what is available for the public at large, and their premises may be violated subject to the rules set forth in the ordinary criminal legislations. As noticed from the various cases pending before the ILO bodies, the problem in this regard too, is not usually associated with the existence of sufficient laws that address the issue, but rather with the application of such laws in practice.

Apart from the aforementioned forms of interference, confiscating trade union materials, occupation and closure of trade union offices had been the most usual means of crippling trade union activity in Ethiopia.

In the CETU V Ethiopia case,<sup>161</sup> one of the allegations submitted by the complainant was the occupation of the trade union premise of the Federation of Commerce, Technical and Printing Industry Trade Unions (FIET) by the security and police personnel of the Government, and the attempts of eight pro-government federations, in collusion with the Government, to reorganize the central confederation anew and administer all its offices, property and assets. In the view of the wide discrepancy between the allegation and the Government responses, the Committee merely reiterated that the principle that attacks against trade union premises and property create a climate of fear which is extremely prejudicial to the exercise of trade union activities, and that the authorities, when informed of such incidences, should carry out an immediate investigation to determine who is responsible, and punish the guilty parties. It requested the Government to ensure that an independent investigation is carried out immediately in to the alleged attack against the premises of the above named federation so as to identify and punish the guilty parties.

The ETA v Ethiopia case,<sup>162</sup> which is still pending, has as well examined a number of issues that involve the freezing of union bank accounts, breaking into union offices and appropriation of documents by Government officials, sealing of ETA offices, thus denying access while allowing rival organization to enter. In the view of the conflict of evidence and lacuna in information, the Committee, without going into a substantive decision, merely recalled the importance of the right to protection of trade union funds and property against intervention by the public authorities, and that the inviolability of trade union premises necessarily implies that the public authorities may not insist on entering such premises without prior authorization or without a legal warrant to do so.<sup>163</sup>

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<sup>161</sup> Supra note 158

<sup>162</sup> Supra note 144

<sup>163</sup> Ibid, para.496

Such incidences are by no means infrequent, and only few can manage to access and request the remedies of the pertinent judicial organs and the international forums such as the ILO.

# 5 CHAPTER 5

## 5.1 Conclusions and Recommendations

### 5.1.1 Conclusions

The right to freedom of association could have political, religious, labour, economic, professional, social and cultural dimensions. People could set up organizations or could choose to associate themselves with established ones for a number of reasons. And the right of organization of employees to promote and protect their economic and social interests merely constitutes one segment of the right to freedom of association.

The International Labour Organization and the UN have been very instrumental in establishing benchmarks for the provision of human and labour rights that would serve as a guide in framing national standards, and in the implementation of labour policies in different countries.

Within the ILO framework, promotion of the right of employees to organize has always been the center of focus of international norm setting endeavors. Even though many of the conventions recognize and guarantee the right to freedom of association of employees, the precise parameters of such rights were far better elaborated and clearly set through the jurisprudence of the supervisory bodies of the ILO.

Over the years, the ILO has built a marvellous system of international standards. The prime references to freedom of association and related labour rights include the preamble of the ILO Constitution, the Declaration of Philadelphia, the Freedom of Association and protection of the Right to Organize Convention of 1948, (No. 87) and Right to Organize and Collective Bargaining Convention of 1949, (No. 98).

The ILO conventions create a binding international obligation up on the states and are intended to have a concrete impact on working conditions and practice of every member state.

A careful glance at many of the ILO conventions demonstrates that there is some room for gradualism in the implementation of obligations. Many states adjust their internal system of law and practice to conform to international commitments after ratification. Ratification of ILO conventions has been regarded as an expression

of solidarity with other member states in agreeing that international coordination of workers' rights and working conditions is appropriate.

It is however true that because of a wrong timing in ratification, lack of adequate economic resources in command, absence of effective means of incorporating ratified conventions within the domestic legal framework, or for reasons associated with the degree of commitment portrayed by governments, international labour instruments might not produce the required level of achievement domestically.

ILO conventions, unlike many other interstate treaties, are adopted within the institutional framework of the General Conference, constituted of governments, employers' and employees' representatives. The entire process of setting and elaborating international labour norms is characterized by the full involvement of all the bodies affected thereby. Tripartism, a unique procedure in international law making, is the central feature of the whole institutional set up.

Reservations to the ILO conventions are inadmissible. However, having regard to the divergent economic, social, and political systems adopted by member countries, the ILO Constitution has allowed a little room for flexibility when found necessary in respect of some conventions.

As the case is with some of the UN treaty bodies, the method of enforcement of ILO standards is based on a system of state reporting, and representation or complaints.

The ILO has sought from the outset to establish methods of supervision that would work and be accepted by its member states. The system of supervision by consent in the ILO has been championed by many as more pragmatic and effective than the corresponding system in the United Nations.

The reports should establish, among other things, whether national laws comply with the provisions of a particular convention, and when ever it is so required, the practical arrangements made to establish administrative or other machinery, while as regards promotional conventions, the report must describe the measures taken towards the achievement of the goals of the convention, and to overcome any obstacles in the way of its full application.

Examination of government reports is carried out in the first instance by the Committee of Experts on The Application of Conventions and Recommendations, which consists of 20 independent experts of the highest standing with imminent qualifications in legal or social fields, and with knowledge of labour conditions and administration.

A particularly important stipulation in the Constitution is that governments must send copies of their reports to national organizations of employers and workers, who thus have the opportunity of commenting critically on their contents.

The Committee of Experts renders its comments which may take the form of 'observations', usually used in cases of serious failures in meeting assumed obligations, or 'requests', largely dealing with more technical matters. The Committee's observations are usually phrased in words that not only declare mere violations of standing obligations, but also point out the measures that should be taken to rectify a particular situation.

The report of the Committee is submitted to each annual session of the International Labour Conference where it is examined and discussed by a tripartite Conference Committee on the Application of Conventions and Recommendations and adopts a report. After its general discussion, the Conference Committee turns to examination of individual observation of the conventions in each country.

On the other hand, a representation may be filed by association of employees or employers alleging that any of the member states has failed in any one of its obligations under a ratified convention, while a complaint may be lodged by any of the members (government, employee or employer delegate) or by the Governing Body on its own motion. A tripartite Committee pulled from its own members is appointed by the Governing Body to study the allegations, and present a report in the form of conclusions and recommendations, which will be followed up the by ILO's regular supervisory machinery.

An additional machinery of enforcement is also established in respect of violations of freedom of association principles. The Committee on Freedom of Association, a tripartite body of ILO Governing Body, is responsible for examining the complaints. Governments, workers' or employers' associations of member states may lodge complaints.

When we refer to the role of the UN in setting appropriate standards on the right to freedom of association, one can observe that few instruments have been adopted namely the UDHR, ICCPR and ICESCR, with some general, but important provisions that touch up on employment rights. However, the development of the relevant labour standards relating to the right to organize seem to be left, by and large, to the ILO institutions. This is demonstrated by the outstanding record of the latter in the protection of the right in its continuous process of formulating new and detailed standards, and the innumerable case law interpreting the various conventions.

Surveying the substantive protections in the UN system, the Universal Declaration of Human Rights, the moral foundation of many of

the subsequent human rights developments within the ILO and the UN, specifically proclaims the right of every person to form and join trade unions for the protection of his interests and a general right of freedom of peaceful assembly and association.

On the other hand, the ICCPR and ICESCR impose on states parties the obligation to ensure the right of individuals to freedom of association with others, the right to form and join trade unions, establish national federations of trade unions, join international confederations, and the right to strike for the protection of their interests.

While these provisions are not so ambiguous as they stand, they are formulated in a more general fashion, and the subject is treated in much lesser detail than the corresponding provisions of the ILO.

Besides, as far as the system supervision is concerned, it is unfortunate that the Committee on economic, social and cultural rights, established with a mandate of supervising the implementation of ICESCR provisions, can not deal with individual or collective complaints of abuses of protected rights - a procedure that would have given the Committee with a better opportunity to develop and further elaborate the right through its case law. International supervision to this date is confined to the system of state reporting. Nor has the subject been addressed by way of general comments.

In contrast, the Human Rights Committee has a system of optional individual complaints procedure for victims of the rights set forth in the Covenant. However, this could have only a limited value as many of the rights pertaining to freedom of association and the right to form unions have, in practice, an overwhelming collective, rather than individual dimension. It has also to be admitted that the case law of the Human Rights Committee under the Optional Protocol has not dealt with right so much as to affect the development of appropriate labour rights by way of elaboration, interpretation or application of the provision in its case law or general comments.

Generally speaking, the UN human rights system has been so sluggish in coming to grips with development of international labour standards particularly pertaining to the right of organization, much attention focusing on other 'pressing' problem areas such as torture, disappearance, war crimes, extra judicial killings, arbitrary arrest, fair trial, and ethnic/indigenous issues.

In the African context, the Charter has dedicated a provision that guarantees every individual 'the right to free association' and 'the right not to be compelled to join an association'. The African Commission, a body set up to oversee the application of the Charter provisions, is empowered to receive and consider communications



submitted by states, individuals, and organizations alleging violation of guaranteed rights, and to periodically review reports on measures adopted in achieving application of the rights by the states.

Inspired by the development of global human and labour rights protection, the Federal Constitution of Ethiopia explicitly guaranteed 'the right of every person to freedom of association for any cause or purpose', and granted factory and service workers, farmers, farm labourers, other rural workers, and government employees below a certain level of responsibility, the right to form associations to improve their conditions of employment and economic well being by forming trade unions and other associations. Ethiopia has also committed itself to honour workers' rights by ratifying all the major UN, ILO, and regional human rights instruments.

Other legislations are put in place intended to further implement the provisions of some of the international instruments. Notable among these, and one that deals with the specificities of employment relationship, is the Labour Proclamation 42/93, which has several provisions dedicated to establishing the procedures for the exercise of freedom of association and formation of trade unions, and the 1960 Civil Code, which allows the formation of any grouping for the purpose of obtaining a result 'other than securing or sharing profits'. Since the Labour Proclamation has excluded a number of workers from the purview of its coverage, with out putting in place a substitute law that governs their rights, the Civil Code provisions on the right to form associations will continue to fill the lacuna thus created.

Freedom of association is a broad concept and the subject is addressed by various instruments in human and labour rights context. Even though what it could constitute at the minimum - the right to form and join an association, may not be disputed, full and effective realization of such a right requires broader safeguards with out which the right may lose much of its meaningful impact. As demonstrated below, the right is constituted of different but intimately interrelated elements.

One aspect of this freedom is the right to form and join an organization. The right to form or join an association, by no means a simple concept as it seems to be, raises a number of issues related to positive and negative trade union freedom, union security clauses and trade union pluralism.

It has to be noted that the guarantees of the various conventions to form or join an organisation of one's own choosing apply not only to basic unions, but also to higher level organizations such as federations and confederations.

Laws imposing various restrictions on the rights of federations and confederations, allowing that only one federation be set up in a given industry or region, or only one confederation at a national level, or that only certain category of employees be organized under such associations, or that they undertake only a limited range of activities could give rise to serious problems under the conventions.

The Labour Proclamation opted for a decentralized organisation of trade unions, putting no legal limit on the number of federations or confederations employee organisations may wish to establish. But, distinctions are made in terms of the respective functions they may assume, such as the power to conclude collective negotiations and the right to call a strike action, rights limited to first level trade unions only.

Another question that arises in relation to the right to form or join an association is the issue of the right to negative trade union freedom. This question gets significance when related to trade union security clauses, which pose serious problems vis-à-vis the exercise by an employee of the option not to belong to or withdraw from a trade union.

The ILO bodies have adopted an arguable position asserting that while positive right to establish or join an organization is recognized, freedom to refrain from joining is not addressed by the instruments, and that trade union clauses are held to be compatible with the conventions, provided that they are the result of free negotiation between workers' organizations and employers, and not merely imposed by law. But, arguably, in either case, the nature of union security clauses runs counter to the basic notion of individual freedom of choice of belonging or not belonging to any type of association. The ECtHR has affirmed that certain practices of compulsion by the employer that oblige an employee to be a member of a union may run counter to the guarantees of the convention, while reference to appropriate UN GA sessions demonstrate that negative right of association is as well protected under the ICCPR.

The guarantee of the right of an employee not to be compelled to join a union does not prohibit certain recruitment activities to attract new members, or the grant of internal benefits to members, such as provision of strike pay by the unions. It does however prohibit the extension of unfair pressures that are not purely internal to the organization.

The pertinent laws in Ethiopia guaranteed positive freedom of association in express terms, although this does not imply that negative trade union freedom is not protected, this left for the pertinent organs to elaborate on the precise scope. The Labour Proclamation has provided for a provision that makes it illegal for an employer to compel any worker by force or in any other manner to

join or not to join or to cease to be a member of a union. The provision, however, seems to guarantee the right only once employment relationship commences.

Referring back to other constituting elements of the right to association, recognition of the right of employees to join an industrial association of their own choosing also presupposes that it must be possible for the employees to have an opportunity of choosing amongst alternative organizations when they so wish. This should cover all levels of associations – basic trade union at a plant level, federations and confederations.

The Labour Proclamation authorizes the formation of only one trade union at a plant level, but there is no legal obligation requiring that there should be only a limited number of federations or confederations, or that trade unions be affiliated only to some of the national organizations and not the others.

When we refer to the question of the category of employees entitled to exercise the right to organization, many of the appropriate conventions grant the right to every individual/ employee, while at the same time recognizing the discretion of states in imposing lawful restrictions in their exercise of this right on members of the armed forces, the police, and in some cases, members of state administration.

There fore, save the limitations, which allow states to determine the extent to which the guarantees shall apply to armed forces and the police, and under some conventions, the employees of state administration, it is possible for all employees, regardless of the category of industry they are engaged in, and whether their employer is the state or the private sector, to form and defend their interest through an association.

The Federal Constitution has guarantees the basic right of organizing for a bulk of the employees, including civil servants, and other members of the state administration governed by special laws, while leaving the regulation of the procedures for the exercise of the right as such to future legislations..

The Labour Proclamation also recognizes that workers shall have the right to establish and form trade unions and actively participate there in. However, the rights of the Proclamation can be exercised only by 'the category of employees covered' by the particular legislation.. The Proclamation has effectively excluded many employees that are properly covered by Convention 87, both UN covenants, as well as the Federal Constitution, including employees engaged in state administration, executive staffs in public and private undertakings, and employment contracts of judges and prosecutors.

Even though some categories are excluded from the Labour Proclamation, however, there are few legislations separately dealing with specific types of workers, such for example as employees in the civil service. And yet, apart from the Civil Code, which grants a general right of association, there hardly exist laws, including the civil service rules, that specifically grant or indirectly deal with the right of association of the above excluded category of employees. Over the years, the Civil Code provisions have been a very important legal basis pursuant to which many employee associations, including employees in some sections of the civil service like teachers, have been established. However, because of the generality of the Civil Code provisions, many employees in several occupations still remain unable to effectively exercise their right of association.

Another aspect of freedom of association is the right to form union organizations 'without previous authorization' from the administrative authorities. It has to be noted that there are usually certain minimal prerequisites that associations should meet before they can operate legally. Even though it is clear that in exercising the rights, workers and their respective organizations, like other persons or organized collectives, shall respect the law of the land, including pertinent regulations putting forth conditions for the establishment of an organization, employees need not receive the blessing of the public officials before they could set up an association to defend their socio-economic interests.

However, such formality requirements shall not be of such a nature as to impair the basic right. Accordingly, when certain formalities need to be fulfilled, legislation should define clearly the precise conditions required for registration or legal recognition and these should be governed by specific statutory criteria.

The Federal Constitution requires that organizations should be established compliance with appropriate laws, and that laws enacted for the implementation of such rights shall establish procedures for the formation and regulation of trade unions.

One such a procedure is established under the Labour Proclamation. Organizations established pursuant to the provisions of the labour law need have a constitution that comprises certain particulars. Nowhere in the law is indicated that organizations should acquire previous authorization from the public officials before they can be set up, except that no organization can perform the activities set forth in the Proclamation or in its by laws unless it deposits, up on establishment, the constitution of the organization, and gets registered

The conditions required for registration are neither ambiguous nor lengthy. The provisions are not framed in such a way as to grant wide discretion to the ministry in charge of registering associations. Specific statutory stipulations determine whether or not he should refuse registration.

Another dimension of the right to associations is that organizations should be able to draw up their constitutions and rules in full freedom. Legislative provisions concerning the preparation, content, amendment, acceptance or approval of constitutions and rules of occupational organizations, which go beyond these formal requirements, may hinder the establishment and development of organizations.

The Labour Proclamation authorises employee associations to draw up their own constitutions in full freedom up on complying with mere formal requirements that hardly pose an impediment on the exercise of their right. It is explicitly provided for under the legislation that the relevant ministry has no discretion but to register the organization when a union deposits, among other things, its constitution. Generally, the authorities do not have a wide discretion in examining the contents of the constitution.

As regards the minimum number of membership required to set up an organization, none of the international instruments provide that an organization shall have a certain minimum number before it can be set up and function legally. It is for the respective organs to elaborate on the conformity of national laws with international obligations where the former sets, as one of the formal requirements, that there should be a specified number of founders. Limitations of this kind could have a negative impact on the right to freedom of association when they are unreasonably excessive.

The Labour Proclamation provided that a trade union may be established in an undertaking where the number of workers is twenty or more, and when only less than twenty employees work in undertaking, they must form a general trade union along with others similarly situated.

Another issue concerns the range of objectives trade unions may legitimately pursue. Trade unions are set up to defend the social and economic interests of their constituencies. Almost all the time, labour legislations provide for the major functions which employees' associations at plant, regional and national levels are supposed to undertake.

One of the most important roles union organizations play in the defense of the interests of their members is the conclusion of a collective agreement on various conditions of work.

The right of employees to engage the employer to a table of collective negotiation is expressly and impliedly recognized in various international instruments. Any interference, which would restrict the right or impede the lawful exercise of collective bargaining, offends the principle that workers' should have the right to organize their activities and to formulate their programs.

The right of employee organizations to bargain with the employers is expressly recognized under the Labour Proclamation as well.

Organizing strike actions is another domain of workers' organizations. It is not uncommon for employers and employees to be held in dead lock during a collective bargaining. Such labour disputes are usually followed by strikes. Concerted as such a measure need to be, it cannot be thought of unless employees are organized in association.

The right to strike is protected under a number of international and regional instruments. National laws set out the details of the preconditions workers' organizations shall meet before they embark on legally protected industrial actions, and the category of employees permitted to engage in such activities.

Laws enacted to regulate strikes will usually have a direct impact on the potential activities of trade unions in furthering and defending the interests of their constituencies. Since the right to strike is one of the essential means available to workers and their organizations in achieving the above goals, caution should be taken as regards the restrictions applied on the exercise of such a right.

Surveying international standards on the subject, art. 8(1) of the ICESCR entitles employees the right to strike, provided that it is exercised in conformity with the laws of the particular country. The right is not however expressly recognized under any of the ILO conventions, even though the ILO documents have been mentioned in a number of instances as the primary sources of the right.

Both the Federal Constitution and the Labour Proclamation have provided for the legal and institutional framework that governs the conduct of the right to strike actions. The Labour Proclamation, which excludes a number of categories from its coverage, has provided for detailed provisions that govern the conditions and procedure of the right to strike. The most important aspect of the labour law that has attracted particular attention of the ILO forums has been that the law prohibits recourse to strike by employees in essential services, an industry that comprises a considerable category of industries. The effect is that employees engaged in such undertakings cannot embark on a strike action to compel an employer submit to certain labour disputes.

As regards the status of public servants, though Convention 87 guarantees the right to organize of workers in the public service, their corollary right to strike may be either limited or prohibited. Those denied such a right should be only public servants exercising authority in the name of the state.

Another soft spot of the labour law on strikes in circumstances when such action is permitted concerns the purposes for which strikes may be launched. A careful reading of the pertinent provisions of the law suggests that employees may not embark on a strike action unless there is a particular labour dispute between them and an employer, and the objective of the industrial action is limited towards influencing the achievement of a particular solution to an existing collective dispute between the parties. Therefore, the law impliedly excludes purely political strikes, sympathy strikes or general strikes, or other forms of industrial measures intended to express solidarity or otherwise influence the policy and laws of the government.

The right to International affiliation is another aspect of the right to freedom of association. The interest of workers is protected more effectively where the law and practice allows unions to affiliate with international labour organizations from whom they may draw better experience and assistance. Restrictions on the exercise of such a right could have negative impact on the freedom of employees at all levels to organize their activities and administration

Several instruments expressly guarantee that workers' organizations shall have the right to establish and join federations and confederations, and any such organization, federation or confederation shall have the right to affiliate with international organizations of workers.

The Labour Proclamation gives this right to employee federations and confederations, but still barring basic unions from establishing direct links with the aforementioned organs.

Apart from the aforementioned responsibilities, it is not clear what other activities union organizations may embark on to defend the same interests. The question of whether or not they may be involved in political activities to pursue the defense of their interest through such means is controversial. But, generally, it can be argued that unions can hardly succeed in protecting and promoting their socio economic positions appropriately and comprehensively, without engaging, one way or the other, and formally or informally, in serious political activities. Trade union activities can not be restricted solely to occupational matters since usually, a government's choice of a general policy is bound to have an impact on workers.

The Labour Proclamation, unlike the previous law, neither prohibits nor explicitly enumerates the range of permissible, active political activities employee organizations may embark on, or may include in their by-laws as one of the strategies for achieving their goals. It will be for the authorized ministry and for the courts to elaborate on the scope of the right.

A free functioning organization presupposes, among other conditions, that the election and decision making procedures of its leadership must conform the principles of democratic process. This in turn implies that the organization has a formal constitution that contains appropriate standing rules, which govern the procedures for electing the governing organs of the association, and a process that guarantees a voting system which is free from all forms of influence.

Legislations should not go beyond the objective of ensuring the proper conduct of the election process as to enable the authorities to interfere in the right of organizations to elect their representatives in full freedom. Besides, distinctions made between employees eligible to stand election, based on various grounds such as current employment status, previous criminal involvement, nationality, and political views or activities could infringe the organization's right to elect representatives in full freedom.

The Labour Proclamation requires that a constitution of an organization should include, among other particulars, the qualification needed for union leadership, and the procedures for holding meetings and elections. The law does not however set what the content of these requirements shall be that all unions need to comply with, such as what the eligibility requirements of leadership are, or what type of procedures they shall apply during elections, thus leaving it for the associations to adopt one. Art. 38 of the Federal Constitution could be of much help in this respect in requiring that elections to positions of responsibility to 'political organizations, labour union, trade organization, or employers' or professional associations shall be conducted in a free and democratic manner.' Apart from this issue, there is no provision in the law that urges the election process to be held in the presence of central union officers or administrative representatives, or that subjects the outcome to subsequent approval by such bodies..

When we refer to the issue of who may assume union leadership roles, however, the law has left it in blank, probably on purpose. None of the provisions prohibit or expressly allow unions to use the services of persons who are already pensioned, belong to a different enterprise or occupation, or who are not at all employed. All that the legislation requires is that the constitution of the organization shall contain 'the qualifications of leadership', and that up on establishment, it shall submit to the ministry a document containing



'the names, addresses and signature of its leaders', with out mention of where such leaders might be pulled from. As a matter of fact, however, many unions use the services of those employees in their own ranks, while securing substantial advisory and other forms of assistance from third parties as well as central organs such as federations and the confederation to whom they are affiliated.

As regards the qualification of individuals who may assume union leadership posts, the law has put forth a limitation only in respect of those who have been convicted and punished, with in the last ten years, of serious, non political offences.

What constitutes serious non-political offence is difficult to settle on. It is not clear if the seriousness should be determined by reference to the gravity of the act or the severity of the punishment it attracts. The law prohibits all ex-convicts from running for union offices with out allowing the need for drawing any relationship between the nature of the offence committed and it's bearing on the integrity of the person.

Another dimension of the right to association is freedom from administrative dissolution or suspension. Administrative measures that have the effect of suspending unions from pursuing their normal activities or dissolving them for good are regarded as unwarranted forms of interference by authorities, prohibited specifically under the ILO Conventions. It is preferable for legislation not to allow dissolution or suspension of workers' organisations by administrative authority, but if it does, the organization affected by such measures must have the right of appeal to an independent and impartial judicial body which is competent to examine the substance of the case.

Under the Labour Proclamation, the first instance power of cancellation of registration is granted to an administrative office, rather than a regular court of law. Decisions of cancellation of registration could however be challenged before the courts of law.

Many laws guarantee the freedom of workers to form or join occupational organizations for better protection of their interests. Such a guarantee can hardly be of any impact unless it is accompanied by additional, and naturally, specific securities that guarantee every employee that she would not be victimized or otherwise prejudiced by an employer for invoking or exercising any of the rights associated with unionization and union activism.

Convention 98, specifically provides that workers shall enjoy protection against acts of anti union discrimination in respect of their employment, both at the time of entering employment, and during the employment relationship, specially in respect of acts calculated to cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities

Under the Labour Proclamation, there is no specific provision that may be invoked in defense of the right of the employee against

systemic measures of anti union discrimination at the recruitment stage. Many of the provisions that prohibit anti union discrimination are framed in such a way as to have effect only after the employee has concluded a contract of employment. This leaves the remedy of the employee to such general laws that imply a right to work and equal opportunities in employment.

Persons covered by specific provisions dealing about anti union discrimination vary. Some are by their nature applicable to every employee, regardless of union membership or activity status, while others specifically target those already assuming active union duty or involved in union activities.

Dismissal for economic reasons has specially been used as a pretext by many employers to fire employees that are not particularly favored, including trade union leaders and members. To combat such acts, the Labour Proclamation has provided for some objective order of retirement, which the employer must necessarily comply with, when he undertakes mass reductions of work force compelled by organizational or operational requirements of an undertaking. Employee representatives are listed among the last to be dismissed, but subject to the condition that they demonstrate comparable skill and higher rate of productivity.

Apart from this, there is no general provision applicable to every scenario of anti union discrimination, thus limiting the redress of employees only to those expressly provided for under the law.

Other prejudices, largely emanating from government officials, could have a far-reaching impact on the personal security of individual unionists. It is not uncommon for union activists to be murdered, face physical assaults, disappear with out a trace, arrested arbitrarily, exiled, or their movements curtailed.

The Federal Constitution, national laws, and a number of other international human rights instruments to which Ethiopia is a party have expressly recognised the right to freedom of security of a person. And yet, a number of serious allegations have been submitted to the ILO supervising bodies alleging death, disappearance, harassment and detention of trade union leaders and members.

Guarantees against interference should not be limited against acts of anti union discrimination by the employer. Of equal consideration are others forms of interference by the employer that can effectively stifle the independence and activities of trade unions.

Art. 2 of Convention 98 provides that Workers' and employers organizations shall enjoy adequate protection against any acts of

interference by each other or each other's agents or members in their establishment, functioning or administration, and that, in particular, acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations, shall be deemed to constitute acts of interference within the meaning of the provision.

It is common for employers in many jurisdictions to grant union leaders a continuous leave with pay, certain physical facilities for union offices, and financial assistance as a matter of legal obligation, or a mere gesture of solidarity with the social partners. The issue of interference arises when any of such activities is aimed at, or have the effect of, putting the unions under the control of an employer or otherwise subjects them to a subordinate position.

There is no express legislative provision in the Ethiopian labour law that prohibits an employer from interfering in the affairs of unions, and thus falls short of the Convention's protections.

Finally, it is important to note that while unions may not claim a differential status other than what is available for the public at large, freedom from constant harassment such as search, occupation, closure, seizure of union materials, and sealing of working premises is no doubt very essential for the effective exercise of the right of association.

### **5.1.2 Recommendations**

As was discussed in various sections of this writing, Ethiopian law and practice in respect of the right to freedom of association of the workpeople has been at a considerable variance with internationally developed standards and practices. The following areas are worthy of special emphasis.

Positive freedom of association and the right to organize in trade unions is expressly guaranteed under several legislations in Ethiopia, even though it still remains questionable if those same laws imply guarantee of a negative right of association as well, that being left for the pertinent organs to elaborate. In fact, the Labour Proclamation has provide for a specific provision protecting the latter right indirectly, and only once employment relationship is established, partially in congruence with the ILO Convention 98. However, the right not to be compelled to be a member need be extended to employees both at the time of recruitment and during employment. It is true that issues that arise in connection with the exercise of negative right of trade union, such for example as union security clauses, are relatively alien to Ethiopian employment relations. And yet, express guarantee of the right not to be compelled to join an association under legislation is recommendable to keep abreast with international developments on the subject.

The extension of preferential privileges to employees solely based on membership of a union should remain illegal. But since only few employees usually become members of industrial associations by paying regular union fees, and participating in union activities, the law should be flexible enough to allow unions solicit membership by extending special privileges to their members, without at the same time transgressing the negative trade union freedom of others, and where this is not possible, the law has to provide for some compensatory mechanisms to make sure that unions remains attractive to employees who should not be discouraged by equal treatment with non union members.

As regards the right to form multiple organizations at all levels, while it is commendable that the Labour Proclamation has opted for a decentralized organisation of trade unions, putting no legal limit on the number of federations or confederations that may be established, a similar right has not been extended to first level organizations. In this regard, the legislation lags behind developments in the field. It must be born in mind that the whole idea behind union pluralism does not necessarily imply automatic proliferation of unions, with weak bargaining powers. Freedom of choice is but about making it possible for the employees to group under the umbrella of any number of unions, if and when they so wish. If for practical reasons, employees find it not in their interest to have many unions, they can settle on one, while leaving the option open at all times. It has to be admitted that the practice of a high number of trade unions per plant is widely acknowledged in many countries.

In order to prevent excessive fragmentation of trade union organizations and the weakening of the trade union movement, the law may introduce the concept of the most representative union, granting a variety of rights and advantages, for such purposes as

collective bargaining, consultation with the authorities or the designation of delegates to international organizations. This has been found compatible with the principles of freedom of association. The draft labour law allowing the establishment of more than one trade union at a plant level, and introducing the concept of most representative union for certain purposes as mentioned herein above, will hopefully address these concerns if adopted as it stands.

Besides, distinctions made by the law as regards the respective functions of different levels of associations may not be justified in all cases. The Labour Proclamation grants the power to conclude collective negotiations only to first level trade unions, subsiding the role of upper level organisations in the process. And provisions pertaining to the right to strike are framed in such a way that only affected trade unions may have a right to take industrial measures of such kind, thus effectively blocking those in similar industries and specially federations and confederations from recourse to calling sympathy style strikes or other industrial actions to further the causes of a specific union, or even the higher organisations themselves. Such limitations in the law will obviously hinder the growth of industrial relations and negatively affect the interest of lower level organisations, specially small, poorly organised trade unions, in effectively defending their socio economic interests.

The right of association under the Proclamation can be exercised only by 'the category of employees covered by the particular legislation. The Proclamation has excluded from its coverage substantial categories of employees including contracts relating to persons holding managerial posts, contracts of personal service for non profit making purposes, contracts relating to persons such as members of the armed forces, police force, employees of state administration, judges of courts of law, prosecutors, and others whose employment is governed by special laws, and contracts relating to independent contractors. Whatever rational lies behind such a clean-sweep-out of protected categories, the Proclamation has effectively excluded many employees that are properly covered by many of the international instruments and the national constitution. Save the case of armed and police forces, a blind exclusion of all employees engaged in state administration, executive staffs in public and private undertakings, and employment contracts of judges and prosecutors is certainly contrary to the stipulation of the ILO convention and the UN instruments unless a separate law specifically addresses their rights.

However, apart from Art 404 of the Civil Code, which grants a general right of association, the writer is not aware of the existence of any law that specifically grant or indirectly deal with the right of association of the above excluded category of employees. Over the

years, the Civil Code provisions have been a very important legal basis pursuant to which many employee associations, including employees in some sections of the civil service such as teachers, have been established. Though with out detailed rules necessary to regulate the establishment and operation of occupational and other organizations, the Civil Code will continue to govern the right of association with regard to excluded sections of employees in respect of whom no special law exists. And yet, because of the generality of the Civil Code provisions, many employees in several occupations still remain unable to effectively exercise their right of association. The Government should initiate the enactment of laws providing for the procedures and regulations determining the manner in which excluded categories of employees may exercise the right of association and give fuller meaning to the constitutional guarantee. Otherwise, the law will continue to defy the commitment the country assumed under various international instruments.

The range of broader objectives for which trade unions may be set up has been elaborated in some detail under the labour laws that the relevant ministry has no choice but to register an organization with objectives fitting those provided for in the law. One possible exception may however be Art. 119(2) of the Labour Proclamation granting the office the power to refuse registration when the 'objectives and the constitution of an organization are illegal'. Apart from enumerating the possible roles and responsibilities of associations in generally promoting occupational interests of their constituencies, the law does not explicitly provide for the type of activities or objectives that may be regarded so impermissible as to allow the ministry refuse registration, thus in effect leaving it for the office to elaborate on what permitted and prohibited activities or objectives of organizations really constitute. It is in the best interest of all concerned parties if the legislation proclaims the specific grounds under which registration may be denied and thereby reduces the discretion of public officials.

This is also true with respect to the discretion of the authorities in relation to some basic elements of registration such as qualification requirements of union leadership, amount of contribution levied on members, procedures followed in elections and meetings, financial and property administration and the like, issues addressed in the law only in a general fashion, thus in effect leaving it to the office to decide on these subjects.

Another soft spot of the labour laws concerns the minimum number of founders required to establish an association. The Labour Proclamation provided that a trade union may be established in an undertaking where the number of workers is twenty or more, and when only less than twenty employees work in undertaking, they must form a general trade union along with others similarly situated.

This number is unreasonably high, especially considering the nature and quantity of small-scale industries in the country. Such a legal limitation could effectively hinder many employees in small-scale enterprises from defending their rights through association.

Employee associations are engaged in various activities in order to defend the interests of their constituencies. One important activity is launching strike actions. The labour law contains broad restrictions on the right to strike. The definition of essential services contained in Art. 136(2) is too broad. In particular, the restriction should not include air transport, railway services, urban and inter urban bus services, filling stations, bank and postal services. Even though the views of employees and employers are so divergent on this issue, it has to be admitted that the concept of essential services should be restricted to those whose interruption would pose considerable danger to the public's life, personal security, or health upon interruption. It is true that special account must be taken of the overall impact of a particular strike action in a given industry, but the restrictions laid on some of the industries mentioned above can hardly be justified by reference to the underlying rationale for the imposition of such limitations in the first place. The law could even set the system of minimum services in respect of certain industries to meet basic needs of the community and avoid damages which are irreversible or out of proportion during strikes, as an alternative to a total prohibition. Besides, the law has not provided for some compensatory mechanisms to employees denied of a right to recourse to strikes, except the regular arbitration and conciliation procedures, which are available to other employees as well. It is commendable that the new draft labour law, in what seems to be a partial response to the comments of the ILO committees, has removed from the category of essential services such industries as rail way services, urban and intra city bus transport, banks, postal , and oil filling station services.

Apart from the above, the Labour Proclamation has specifically made it clear that strikes may be undertaken only to 'persuade their employer' to accept certain labour conditions in connection with 'a labour dispute', or to 'influence the outcome of the dispute'. Accordingly, employees may not embark on a strike action unless there is a particular labour dispute between the employer and employees. Therefore, the law impliedly excludes purely political strikes, sympathy strikes or general strikes, or other forms of industrial measures intended to express solidarity or otherwise influence the policy and laws of the government. While usually, it will be difficult to determine the political or occupational nature of the strike action, workers' organizations should not be prevented from striking at least, against the social and economic policy of the government, in particular where the protest is not only against that

policy, but also against its effects on some provisions of collective agreements and employment legislations.

Whether or not related to the scope of the right to strike, generally speaking, trade union activities should not be restricted solely to occupational matters since a government's choice of a general policy is usually bound to have an impact on workers. Some degree of flexibility in legislation is therefore desirable in this respect as well.

The interest of workers is protected more effectively where the law and practice allows unions to affiliate with international labour organizations from whom they may draw better experience and assistance. Restrictions on the exercise of such a right could have a negative impact on the freedom of employees at all levels to organize their activities and administration. The Labour Proclamation gave the right of international affiliation only to employee federations and confederations, while still barring basic unions from establishing direct links with the aforementioned organs. This is contrary to the clear stipulations of the ILO conventions.

Another perspective concerns the right to elect union representatives. Legislation should be flexible enough to allow certain proportion of qualified candidates for trade union office to be recruited from outside the respective occupation, enterprise, or production centre. This is particularly important when unions are unable to provide enough qualified persons from among their own ranks. Even though the labour law provisions are silent on this question, it is desirable for the law to at least allow admittance as candidates such persons who have previously been employed in the occupation concerned, or by exempting from the occupational requirement a reasonable proportion of the union officers of an organization.

As regards the eligibility requirements of those standing for election, disqualifying provisions based on criminal record of candidates should be confined to such cases which call into question the integrity of the person concerned which is clearly prejudicial to the performance of trade union duties.

Another flaw in the law is the grant of first instance power of cancellation of registration to an administrative office, the same organ that registers associations, rather than a regular court of law. It is of course provided for that decisions of cancellation of registration could be challenged before the courts of law. However, the provision grants an administrative body, an organ that may not necessarily be objective in its assessment of facts, too much control over organisations, not to mention that some of the grounds for cancelling registration are open to subjective interpretation. It must be noted that cancellation of registration effectively prevents an organization from performing any of the activities set forth in the law, leading to



the legal presumption that the organisation shall be deemed as dissolved for all practical purposes.

The issue of anti union discrimination should as well be addressed. It is unfortunate that there is no a general provision applicable to every scenario of anti union discrimination, thus limiting the redress of employees only to those expressly provided for under the law. Even as regards some of those specifically provided for, like for example Art. 14 of the Labour Proclamation, which makes it illegal to coerce a worker to be a member or cease membership, the law has not provided for what happens if the employer embarks on such acts. Union members and leaders have little or no means of redress that are specifically designed for them, and they may merely recourse to such other remedies as are available to the rest of the workers. Legislation should provide for an all rounded protective scheme and strengthen the position of such victims by devising less cumbersome evidentiary procedures by placing on the employer the onus of proving that the act of alleged anti-union discrimination was connected with questions other than trade union matters.

The security of trade union officials is also another issue of consideration. The government must show its determination to stand for the principles of trade union freedom by efficiently investigating and prosecuting acts of persecution committed against union leaders. Specially, when disorders have occurred involving loss of human life or serious injury, the setting up of an independent judicial inquiry is a particularly appropriate method of fully ascertaining the facts, determining responsibilities, and punishing those responsible for the acts. Judicial inquiries of this kind should be conducted as promptly and speedily as possible, so that there is no de facto impunity reinforcing a climate of violence and insecurity.

In the broader context, the trade union situation in Ethiopia has been the object of intensive controversy and debate before the ILO forums. Even though the Federal Government has been undertaking numerous measures to lay down the foundation works for the effective exercise of the right to freedom of association, the legal framework and its application in practice is still at a considerable variance with international standards and practices. The Government should seriously embark on concrete steps measures to improve the situation so that of freedom of association is respected and the principles applied both in law and in practice. In this respect, it is recommendable to note that the basic right to freedom of association cannot be thought of as standing in isolation, but only in conjunction with other related rights. The complete respect of the right demands that the Government show determination to respect other civil liberties endowed in every person. The effective exercise of employees rights to organize can not be realized in a system that disregards, de jure or de facto, the basic civil and political rights.



# ANNEXES

CEACR: Individual Observation concerning Convention No. 87, Freedom of Association and Protection of the Right to Organise, 1948 Ethiopia (ratification: 1963) Published: 1989

Description:(CEACR Individual Observation)

Convention:C087

Country:(Ethiopia)

Display the document in: [French](#) [Spanish](#)

Published:1989

Subject classification: Freedom of Association

Subject classification: Collective Bargaining and Agreements

1. With reference to its previous comments, the Committee notes the information supplied by the Government in its last reports and, in particular, that the draft Labour Code is currently being completed in the light of the Committee's comments and that in the near future it is due to be submitted to the "National Shengo".

2. The Committee recalls that the discrepancies between the legislation and the Convention concerned the following points:

- the organisation of workers and peasants into a single trade union system (sections 6, 9 (4), (5) and (11) of Proclamation No. 222 respecting trade unions, and sections 9, 10 (3), 29 and 30 of Proclamation No. 223 respecting the consolidation of peasants' organisations);

- the obligation upon workers' trade unions and peasants' associations to disseminate among workers the Government's development plans and Marxist-Leninist theory, and to apply the political and economic directives of the higher authorities (section 5 of Proclamation No. 222 and sections 6 (3), 15 (4) and 22 (4) of Proclamation No. 223);

- the formulation of the rules of workers' organisations and peasants' associations by the higher trade union organisations referred to by name in the legislation, namely: the All-Ethiopia Trade Union (section 6 (7) of Proclamation No. 222) for workers' trade unions, and the All Ethiopia Peasants' Association (section 30 (6) of Proclamation No. 223) for peasants' associations;

- the right of affiliation to international organisations, which is reserved to the All-Ethiopia Trade Union (section 6 (6) of Proclamation No. 222);

- restrictions on the right to strike (sections 99 (3) and 106 of the Labour Proclamation of 1975);

- the non-recognition of trade union rights for public servants and domestic personnel;

- the right of employers to establish employers' organisations in accordance with the principles set forth in the Convention. (Proclamation No. 148 of 1978 on the Chamber of Commerce entrusts employers' organisations with the implementation of the revolutionary programme and lays down that the Secretary-General of the National Chamber of Commerce is appointed by the responsible Minister).

Single trade union system set forth by law

(a) For several years, the Committee noted that Proclamation No. 222 imposed upon workers a system of organisation which, at the highest level, resulted in the creation of an expressly designated single national trade union, namely the All-Ethiopia Trade Union (AETU), by obliging base-level trade unions to conform to the rules formulated by the AETU and by subordinating trade union bodies to ideological and economic policies. It requested the Government to amend the legislation in order to safeguard the right of workers to establish trade union organisations of their own choosing outside the existing trade union structure.

According to the information supplied by the Government, the system of trade union organisation that is currently in force is a result of the common will of the workers. However, in accordance with section 47 of the Constitution, which guarantees the right of association, the Government states that it is prepared to envisage amending the legislation in the light of the Committee's comments.

The Committee notes these statements and points out that the principle of workers' freedom of choice of their organisations, as set forth in Article 2 of the Convention, does not imply an expression of support for the idea of trade union unity or for trade union pluralism. It means that pluralism must remain possible under the legislation. Furthermore, it wishes once again to emphasise that where a single trade union system implies that the trade union organisations are to conform to the rules formulated by the single national trade union, to disseminate Marxist-Leninist theory and to apply the Government's economic and political directives, workers' organisations do not have the right to organise their administration and activities and to formulate their programmes without interference from the public authorities (Article 3 of the Convention).

The Committee requests the Government to indicate in its next report the measures that have been taken to bring the legislation into conformity with the Convention.

(b) The Committee made identical comments concerning the peasants' associations established under the terms of Proclamation No. 223.

The Government once again indicates that peasants are either state employees considered as workers under the terms of the Labour Proclamation of 1975 and covered by Proclamation No. 222, or workers associated in co-operatives, who are excluded from the Proclamation of 1975 by virtue of section 1 (27) and are regulated by Proclamation No. 223.

In the Government's opinion, this latter category of peasants are not workers in the sense of Convention No. 87, but come under the Rural Workers' Organisations Convention, No. 141, which Ethiopia has not ratified.

The Committee nevertheless points out that Convention No. 87, in Article 2, covers workers "without distinction whatsoever". This expression in the sense of Convention No. 87 does not refer to the legal status of workers and cannot, in any case, be restricted to the concept of employee as usually understood in national labour legislation, and consequently all workers irrespective of the juridical nature of employment relationship are covered by the Convention. Furthermore, Convention No. 87, by referring to workers' organisations, does not limit the rights set forth in its second Article only to trade unions, but applies to any form of workers' organisations.

In the Committee's opinion, the rural workers covered by Proclamation No. 223 and the associations that are established in conformity with that Proclamation are respectively workers and workers' organisations in the sense of Convention No. 87.

The Committee trusts that the Government will take this interpretation into account and that the above provisions of Proclamation No. 223 will be amended in order to guarantee peasants employed on their own account or grouped in associations, who so wish, the right to establish organisations of their own choosing to further and defend their economic and social interests, outside the existing trade union structure.

#### International affiliation

With regard to the right to affiliate with international organisations, which is recognised exclusively for the AETU, the Committee understands, from the information supplied, that this provision may be re-examined. The Committee points out that this right must be recognised for all workers' organisations, without distinction, in accordance with Article 5 of the Convention. It requests the Government to indicate the measures that have been taken in order to give effect to the Convention in this respect.

#### Restrictions on the right to strike

In its previous comments, the Committee noted that sections 99 (3) and 106 of the Labour Proclamation of 1975 could result in practice in a prohibition of the right to strike. According to the information supplied, the Government considers that the right to strike is not restricted by the Constitution and states that specific legislation is envisaged in this connection once the new Labour Code has been adopted.

While noting this statement, the Committee points out that the right to strike is one of the means available to workers' organisations to defend their interests (Article 10 of the Convention) and to formulate their programmes (Article 3 of the Convention) and cannot be restricted, following mediation and conciliation procedures, except in the case of public servants acting in their capacity as agents of the

public authority, or in essential services in the strict sense of the term, namely services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, or in the event of an acute national crisis (see, in this connection, paragraphs 214 and 226 of the 1983 General Survey on Freedom of Association and Collective Bargaining).

The Committee requests the Government to indicate the measures that have been taken in order to modify the legislation.

The trade union rights of public servants and domestic personnel

In its previous observations, the Committee noted that distinct practical measures would be taken to recognise the trade union rights of public servants and domestic personnel once the new labour legislation had been adopted.

Noting that the formulation of the new labour legislation is being completed, the Committee trusts that the measures that have been announced concerning these workers will be adopted in the near future and requests the Government to supply information on the progress achieved in this respect.

The right to organise of employers

In its previous observations, the Committee noted that employers' organisations established by virtue of Proclamation No. 148 of 1978 on the Chamber of Commerce were not employers' organisations in the sense of the Convention, that is organisations for furthering and defending the interests of employers without interference by the public authorities.

The Committee notes, from the information supplied by the Government, that a draft Proclamation respecting chambers of commerce has been submitted to the Council of Ministers.

The Committee requests the Government to indicate the measures that have been taken to guarantee employers the right to organise in organisations of their own choosing, without interference from the public authorities, and to transmit a copy of the draft Proclamation.

[CEACR: Individual Observation concerning Convention No. 98, Right to Organise and Collective Bargaining, 1949 Ethiopia \(ratification: 1963\) Published: 1989](#)

Description:(CEACR Individual Observation)

Convention:C098

Country:(Ethiopia)

Display the document in: [French](#) [Spanish](#)

Published:1989

Subject classification: Freedom of Association

Subject classification: Collective Bargaining and Agreements

The Committee notes the information supplied by the Government in its report and to the Conference Committee in 1987, and the attached documents.

The Committee's comments concern the application of Article 4 of the Convention.

In its previous observations, the Committee noted that section 70(2) of the Labour Proclamation of 1975 provides for the compulsory registration of collective agreements, which may be refused without the possibility of appeal in the event, among other criteria, of their not conforming to the general policy pursued by the Government.

The Committee takes due note of the Government's indication in its report that the main objective of this procedure is to verify that collective agreements conform to the minimum standards established by the labour legislation and that, if a trade union is not satisfied with the Minister's decision, it may appeal to the High Court within two weeks.

Furthermore, the Committee notes, from the available information, that the Government's policy is to restrict wage increases. With reference to sections 6(5) and 8(2) of Proclamation No. 222 of 1982 respecting trade union organisation, under which the All-Ethiopia Trade Union (AETU) participates in the formulation of the country's political and economic plans and first-level trade unions participate in the formulation of enterprise plans, the Committee requests the Government to supply information on the effect given to these provisions and to indicate in particular whether the trade unions were consulted before the wages policy was established and the level at which they participate in decision-making in this area.

It also requests the Government to supply information on the effect given in practice to Article 4 of the Convention by continuing to supply, among other data, information on the number of agreements that are concluded, and the sectors and workers that they cover.

The Committee is addressing a request directly to the Government on another point.

[CEACR: Individual Observation concerning Convention No. 87, Freedom of Association and Protection of the Right to Organise, 1948 Ethiopia \(ratification: 1963\) Published: 1999](#)

Description:(CEACR Individual Observation)

Convention:C087

Country:(Ethiopia)

Subject classification: Freedom of Association

Subject classification: Collective Bargaining and Agreements

Display the document in: [French](#) [Spanish](#)

The Committee notes the Government's report. It also notes the statement of the Government representative to the Conference Committee in 1998 and the discussion that followed, as well as the most recent conclusions of the Committee on Freedom of Association in Cases Nos. 1888 and 1908 (see 310th Report of the Committee on Freedom of Association, approved by the Governing Body at its 272nd Session, June 1998).

The Committee must again note with serious concern the grave allegations of violations of trade union rights brought before the Committee on Freedom of Association.

Articles 2 and 10 of the Convention. In its previous comments, the Committee, noting that section 3(2)(b) of Labour Proclamation No. 42-1993 excludes teachers from its scope of application, requested the Government to indicate how teachers' associations could promote their occupational interests. The Committee notes the statement of the Government representative to the Conference Committee that, as civil servant, they are governed by laws other than labour laws, and that specific legislation was under consideration. The Committee requests the Government to indicate the precise provisions permitting teachers' associations to promote their occupational interests, and to forward to the Committee any draft legislation governing teachers' associations.

The Committee notes that despite being informed by the Government in its report of 1994 that a new law was expected to be adopted "in the very near future" to address the concerns that had been raised by the Committee with respect to the denial of the right of state administration, judges, prosecutors and others to establish and join organizations for the promotion of their occupational interests, the Government has not since provided any information on the progress of this law. The Committee requests the Government to inform it of the status of this law, and reminds the Government that workers' and employers' without distinction whatsoever, are to have the right to establish and join organizations of their own choosing.

Article 3 (Right of workers to elect their representatives). The Committee notes that the Committee on Freedom of Association cases concern, inter alia, the forced removal of elected trade union leaders of the Federation of Commerce, Technical and Printing Industry Trade Unions (FCTP) and of the Ethiopian Teachers' Association (ETA). In this regard, the Committee recalls that the removal of trade union leaders and the nomination by the administrative authorities of members of the executive committees of trade unions constitutes a violation of Article 3 of the Convention. Noting that a judgement rendered by the Court of Ethiopia has upheld the claims made by ETA's elected leadership that they represent Ethiopian teachers, the Committee requests the Government to comply with this decision. The Committee notes that the Government has lodged an appeal on this decision. The Committee requests the Government to inform it of the outcome of the appeal and to provide a copy of the higher-court judgement as soon as it is handed down.

Article 4. The Committee notes with concern that the Ministry of Labour has cancelled the registration of the former Confederation of Ethiopian Trade Unions (CETU) pursuant to the powers vested in it under section 120 of the Labour Proclamation, and observes that the Federal High Court has confirmed the decision of the Ministry. The Committee requests the Government to take measures to amend the



legislation to ensure that an organization shall not be liable to be dissolved or suspended by administrative authority, in conformity with Article 4 of the Convention and to keep it informed of any progress in this regard.

Articles 3 and 10. The Committee notes that Labour Proclamation contains broad restrictions on the right to strike: the definition of essential services contained in section 136(2) is too broad and should notably not include air transport and railway services, urban and inter-urban bus services and filling stations, banks and postal and telecommunications services (section 136(2)(a), (d), (f) and (h)); sections 141(1), 142(3), 151(1), 152(1), 160(1) and (2) allow labour disputes to be reported to the Ministry for conciliation and binding arbitration by either of the disputing parties.

The Committee therefore requests the Government to amend its legislation so that the ban on strikes is limited to essential services in the strict sense of the term and disputes may be submitted to the Labour Relations Board for binding arbitration only if both parties agree or in relation to essential services whose interruption would endanger the life, personal safety or health of the whole or part of the population or in case of an acute national crisis.

Finally, the Committee is addressing a request directly to the Government.

Requests

The Government is requested to report in detail in 1999.

Report date:00:00:1999

[CEACR: Individual Observation concerning Convention No. 87, Freedom of Association and Protection of the Right to Organise, 1948 Ethiopia \(ratification: 1963\) Published: 2000](#)

Description:(CEACR Individual Observation)

Convention:C087

Country:(Ethiopia)

Subject classification: Freedom of Association

Subject classification: Collective Bargaining and Agreements

Display the document in: [French](#) [Spanish](#)

The Committee takes note of the Government's report as well as the statement of the Government's representative to the Conference Committee in 1999 and the discussion that followed.

The Committee recalls its serious concern with regard to the trade union situation and in particular in relation to the Government interference in trade union activities.

Article 2 of the Convention. The Committee notes from the Government's report that only one trade union may be established in an undertaking where the number of workers is 20 or more, in accordance with section 114 of Labour Proclamation No. 42-1993.

The Committee insists that a legislation which provides that only one trade union may be established for a given category of workers runs counter to the standards expressly laid down in the Convention. It therefore requests the Government to take the necessary measures in order to guarantee that trade union diversity remains possible in all cases.

Articles 2 and 10. In its previous comments, the Committee, noting that section 3(2)(b) of Labour Proclamation No. 42-1993 excludes teachers from its scope of application, requested the Government to indicate how teachers' associations could promote their occupational interests. The Committee requests once again the Government to indicate the precise provisions permitting teachers' associations to promote their occupational interests, and to forward to the Committee any draft legislation governing teachers' associations.

The Committee notes that despite being informed by the Government in its report of 1994 that a new law was expected to be adopted "in the very near future" to address the concerns that had been raised by the Committee with respect to the exclusion of state administration officials, judges and prosecutors from Proclamation No. 42, the Government has not since provided any information on the progress of this law. The Committee would once again ask the Government to indicate whether judges and prosecutors are entitled to associate to further and defend their occupational interests and requests it to inform the Committee of the status of any law related to this matter.

Article 4. The Committee had noted with concern that the Ministry of Labour cancelled the registration of the former Confederation of Ethiopian Trade Unions (CETU) pursuant to the powers vested in it under section 120 of the Labour Proclamation. The Committee requests once again the Government to take measures to amend the legislation to ensure that an organization shall not be liable to be dissolved or suspended by administrative authority, and to keep it informed of any progress in this regard.

Articles 3 and 10. The Committee had noted that the Labour Proclamation contains broad restrictions on the right to strike: the definition of essential services contained in section 136(2) is too broad and should in particular not include air transport and railway services, urban and inter-urban bus services and filling stations, bank and postal services (section 136(2)(a), (d), (f) and (h)); sections 141(1), 142(3), 151(1), 152(1), 160(1) and (2) allow labour disputes to be reported to the ministry for conciliation and binding arbitration by either of the disputing parties. The Committee therefore requests once again the Government to amend its legislation so that the ban on strikes is limited to essential services in the strict sense of the term and disputes may be submitted to the Labour Relations Board for binding arbitration only if both parties agree, or in relation to essential services whose interruption would endanger the life, personal safety or health of the whole or part of the population or in case of an acute national crisis.

The Committee urges the Government to communicate in its next report the measures taken or contemplated to amend its legislation and practice in order to comply with the requirements of the Convention.

[CEACR: Individual Observation concerning Convention No. 87, Freedom of Association and Protection of the Right to Organise, 1948 Ethiopia \(ratification: 1963\) Published: 2002](#)

Description:(CEACR Individual Observation)

Convention:C087

Country:(Ethiopia)

Subject classification: Freedom of Association

Subject classification: Collective Bargaining and Agreements

Display the document in: [French](#) [Spanish](#)

The Committee notes with regret that the Government's report has not been received despite the fact that the Committee on the Application of Standards had requested a detailed report in 2001.

The Committee notes the oral information provided by the Government representative to the Conference Committee in 2001, as well as the discussion which took place therein and the resulting special paragraph in the Conference Committee's report. It further notes the most recent conclusions and recommendations by the Committee on Freedom of Association in Case No. 1888 (see 325th Report of the Committee on Freedom of Association, approved by the Governing Body at its 281st Session, June 2001).

In its previous comments, the Committee had expressed its deep concern over the current, extremely serious, trade union situation and, in particular, the government interference in trade union activities.

The Committee had also expressed its concern regarding the conviction on charges of conspiracy against the State of the president of the Ethiopian Teachers' Association, Dr. Taye Woldesmiate, who had been held in preventive detention for three years and who was sentenced to a prison term of 15 years. The Committee now notes with deep concern from the latest examination of the case before the Committee on Freedom of Association, that a hearing on Dr. Woldesmiate's appeal of this decision has been adjourned 12 times since his conviction in 1999, without a discussion yet even being issued on the receivability of the appeal. In this regard, the Committee stresses the importance it places upon the observance of the right of all detained or accused persons, including trade unionists, to be tried promptly through normal judicial procedures, which includes in particular: the right to be informed of the charges brought against them, the right to have adequate time for the preparation of their defence, the right to communicate freely with

counsel of their own choosing, and the right to a prompt trial by an impartial and independent judicial authority in all cases, including cases in which trade unionists are charged with criminal offences, whether of a political nature or not, which in the Government's view have no relation to their trade union functions (see General Survey on freedom of association and collective bargaining, 1994, paragraph 32).

While noting the Government representative's statement before the Conference Committee that the drafting of a new law governing teachers' associations and state administration employees is under way, the Committee recalls that the Government has referred to the drafting of new legislation for over seven years now and regrets that no specific progress or developments have yet occurred.

The Committee further recalls that its previous comments concerned the following.

Article 2 of the Convention. Right of workers without distinction whatsoever to join an organization of their own choosing. The Committee had noted that only one trade union may be established in an undertaking where the number of workers is 20 or more, in accordance with section 114 of Labour Proclamation No. 42-1993. The Committee considers that legislation which provides that only one trade union may be established for a given category of workers runs counter to the provisions of the Convention. It therefore once again urges the Government to take the necessary measures in order to guarantee that trade union diversity remains possible in all cases.

Articles 2 and 10. Restrictions on the right to unionize of teachers and civil servants. The Committee had noted that section 3(2)(b) of Labour Proclamation No. 42-1993 excludes teachers from its scope of application and had requested the Government to indicate how teachers' associations could promote their occupational interests. The Committee notes from the Government representative's statement before the Conference Committee that the draft law, including the proposal for the rights of civil servants to form unions, had already been drafted and had been submitted to the different stakeholders for comment and suggestions. The Committee requests the Government once again to forward any draft legislation governing teachers' associations and other government employees. Furthermore, having also noted that state administration officials, judges and prosecutors are also excluded from Proclamation No. 42-1993, the Committee reiterates its request that the Government indicate whether these categories of workers are entitled to associate to further and defend their occupational interests and if they will be covered by the proposed draft legislation mentioned above.

Article 4. Administrative dissolution of trade unions. In its previous comments, the Committee noted with concern that the Ministry of Labour had cancelled the registration of the former Confederation of Ethiopian Trade Unions (CETU) pursuant to the powers vested in it under section 120 of the Labour Proclamation. The Government had

indicated in its last report that the Ministry of Labour and Social Affairs had submitted draft legislation to the Council of Ministers which would vest the power of cancellation solely in the Ethiopian courts. The Committee once again requests the Government to transmit with its next report any draft legislation or amendments which would ensure that an organization cannot be dissolved or suspended by an administrative authority.

Articles 3 and 10. Right of workers' organizations to organize their programme of action without interference by the public authorities. In its previous comments, the Committee had noted that the Labour Proclamation contains broad restrictions on the right to strike, namely: the definition of essential services contained in section 136(2) is too broad. The definition should, in particular, not include air transport and railway services, urban and inter-urban bus services, filling stations, bank and postal services (sections 136(2)(a), (d), (f) and (h)). In addition, sections 141(1), 142(3), 151(1), 152(1), 160(1) and (2) allow labour disputes to be reported to the Ministry for conciliation and binding arbitration by either of the disputing parties. In order to avoid damages which are irreversible or out of all proportion to the parties, namely the users or consumers who suffer the economic effects of collective disputes, the Committee suggests that the Government give consideration to the establishment of a system of minimum service in other services which are of public utility rather than impose an outright ban on strikes, which should be limited to essential services in the strict sense of the term (see 1994 General Survey on freedom of association and collective bargaining, paragraph 160). The Committee once again requests that the Government amend its legislation so that the ban on strikes be limited to essential services in the strict sense of the term and so that disputes may be submitted to the Labour Relations Board for binding arbitration only if both parties agree, or if they are in relation to essential services whose interruption would endanger the life, personal safety or health of the whole or part of the population or in case of an acute national crisis.

The Committee urges the Government to take all necessary measures to ensure the full respect of the civil liberties essential for the implementation of the Convention. Furthermore, the Committee urges the Government to communicate in its next report the measures taken to amend its legislation and practice in order to comply with the requirements of the Convention and, in particular, requests the Government to transmit copies of any relevant draft legislation as well as the court judgement concerning the appeal made by the President of the Ethiopian Teachers' Association, Dr. Taye Wolde-smiate.

ILCCR: Examination of individual case concerning Convention No. 87, Freedom of Association and Protection of the Right to Organise Convention, 1948 Ethiopia (ratification: 1963) Published: 2001

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A Government representative of Ethiopia enumerated his Government's views on the status of issues pending before this Committee relating to Ethiopia. With regard to the trial and conviction of Dr. Taye Woldesmiat, he was charged and convicted under sections 32(1) and 252(1)(a) of the Penal Code of Ethiopia for conspiracy to commit a criminal act with the view to overthrowing the Ethiopian Government by force. This Committee and the Committee on Freedom of Association were informed by his Government regarding the developments in the case starting from its inception. The decision of the Federal High Court on this case was also forwarded to the Office. Moreover, in its previous submissions, his Government had clearly established that the previous membership of Dr. Taye in the Executive Committee of the Ethiopian Teachers' Association and activities he undertook in that capacity had no bearing on the case.

As to the concerns that had been expressed by the Committee of Experts with respect to the fairness of the judicial procedures, he wished to assure this Committee that Dr. Taye and the other defendants in the case were represented by lawyers of their own choice and all guarantees of due process of law were observed throughout the trial. The latest development with regard to this case was that the appeal lodged by Dr. Taye against his conviction was received by the Federal Supreme Court and his case was currently being reviewed by the highest court of appeal in the country. Moreover, he was serving his prison term in satisfactory and humane conditions that were accorded to any convicted person in the country with full respect for his person and his well-being. On more than one occasion he had been visited by persons from outside the country to whom he expressed his views freely.

With regard to the outstanding issues before the Committee of Experts, such as the question of defining essential services in a stricter sense for the exercise of the right to strike, ensuring trade union diversity at the enterprise level, ending administrative dissolution of trade unions, and the rights of civil service personnel to form trade unions, due attention had been given to incorporate these

issues into law reform proposals of the country. Some of these law reforms were already before the Council of Ministers.

As indicated in previous government reports, two consecutive tripartite workshops had been conducted, which thoroughly discussed independent position papers presented by the social partners in order to arrive at agreed recommendations with a view to amending the labour proclamation. However, at the workshop that was held in November 2000, the participants were unable to reach consensus on all draft provisions presented to them. Agreement was reached only on around ten of the draft provisions. Hence, the draft amendments were placed before the Tripartite Labour Advisory Board with the different positions of the participants. Presently, the Board was going through the proposals in detail. After the Board completed its work, the final draft would be submitted to the Government for consideration and approval. In this regard, the speaker thanked the ILO Office in Addis Ababa for providing financial support for the holding of the tripartite workshops.

In connection with the issue of civil service reform, the draft law, including the proposal for the rights of civil servants to form unions, was already prepared and brought to the attention of different stakeholders with a view to incorporating their suggestions and recommendations for further enrichment of the instrument. After passing through this process the draft law would be submitted to the relevant body for consideration and approval. In this regard, his Government had committed itself the previous year to finalize the law reform process in the shortest time possible. However, despite good faith efforts, it could not complete the task due to the need for completing the tripartite discussions of the law reform process and the heavy legislative agenda of Parliament. The speaker wished to assure this Committee that his Government would intensify its efforts to finalize the law reform as quickly as possible. Moreover, his Government would endeavour to ascertain the consistency of the draft laws with the relevant ILO standards. In this connection, his Government would solicit comments on the draft text from the ILO.

In conclusion, the Ethiopian Government was firmly supporting the vital institutions of democracy and market economy. In this endeavour it was attempting to instil the principle of tripartite consultations and social dialogue in order to enable people who were directly affected by decisions taken by the public authorities to have a say in the shaping of these decisions. Bearing this in mind, the long process being undertaken in the country to amend the existing legislation or promulgate a new law was, in the final analysis, about respecting this underlying principle. Hence, the Government member sought the understanding of this Committee that his country be allowed to develop and enrich its laws in accordance with the practice and the pace of its legislative process as it continued with its national endeavour to consolidate peace and democracy following years of dictatorship.

The Worker members indicated that this case was on the list of individual cases because it met at least six of the criteria set out by the Workers' group. These criteria related to the content of the case, the replies given by the Government in earlier debates, the discussion and conclusions of the previous year, the observations by workers/employers, the report of the Committee on Freedom of Association as well as recent developments. They recalled that Convention No. 87 was one of the key ILO Conventions. Moreover, this case had been discussed by this Committee for the ten years that the present regime had been in power. Last year this Committee had heard repeated promises by the Government to bring the first three legislative issues mentioned in the report of the Committee of Experts in line with the Convention. The Government had also promised that a comparative study of law and practice in neighbouring countries which would form the basis for the draft civil service law would be completed by the end of last year. In addition to these legal shortcomings, there was an appalling practice in respect of freedom of association. There was, for example, the case of Dr. Taye, mentioned in the report of the Committee of Experts. Other cases concerning more recent developments included interference in the internal affairs of trade unions, the murder, arrest, imprisonment without trial of unionists, as well as mistreatment in jail allegedly leading to the death of unionists. The Worker members noted that one of the arguments raised by the Government was that tripartite consultations were needed in order to adopt the legislation in question. In their view, whether or not the social partners agreed on the shortcomings in current legislation was completely irrelevant; what was required was that the legislation be brought in line with the requirements of the Convention. In addition to the continued serious concerns expressed by the Committee of Experts, there was the deep concern expressed by the Committee on Freedom of Association whose appeals had been completely disregarded by the Government. There was no progress in respect of moves to amend legislation concerning the issues raised by the Committee of Experts in respect of Articles 2, 3, 4 and 10 of the Convention. These issues included the right of workers without distinction whatsoever to establish organizations of their own choosing, the right of unions to organize their own administration, the administrative dissolution of trade unions and the right of workers' organizations to organize their programme of action without interference by the public authorities. The Worker members considered that if draft legislation had been sent to Parliament, then it should have also been sent to the ILO. There was no new information provided by the Government in this regard. The Government had, however, promised that it would provide a follow-up report on measures taken by the end of 2000 as required by the Committee of Experts as well as this Committee. The Government had also promised detailed answers to all of the comments raised by the Committee of Experts. With regard to the application in practice, the Worker members pointed out that an



ICFTU mission visited Ethiopia in November 2000. According to the trade union leaders it met with, this mission noted that the interference by the Government in internal trade union affairs was ongoing. The mission concluded that, since labour legislation had not been amended, the environment was not conducive for the functioning of an independent and democratic trade union movement. The same mission concluded that the Government would not fulfil its commitments made during the International Labour Conference the previous year. The mission also talked to former leaders of the Confederation of Ethiopian Trade Unions (CETU) affiliates who had been dismissed and who were facing trials. In early 2001, the secretary-general of the Awassa branch office of CETU, who had been jailed without any charges or trial, died in jail allegedly due to harsh treatment. Two Ethiopian Teachers' Association (ETA) leaders, Mr. Kebede Desta and Mr. Shimelis, faced the same fate in 1999. During the end of 2000, the Government arbitrarily detained and jailed the President of the Akaki Textile Factory Union, Mr. Legesse Bejeba, who was allegedly participating in "Red Terror". Mr. Bejeba was a well-known trade union leader for some 20 years and he was one of the founding fathers of the Ethiopian trade union movement. In early 2001, the authorities interfered in the election of the enterprise union of the National Bank of Ethiopia. Registration was refused and elections had to be held three times. Last year, this Committee had indicated that if no progress had been made in this case, then a special paragraph would be unavoidable. Since no progress had been made at all, the Worker members wished for the main conclusions and recommendations contained in the reports of the Committee of Experts and the Committee on Freedom of Association to be reflected in a special paragraph. They also wished for an urgent appeal to the Government to be reflected in such a paragraph in order to put an end to the violations in law and in practice. The special paragraph should also contain an offer of technical assistance from the Office to solve the legislative problems. Finally, the ILO Office in Addis Ababa should keep a close watch on the situation of Dr. Taye, Mr. Bejeba and other trade union leaders.

The Employer members recalled that this case had been the subject of comments by the Committee of Experts for the past 20 years, and that the Conference Committee had discussed the case for some time. They noted that the Government representative of Ethiopia had already indicated in 1994 and again in 1999 that they would prepare new legislation to remedy the situation. With regard to the 15-year prison sentence imposed on the President of the Ethiopian Teachers' Association, the Employer members stated that the authorities should respect the rights of detained or accused persons, including guarantees of due process, the right to be informed of charges, the right to have adequate time for the preparation of a defence and to communicate freely with counsel of their own choosing. The Government should also provide to the Committee the text of the judgement regarding this case. With regard to the call of the

Committee of Experts to amend the minimum number of workers needed in an enterprise in order to establish a trade union, the Government should provide draft legislation which it had announced regarding this matter. The Government should also submit draft legislation which it had announced to redress the fact that teachers were restricted from unionizing under Labour Proclamation No. 42-93. Similarly, the Government's announcement of draft legislation which would vest the power to cancel registration of trade unions solely with Ethiopian courts instead of the Ministry of Labour and Social Affairs was only a vague indication, and the lack of any solid evidence of such legislation could be viewed as a delay tactic.

Concerning the right to strike and the definition of essential services, the Employer members stressed that their view was completely different from the position of the Committee of Experts on this issue. In that respect, they wished to clarify their general position on the right to strike which, according to the observations of the Committee of Experts, was implied in Convention No. 87. Although the Employer members did not deny the right to strike as such, they maintained that the right to strike was not provided for by the Convention, as the text of the instrument did not contain any reference to "strike" or "right to strike". The preparatory work to the Convention excluded such references as well. Report VII, 31st Session of the ILC, 1948, Conclusions, page 87, read as follows: "Several Governments, while giving their approval to the formula, have nevertheless emphasized, justifiably it would appear, that the proposed Convention relates only to the freedom of association and not to the right to strike, a question which will be considered in connection with Item VIII (conciliation and arbitration) on the agenda of the Conference. In these circumstances, it has appeared to the Office to be preferable not to include a provision on this point in the proposed Convention concerning freedom of association." A similar conclusion had been reached in the discussions at the Conference leading up to Convention No. 98. At that time, two proposals to address the right to strike in the Convention were rejected. Convention No. 87 was not intended to be a code of regulations on the right to organize, but rather a concise statement of fundamental principles. It was worth noting in this regard that the term "strike" was only mentioned in Paragraph 4 of the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), which also mentioned "lockouts". This Recommendation, however, did not regulate the conditions of a strike or lockout, but established rules on the legal consequences which could arise from them. Finally, the International Covenant on Economic, Social and Cultural Rights, in article 8, paragraph 1(d), provided for a right to strike in the framework of national law. It was therefore the State's competence to determine the framework within which the right to strike could be exercised.

With regard to the Committee of Experts' call for a stricter definition of essential services, the Employer members believed that the definition of essential services was a device to limit as much as

possible the number of workers who did not enjoy the right to strike. The definition of essential services should not be restricted to only those whose interruption would endanger human life, but should include other important services, including teaching. The Employer members pointed out that both issues were important to them and the disagreement of the Employer members with other members of the Committee on this issue, especially with Worker members, should not be covered up in the conclusions through elegant formulations.

As concerned the case of Ethiopia, they pointed out that the Government had provided no new information in this case, and that they therefore supported the Worker members' proposal to present the conclusions of the case in a special paragraph.

The Worker member of Zimbabwe indicated that as far back as 1992 this Committee was advised that the Government of Ethiopia was preparing a draft labour law that would be in conformity with Convention No. 87. The Government was told at that time that "the legislation could not impose a single trade union system. Trade union pluralism must remain". Since then, this Committee had examined the situation facing Ethiopian trade unionists on a number of occasions. This Committee had seen the cancellation of the registration of the CETU when it opposed government policy; the closing of CETU's offices and the freezing of its bank account; the recognition of new leadership by the Government when the elected leadership sought asylum in fear of their lives;

continued harassment and intimidation of the Ethiopian Teachers' Association (ETA) leadership; the seizure of ETA offices; the freezing of ETA bank accounts; the arrest, detention, harassment, intimidation and killing of elected union leaders; and the recognition by the Government of new leaders supportive of government policies. The pattern was clear. In 2001, the Committee was still dealing with a situation where the labour laws did not permit freedom of association. One trade union per enterprise was still the rule. The Government had made it clear that it did not intend to change its legislation in this regard. The Government got rid of elected leaders of unions when they contested government policy; then it actively supported groups favouring the Government to reorganize and recognize them. Then it denied others the right to organize if they wished to organize other unions. It was not an original strategy to control unions but it was clear that this was exactly what it was. The Ethiopian Government continued to promise change but failed to deliver. The exclusion of certain groups like teachers from the scope of the legislation allowing them to unionize was not acceptable. This case presented a very serious violation of many aspects of trade union rights guaranteed under Convention No. 87. Clear violations of fundamental rights were continuing; justice was obstructed by the refusal of the Government to order an independent investigation into the killing of Assefa Maru by the police; the rule of law appeared to be set aside when it was convenient to the Government; transfers, dismissals, political

interference all continued. Moreover, students were subjected to brutality and the Ethiopian Human Rights Commission President had been charged with similar charges that had kept Dr. Taye Woldesmiate in prison. The Government of Ethiopia had had enough time to bring its legislation into line with Convention No. 87. It certainly should stop the persecution of trade unionists that disagreed with their policies. This Committee should adopt a special paragraph this year.

The Worker member of Austria expressed his support for the trade union activists from Ethiopia who were in exile, including those who had sought refuge in Austria. Their efforts had raised awareness about the situation in Ethiopia, including not only the logistical obstacles to freedom of association but also the unacceptable practice of restricting and repressing trade unions. Aside from the serious issue of the persecution of individual trade union leaders, he wished to address two other salient problems in this case. First, it was unacceptable that Proclamation No. 42-93 excluded all public servants from its scope of application, which de facto exempted significant groups of workers, including teachers and medical personnel, from legal protection. He urged the Ethiopian Government to take the necessary steps to include all workers under the scope of the law and thereby to provide for freedom of association. Secondly, it was also unacceptable that numerous industrial sectors had been denied the right to strike. He recalled that the Committee of Experts had noted that practically the entire transportation industry and parts of the public service sector, including postal workers, telecommunications workers and bank workers, had been denied the right to strike. These restrictions affected no less than 60 per cent of all workers. He called on the Government of Ethiopia to take steps to provide freedom of association to all workers in conformity with Convention No. 87 and to end the repression of Ethiopia's civil society.

The Worker member of Swaziland pointed out that since 1994 the Ethiopian Teachers' Association had managed to survive the constant pressures to which it had been subjected to try to silence it and make it impossible for it to represent its members. There was active support by the Government for the establishment of another Ethiopian Teachers' Association loyal to the Government. Moreover, the President of ETA had spent five years in prison and was convicted in 1999 to 15 years in prison on charges that he was subversive. An appeal was lodged after his conviction in 1999. Since then, the Supreme Court adjourned the case 12 times before making a decision on the receivability of the appeal. It was only recently that the Court had accepted that the appeal could be heard. This would take even more time. Amnesty International had declared Dr. Taye Woldesmiate to be a prisoner of conscience after reviewing the transcript of the trial. In addition, no inquiry had been ordered into the shooting by the police of the unarmed Assefa Maru. Other ETA leaders had been forced into exile. Furthermore, court action by the

new ETA to strip assets from the original ETA had been obvious and they were now trying to obtain the former ETA office. Moreover, the dismissal of the ETA activists continued. Finally, members of the international organization to which ETA was affiliated were denied visas in 2000. In March of this year, a mission was allowed to enter Ethiopia. Dr. Taye, contrary to the information provided by the Government, was held in very difficult conditions in prison. He was confined in a small room with seven other prisoners. Outside access was to a small area ten metres by four metres which was walled. Dr. Taye was not allowed to work in the prison school or to use the library. He was ordered not to speak to any prisoners other than those in the same room. The mission had also met teachers who had asked that their union dues not be paid to the new ETA and, despite repeated requests to authorities that this should not be done, it continued. Some teachers believed that their transfers were due to such requests being made. Government officials had indicated that ETA should be free to organize provided they did so on the basis of a structure determined by the Government. ETA insisted on the right for its members to determine the union structure they wanted. The speaker insisted that there be an end to this treatment of the Ethiopian Teachers' Association. New labour legislation should be adopted allowing freedom of association and the scope of the legislation should include teachers and other sectors currently excluded. Government interference in trade union affairs should be ended. It was not acceptable that the Government had given its support to unions that had tried to stop other unions from existing. Freedom of association should allow registration of more than one union in a sector enterprise so that union members could freely choose their representatives. No real change had taken place since this Committee had begun to examine the violations of Convention No. 87. The Government was using unions for its own purposes.

The Worker member of Senegal emphasized the worrying number of attacks on trade union freedom and the age of those cases. Indeed, those cases were symptomatic. The case of Ethiopia illustrated all aspects of the violation of trade union freedom: arrests, imprisonment, impossibility for workers to belong to the trade union of their choice, dissolution by the Government of trade union organizations, etc. It was a very sad picture, even if the observations of the Committee of Experts were more circumspect. Indeed, how could a trade union official be accused of conspiring against the State? The use of expressions such as "acts or conduct such as to compromise public safety" or "public disturbances", were mendacious pretexts used by the State. It should be underlined in that respect that the judiciary, whose job was to state the law, was subject to considerable political pressure and was still seeking to establish its independence. The sentencing of Dr. Taye Woldesmiat to 15 years' imprisonment was such an example. The case put forward by the Government was not convincing and contradicted its actions in practice. By way of example, he pointed to the trade union

monopoly established under section 114 of the Labour Proclamation No. 42-93 or the cancellation of the registration of the former Confederation of Ethiopian Trade Unions. As soon as a trade union fulfilled its mandate, its legitimacy and means of action were challenged. The Labour Proclamation replaced the law and, indeed, even the Constitution in many areas. They were thus trapped at the heart of a process, the goal of which was to tame workers and their representative organizations. The situation was deadlocked, whether in relation to teachers' organizations, civil servants or the numerous restrictions on the right to strike. The situation should again be denounced, and that was why the case should be given a special paragraph.

The Worker member of New Zealand cited information received from Education International (EI) which it had gathered on a mission to Ethiopia in March of this year. He recalled that EI representatives had been refused visas in July and again in December 2000, and an EI representative who was to take part in the EI-ICFTU mission in November 2000 was denied a visa as well. He appreciated, however, the fact that EI was able to visit Ethiopia this year and meet with government representatives, the Confederation of Ethiopian Trade Unions and Ethiopian Teachers' Association, and to visit with Dr. Taye Woldesmiat in prison. Dr. Taye's condition in prison was very severe and he required urgent dental care. He recalled that Dr. Taye had been declared a prisoner of conscience by Amnesty International last year. Furthermore, government officials had indicated that they doubted that the ETA had any members, despite the fact that the ETA held annual meetings and workshops. The ETA had asserted that the Government, through the Minister of Education, had instructed regional authorities not to deal with the ETA or allow them access to schools. Teachers had also alleged that they wished to pay dues to the ETA but that these dues were then sent to other government-supported associations. It was a measure of great urgency that the ETA be recognized, and the fact that it was not, was a clear violation of Convention No. 87. He called for the end of the harassment and intimidation of ETA members and activists, the reinstatement and compensation of teachers who had been arbitrarily transferred, the release of Dr. Taye and an independent inquiry into the death of Assefa Maru as called for by the Committee on Freedom of Association.

The Worker member of Ethiopia referred to the comment of the Committee of Experts regarding Article 2 of Convention No. 87 concerning trade union monopoly at the enterprise level. Although he did not object to the principle in the Convention regarding the need for union diversity, he stated that his organization, the Confederation of Ethiopian Trade Unions, was of the view that more than one union in an enterprise would undermine the unity of workers. He recalled that in discussions with the Labour Advisory Board, both the Government and employers had supported union diversity, but workers' representatives had strongly objected. He therefore did not

support the observation of the Committee of Experts regarding this point. However, he agreed with the Committee of Experts that the minimum number set out in law of workers needed in an enterprise for the establishment of a trade union should be reduced from 20 to ten. With regard to the observations on Articles 2 and 10 of the Convention, he recalled that Proclamation No. 42-93 did not cover teachers and other civil servants, while the Federal Constitution of 1994 guaranteed workers the right to form trade unions and bargain collectively. Yet so far, there was no clear law providing these rights for teachers and civil servants. He urged the ILO to continue its support on this matter and called for greater participation by teachers in the preparation of draft legislation concerning teachers and civil servants. Concerning the administrative dissolution of trade unions (Articles 3 and 10 of the Convention), he supported the observation of the Committee of Experts which indicated that the power of the Ministry of Labour and Social Affairs under Proclamation No. 42-93 to cancel trade unions was in violation of the Convention. He also agreed with the Committee of Experts' observation which pointed out that Proclamation No. 42-93 excluded many important sectors from the right to strike through a definition of essential services which was too broad and ambiguous. This broad restriction should be lifted, although there should be some flexibility with regard to essential services whose interruption might endanger the lives of persons. Labour disputes could also be referred to the Ministry of Labour and Social Affairs for voluntary conciliation. In conclusion, he recalled that at last year's session of the Committee, the Government member of Ethiopia had announced that Proclamation No. 42-93 would be amended within six months. As this still had not been done, he urged the Government to amend the labour law as soon as possible.

The Government member of the United States recalled that the Committee's discussion in 2000 had laid out very specific terms, based on the observations of the Committee of Experts, regarding what the Ethiopian Government should do to bring law and practice into conformity with Convention No. 87. The Committee had urged the Government to take these steps as a matter of urgency and had reminded the Government that the ILO was at its disposal to provide necessary technical assistance. The Committee had noted the Government's statement that it was committed to bringing law and practice into line with the Convention. It was unfortunate to note that this year's Committee of Experts' observation regarding this case did not indicate any progress or apparent change from last year. Indeed, very little news had been added by the intervention of the representative of the Government of Ethiopia today. She urged the Government to move forward without further delay to implement the recommendations of the ILO supervisory bodies, with the technical assistance of the Office, if necessary, in order to bring law and practice into full conformity with the freely ratified Convention.

The Government representative of Ethiopia indicated that the allegations raised in this Committee were too many to respond to in

detail. Any suggestion that this case could be solved by putting Ethiopia in a special paragraph was a mistake. Moreover, nowhere in the report of the Committee of Experts was it indicated that the Government had refused to comply with Convention No. 87. The speaker acknowledged the need to amend the legislation; however, the new Constitution had been adopted only in 1994 and any changes in the civil service law could not be carried out quickly. Moreover, although the country had been freed from a military dictatorship it had still suffered the consequences of an international conflict, civil war and natural disasters. The Ministry of Labour could do so much by submitting the draft civil service law to Parliament, but it was up to Parliament to decide on its priorities and there was a large body of laws to be adopted. He stressed that it was very erroneous to state that this case had been pending for 20 years since the new Government had come into power only ten years ago. Moreover, the Labour Proclamation of 1993 guaranteed the basic rights enshrined in Convention No. 87. However, in order to amend the legislation there was a need to have the consensus of stakeholders. He was appalled to hear the statement of the Worker member of Ethiopia regarding the lack of consultation since during the last two meetings of the Labour Advisory Board, the workers' representatives were absent. He pointed out that his Government's representative was unduly optimistic in specifying a timeframe of six months for the completion of the legislative process during last year's meeting of this Committee. In effect, there was a process to be followed and the ultimate decision lay with Parliament. With regard to the alleged violations of human rights, the Worker members had mentioned new names of persons allegedly detained that the Government delegation had not even heard of. Also, he had not read the report of the ICFTU mission to Ethiopia last year. In any case the Government representative asserted that the individuals allegedly detained could have challenged their detainment in courts of the country. Regarding the allegation that the Supreme Court had adjourned Dr. Taye's appeal 12 times, the Government representative indicated that this was because Dr. Taye had appealed only after the expiry of the 60 days' deadline to appeal. Finally, the Supreme Court accepted the appeal and it was being actively heard. With regard to the alleged violations of freedom of association of ETA and its leaders and members, the Government had just received the report of Education International (EI) after its recent mission to Ethiopia. Accordingly, the Government would send a reply to the Committee on Freedom of Association. He reiterated that his Government would continue to cooperate with the Committee on the Application of Standards. Therefore, the proposal to include Ethiopia in a special paragraph was unwarranted and would not be conducive to the spirit of cooperation that should exist between the Government and the Committee.

The Worker members pointed out that in their statement as well as that of the Employer members, there were historical references made



with a view to giving a certain context to the case under discussion. However, they emphasized that this case had been pending for ten years since this Government had taken over from the previous dictatorship. They repeated the names of the trade union leaders who were detained since the Government member indicated he had never heard of them before. They pointed out that goodwill was excellent but needed to be demonstrated which had not been the case for this Government for the past ten years. Although this Government had indicated that it wanted to correct the wrongs of the previous Government, it had not done so.

The Employer members stated that the intervention by the Government member of Ethiopia had, in their view, made no difference in this case. They recalled that under international law, member States were bound by ILO Conventions, not individual governments. They noted that in 1994, the present Ethiopian Government had already promised to make the necessary changes to its laws in order to comply with the Convention. Once again, in the year 2001, the Ethiopian Government was promising all sorts of measures yet cautioning that progress should not be made too quickly. In fact, the process of change in this case was all too slow. The inclusion of this case in a special paragraph of the Committee's report was justified.

#### Summary

The Committee noted the statement made by the Government representative and the discussions which took place thereafter. The Committee shared the serious concern of the Committee of Experts with regard to the trade union situation. The Committee was deeply concerned by the fact that no progress had been made in respect of the serious complaint pending before the Committee on Freedom of Association concerning government interference, in particular, with the functioning of the Ethiopian Teachers' Association and that its President had now been convicted, after three years of preventive detention, on charges of conspiracy against the State and sentenced to 15 years' imprisonment. It recalled that the Committee of Experts had requested the Government to indicate that the precise provisions permitting teachers' associations to promote the occupational interests of their members and to provide information on the progress made in adopting legislation to ensure the right to organize for employees of the state administration. It also recalled the concern raised by the Committee of Experts about the cancellation of the registration of a trade union confederation, as well as broad restrictions placed on the right of workers' organizations to organize their activities in full freedom. The Committee regretted to note that apparently no progress had been made in this respect since the last time this case was before it. The Committee strongly urged the Government to take all the necessary steps as a matter of urgency to ensure that the right of association was recognized for teachers to defend their occupational interests, that workers' organizations were able to elect their representatives and organize their administration

and activities free from interference by the public authorities and that workers' organizations were not subject to administrative dissolution, in accordance with the requirements of the Convention. It urged the Government to respect fully the civil liberties essential for the implementation of the Convention. The Committee expressed the hope that the ILO Office in Addis Ababa could visit the detained trade unionists. While noting the statement of the Government representative concerning legislative changes under way, the Committee was obliged to note with concern that no progress had been made. The Committee made an urgent appeal to the Government to put an end to all violations to the Convention both in law and in practice. The Committee also requested the Government to provide any relevant draft legislation, as well as the court judgement concerning the appeal made by the President of the Ethiopian Teachers' Association. The Committee urged the Government to supply detailed and precise information on all the points raised in its report due this year on the concrete measures taken to ensure full conformity with the Convention, both in law and in practice. The Committee expressed the firm hope that it would be able to note concrete progress in this case next year. The Committee decided that its conclusions would be placed in a special paragraph of its report.

[ILCCR: Examination of individual case concerning Convention No. 87, Freedom of Association and Protection of the Right to Organise Convention, 1948 Ethiopia \(ratification: 1963\) Published: 2002](#)

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A Government representative stated that the Ethiopian Government had been consistent and clear in all its replies regarding the trial and conviction of Dr. Taye Woldesmiat and the other defendants. As was repeatedly explained by his Government, the issue in question had nothing to do with the individual's previous position and membership in the Ethiopian Teachers' Association (ETA). It was a purely judicial matter and the delay in the appeal process was entirely due to the appellant's failure to lodge his appeal within the period prescribed by law.

The speaker further stated that the latest significant development in this regard was that the appeal proceeding against the conviction of Dr. Taye Woldesmiat and the co-defendants had now been

concluded and that a decision of the Federal Supreme Court was rendered on 10 May 2002. Dr. Taye and one of the co-defendants were found guilty under articles 32(1)(a) and 269(c) of the Penal Code of Ethiopia, on a different count than what they were charged with at the outset; namely that of assisting an illegal terrorist organization called "Ethiopian Patriotic Front". The Federal Supreme Court sentenced Dr. Taye and one other defendant to five years' imprisonment as of the date of their arrest. However, since they had already served the time since the day of their arrest, they were released on the date of the final decision of the Supreme Court. The other co-defendants were acquitted as per article 195 (2)(b)(i) of the Criminal Procedure Code. The decision of the Federal Supreme Court, therefore, confirmed the Government's contentions all along that the case had nothing to do with the defendant's trade union activities. The text of the decision would be forwarded to the Office as soon as the translation was ready.

Turning to the issues of trade union diversity, administrative dissolution of trade unions, the right of teachers and other civil servants to unionize, and the scope of the right to strike, he said that the Government had undertaken an extensive process of amendments of the Labour Law and the Civil Service Law. As the task was huge and complex, it had indeed contributed much to the delay of the amendment process. For this reason the Government was unable to meet its commitment to finalize the draft laws in the shortest possible time. In order to address most of the concerns raised and to come up with comprehensive legal texts, the initial draft, after having been examined by the appropriate highest government authority, was now on its final phase of exhaustive review of all the issues involved.

As the first African member State of the ILO in 1923, Ethiopia had ratified an ILO Convention for the first time in 1947. To date it had ratified 19 Conventions. Two Conventions, Nos. 29 and 182, were currently awaiting the approval of the National Parliament, which was the competent authority for the ratification of Conventions. The exercise of amending labour legislation was also part of his country's endeavour to comply with ILO Conventions.

In the human rights field, Ethiopia had acceded to or ratified all core international human rights instruments and at the national level the proclamations to establish the Human Rights Commission and Ombudsperson Office had been promulgated recently. Freedom of association and other fundamental rights were constitutionally guaranteed rights. The implementation of the national poverty reduction strategy was a priority concern to his Government in the achievement of a qualitative improvement in welfare, employment skills and social security schemes and the progress made in this regard was encouraging.

Finally, his delegation solicited the understanding of this Committee that the delay in the finalization of the draft laws was due to the complexity of the issues involved that had demanded a continuous

dialogue with the social partners. He further requested the International Labour Office to enhance its assistance to resolve some of his Government's technical expertise constraints.

The Worker members wished to take the Minister's personal participation in the discussions of the Committee as a sign of the importance attached by the Government of Ethiopia to the work of this Committee. They welcomed the information on the release of Dr. Taye from six years in jail. They recalled that his case had been the subject of comments of this Committee and the Committee on Freedom Association. Dr. Taye was not in jail for conspiring to overthrow the government by force. He was imprisoned for his trade union activities as the President of the Ethiopian Teachers' Association. They wanted to know whether the Government would assure them that Dr. Taye could resume his trade union activities and that the interferences in the work of his union would come to an end too. They wished the Committee of Experts to follow up these questions. His release was made possible because of the impact of the ILO supervisory system, which was effective even if a bit slow.

The Worker members deplored that the Government had not sent the report due last year for examination by the Committee of Experts. In the interest of saving the limited time of the Committee they did not wish to repeat in detail what continued unchanged in the situation in Ethiopia regarding the outstanding points before this Committee. They limited themselves to referring to paragraphs 35-38 of Provisional Record No. 19 of the 89th Session of the International Labour Conference. Their own statement from last year was still valid in this case. They only wanted to draw attention to the findings of a recent ICFTU mission, that in Ethiopia the climate was not conducive for the functioning of an independent and democratic trade union movement. They urged the Government to accept ILO technical assistance in drafting amendments to the legislation.

Turning to the explanations provided by the Government for the delay in the amendment process, they indicated that even though consultations were necessary and consensus was desirable, that could not be used to delay action on the part of the Government on matters that were its responsibility. It was the Government that had to fulfil its obligations under the Convention.

The Worker members regretted that, after two decades, there was no real progress in the implementation of Convention No. 87. Despite the personal interest shown by the Minister in the work of this Committee and despite the release of Dr. Taye, everything spoke in favour of a repetition of a special paragraph in this year's report. They noted the Government promised to amend the legislation shortly and that it would accept the assistance of the Office in doing so. They would have preferred to have a commitment to do that before the next session of the Committee of Experts. They regretted that the Government could not meet that deadline. They wanted to know whether the Government would undertake to do the necessary work in the next 12 months and to report on this work to the

Conference next year. They also assumed that the Government undertook to submit its regular report for the next session of the Committee of Experts.

The Worker members also urged the Government to cooperate in an investigation by the ILO into the question of the imprisoned trade unionists mentioned last year. Ethiopian trade union leaders in Europe also reported new imprisonments of trade union leaders. This they considered was important for the work of this Committee. They appealed once more to the Government not only to comply with recommendations of the Committee but also to restore genuine trade unions, release all detained trade union leaders, allow previous trade union leaders and activists to return to the country, allow these ex-detainees and ex-refugees to resume their trade union work in normal and safe conditions, and to establish a long overdue independent national commission of inquiry into the murder of trade union leaders. They reserved their position in respect to where the conclusions of the Committee would be placed.

The Employer members recalled that this case had been the subject of comments by the Committee of Experts for the past 20 years, and that the Conference Committee had discussed the case five times since 1995. They welcomed that the imprisoned President of the Ethiopian Teachers' Association, Dr. Taye, was released from prison. The Government representative had promised to supply the judgement regarding this case, which would be interesting with regard to the long time the case was pending at court, which, in the past, were deemed to constitute a non-respect by the authorities to guarantee due process to detained or accused persons.

The Employer members referred to the requirement of 20 workers as the minimum number needed in an enterprise in order to establish a trade union, the fact that teachers and public employees were barred from unionizing, and the Minister's right to dissolve registered trade unions, which the Minister did use in the past. They noted that the Government had made promises since 1994 to introduce the necessary legislative amendments. In this light, the promise made by the Government representative could unfortunately not be taken seriously. The Government had in the past failed too often to comply with its international public law obligations deriving from Convention No. 87.

Turning to the right to strike, the Employer members said that their views were well known. It was therefore not necessary to recall their position, which was different from the position of the Committee of Experts on this issue, every time when the Conference Committee discussed one of the numerous cases regarding the application of Convention No. 87.

In conclusion, the Employer members associated themselves with the conclusions which were proposed by the Worker members. They still hoped that progress would be achieved on the case, irrespective of the negative facts the Conference Committee had experienced in the past.

The Worker member of Ethiopia indicated that when this case was discussed in this Committee last year, one of the serious comments made concerned the conviction on charges of conspiracy against Dr. Taye Woldesmiat, the President of the Ethiopian Teachers' Association. His confederation was happy to learn of the decision of the court. He expressed his confederation's commitment to arrange for dialogue between two groups of teachers' associations and resolve their unhealthy differences and help them to work together for the benefit and interest of Ethiopian teachers. He hoped the ILO would support this endeavour. He supported the comments of the Committee of Experts calling for respect for the right of workers, without distinction whatsoever, to join organizations of their choosing. His confederation had sent to the Government proposals for amendments to the law, with a view to removing existing provisions of the law requiring a minimum of 20 workers within an enterprise for the formation of a trade union. The Worker member supported the comments of the Committee of Experts calling for the right of teachers and public servants to form trade unions that was currently prohibited by Proclamation No. 42 of 1993. His confederation had sent proposed amendments to the law in this respect. They regretted delays in enacting these needed amendments and urged once again the Government to speed up the process. He also agreed with comments of the Committee of Experts calling for the repeal of the provisions authorizing the administrative dissolution of trade unions which was a violation of Convention No. 87. Similarly, his confederation had sent proposed amendments to the Government. Also in line with the comments of the Committee of Experts, his confederation had sent proposed amendments to the Government regarding the current exclusions of important sectors from having the right to strike as a result of a wide definition of essential services in the existing law. Sectors such as transport (railways, urban and inter-urban services and airlines), banks, postal, telecommunications and fuel stations were defined as essential under the laws. His confederation was of the view that essential services should be restricted to those whose interruption would endanger the lives of persons. He indicated that delays in court decisions were among the major problems faced by Ethiopian workers. The Government should improve the court system for it to be able to render timely decisions. He appealed for ILO technical support in upgrading the efficiency of labour courts in the country.

Despite the proposals for amending the labour laws made by his confederation, in consultations with stakeholders, the process had taken many years. The Government needed to move faster. Encouragingly, the draft law had been presented to the Council of Ministers, but he feared that the setting-up of another ministerial committee to study it would further delay its enactment. He called for this process to be speeded up and for the ILO to support this effort.

The Worker member of Italy indicated that the three Italian trade union confederations she represented had followed the situation in

Ethiopia for a long time. Because of the time constraints she did not read her full statement in which she had listed a series of violations of Convention No. 87 received in the last couple of months. She expressed her solidarity with the workers and trade unions of Ethiopia and supported the views expressed by the Worker members in this case.

The Worker member of Senegal stated that this case had already been discussed by the Committee the previous year and, despite its inclusion in a special paragraph, trade union rights continued to be violated. Convention No. 87 continued to be ignored and ever-greater and harsher restrictions imposed on freedom of association. In this regard, the accusations made by the Committee of Experts were eloquent. There were numerous shortcomings in the Ethiopian legislation. The constitutional principles relating to the right of workers to establish and join trade unions were not applied in practice, and the dissolution of unions remained possible. Teachers and civil servants were excluded from the application of these rights. The Government had not shown any sign of good will. This Committee should ensure that persecutions against workers ceased. For that reason, it was necessary to include this case in a special paragraph.

The Employer member of Ethiopia stated that most of the issues raised by the Committee of Experts were very important and complex. Resolving them would necessitate the overhaul of the existing labour laws. The Ethiopian Employers' group had actively participated in the tripartite process for amending the labour law. A great deal of the work had been accomplished and the process was encouraging despite some difficulties encountered. He expressed his concern about the delay in finalizing it. He wished to indicate to the Committee that the situation in his country regarding matters covered by this case had improved significantly. Both the release of Dr. Taye and the ongoing process of amendment of the labour law, even if this process was slow, were positive measures. He could not accept the Committee's recommendations regarding the scope of the right to strike, which appeared to lack objectivity and did not take into account the specific situation of his country.

The Government member of Norway, also speaking on behalf of the Government members of Denmark, Finland, Iceland, Netherlands and Sweden, expressed deep concern at the extremely serious situation for trade unions, and particularly the interference of the Government in trade union activities. He welcomed the release of Dr. Taye Woldesmiate, the President of the Ethiopian Teachers' Association. However, he deeply regretted the fact that he had been held in preventive detention for six years. He emphasized the importance of the right of all detained or accused persons, including trade unionists, to be tried promptly through formal judicial procedures. This involved, in particular, the right to be informed of charges, the right to have adequate time for the preparation of their defence, the right to communicate freely with the counsel of their own

choosing and the right to a prompt trial by an impartial and independent judicial authority in all cases. This also had to include cases in which trade unionists were charged with criminal offences, whether of a political nature or not, which in the Government's view bore no relation to trade union functions. With reference to the drafting of new legislation over the past seven years, he encouraged the Government to forward a copy of the draft legislation to the Committee of Experts. Finally, he urged the Government to take all necessary measures to ensure the full respect of the civil liberties and rights essential for the implementation of the Convention, and to fully comply with the requirements of the Convention.

The Government representative stated that he had listened carefully to the comments made by the social partners and that he valued this opportunity for a constructive and result-oriented dialogue. He indicated that, despite the economic, political and social challenges his country encountered at different levels, the progress achieved in addressing the Committee's concern was considerable. In addition to the release of Dr. Taye, all the other concerns regarding labour issues required a huge task of amending the Labour Law and the Civil Service Law. He indicated that this process, which involved the social partners, was entering its final phase and the progress attained so far was significant despite the complexity of the issues involved and difficulties encountered in reconciling interests of different groups. Regarding trade union diversity, he said it was difficult to obtain its acceptance by the Workers' group as they indicated last year to this Committee that this would weaken the solidarity of workers. His delegation could cite many such issues of controversy in the tripartite process that were delaying the finalization of the amendment process. It was his Government's conviction that this process would be finalized soon and that most of the issues of concern would be addressed to the satisfaction of the social partners. In view of the progress underscored, he expected constructive dialogue, encouragement and understanding from this Committee. He reiterated his delegation's concern, expressed in the general debate, regarding the criteria for selecting the individual cases for discussion in this Committee that his country had continuously been subjected to. On the allegations made by the Worker members, these were new to his delegation as well as to this Committee. He indicated that his Government did not have information on any person detained in connection with the legitimate exercise of trade union activities. If the Worker members believed they had valid and substantiated allegations, they would have to be first communicated to his Government.

The Employer members referred to their initial statement on the case. In the conclusions, the Government must be urged to rapidly introduce the legislative amendments it had promised, and to report on them to the ILO. With regard to the statement of the Employer member of Ethiopia, they clarified that he had made the statement on his own behalf, not on behalf of the Employer members.



The Worker members indicated that, after hearing what the representative of the Government had to say, the arguments that led to the placement of the Committee's conclusions in a special paragraph of its report last year, remained valid. The Government had to put its house in order for next year's session of the Conference. Unless the Government representative could undertake before this Committee, to do the necessary work to ensure compliance with the Convention within the next 12 months, they would request for the Committee's conclusions to be put in a special paragraph. They also said that the criteria for the selection of individual cases for discussions before this Committee were clear and were set in the paragraphs at the beginning of the report of this Committee.

The Government representative indicated that any progress depended on the cooperation of the social partners. He reiterated his Government's commitment to do its best to resolve the outstanding issues if the social partners would collaborate in this process and that the ILO would provide assistance.

The Worker members said that in light of the reply given by the Government representative they requested a special paragraph in this case.

The Employer members agreed that there was no improvement in the situation from last year and the understanding with the Worker members on this question held true. They wished to hear the proposed conclusions before definitely pronouncing themselves on the placement of the conclusions.

#### Summary

The Committee took note of the statement made by the Government representative and the discussion which ensued. The Committee noted that the Committee of Experts has, for several years now, been commenting upon serious discrepancies between the national legislation and the Convention. These matters concerned the right of workers, without distinction whatsoever, to form organizations of their own choosing and the right of these organizations to organize their activities without interference by the public authorities and not to be dissolved by administrative authority. While noting with concern that no concrete progress had been made on these points, the Committee welcomed the Government's desire to receive in-depth technical assistance in this regard, and made an urgent appeal to the Government to take measures urgently, so as to ensure full conformity with the provisions of the Convention. The Committee especially insisted that teachers' trade union rights be fully respected both in law and in practice. Welcoming the release of the trade union leader Dr. Taye Woldesmiat, the Committee nevertheless reminded the Government that respect for civil liberties was essential to the exercise of trade union rights. It expressed the firm hope that the Government would no longer have recourse to such grave measures as the detention of trade union leaders for the exercise of legitimate trade union activities. The Committee requested the Government to

provide detailed information in its next report, in particular on any measures taken to give effect to the comments of the Committee of Experts and to transmit with its report any texts of draft legislation being considered. The Committee decided to place its conclusions in a special paragraph of its report.

After a brief exchange of views between the Government representative, the Worker members and the Chairperson, it was decided to place the conclusions of the Committee in this case, in a special paragraph of its report.

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