Addis Ababa University
School of Graduate Studies, Faculty of Law

"The extent of compatibility and limitations of the Labour Proclamation No.377/2003 vis-à-vis Fundamental ILO Conventions"

By: Mesfin Seleshi
September 29, 2012
Addis Ababa University

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Submitted in partial fulfillment of the requirements for the Degree of Master of Laws (LL.M) at the Faculty of Law, Addis Ababa University

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DECLARATION

I hereby certify that this is my innovative work. The works of others included in this dissertation are properly cited.

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Acronyms

1. AETU- All Ethiopian Trade Unions.
2. CELU - Confederation of Ethiopian Labour Unions.
3. CETU - The Confederation of Ethiopian Trade Unions.
4. EEF- Ethiopian Employers Federation.
5. ETU- Ethiopian Trade Unions.
6. FDRE-Federal Democratic Republic of Ethiopia
7. ICCPR-International Covenant on Civil and Political Rights.
8. ICESCR-International Covenant on Economic Social and Cultural Rights.
9. ICFTU-International Confederation of Free Trade Unions.
10. ILC- International Labour Conference.
11. ILO- International Labour Organization.
12. ILS- International Labour Standards
13. MOLSA- Ministry of Labour and Social Affairs
14. UDHR-Universal Declaration of Human Rights

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Abstract

Ethiopia as a member State of ILO is duty bound to make her legislation to be compatible with Fundamental Conventions of the latter. But it seems that there exists incompatibility between certain provisions of the current Labour Proclamation No.377/2003 and the ILO Fundamental Conventions. This research explores the extent of compatibility of the contested labour proclamation with the two most fundamental conventions i.e., freedom of association and the effective recognition of the right to collective bargaining and it also identifies the limitations it has in its entirety. The researcher examines books, journals, related literatures, Fundamental Conventions of ILO, other International Instruments, FDRE Constitution, prior labour legislations of the country, and Labour Proclamation No.377/2003. He also uses key informant interview method and selected MOLSA, EEF, and CETU for this purpose since they are stake holders on labour matter and are directly knowledgeable on the issue at stake. The paper concludes that although the labour proclamation under dispute is to some extent compatible with the fundamental conventions of ILO it is not compatible with the two essential conventions on which other rights of workers are established on. This is because, the contested proclamation clearly prohibits certain group of workers not to exercise their right of freedom of association and the right to organize, and it does not include the provisions of the two most essential conventions, which makes it insufficient. The proclamation under discussion has many limitations that either needs revision and/or an inclusion of new provisions that possibly minimize the limitations it has. The researcher recommends for the ratification of Conventions No.135, No. 141, and No. 151, which are highly interrelated with the two most fundamental conventions and are helpful in order to attain the desired compatibility and able to minimize the limitations on the labour proclamation.

INTRODUCTION

The International Labour organization (ILO) is one of the oldest and the only surviving international body set up at the time of League of Nations following the treaty of Versailles in 1919. After the end of the First World War there was a growing concern for social reform and the passion that any reform had to be conducted at an international level and ILO was founded to provide this expression. [1]

ILO became the first specialized agency associated with the newly formed United Nations Organizations in 1946. [2] ILO is the only tripartite United Nations agency that works with government, employer, and worker representatives as its affiliates, which makes it unique from other UN agencies. In other words, "*this tripartite structure makes the ILO a unique forum in which the government and the social partners of the economy of its 183 Member States can freely and openly debate and elaborate labour standards and policies*".[3]

The main aim of ILO is to provide the needs of working women and men by laying down labour standards, develop policies, and devise programmes by bringing together government, employers and workers. Due to the very fact of the structure of the ILO, workers and employers together have an equal voice with governments in its deliberations and this shows social dialogue in deed.[4]

The unique element that differentiates the International Labour Standards (ILS) from other international standards is the aspect of tripartitism. That is to say, the participation of governments along with the most representatives workers' and employers' organizations is an

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[1] www.ilo.org. accessed 12/08/ 2012
[2] Ibid
[3] www.ilo.org/global/about-the-ilo/who-we-are/lang--en/index.htm.accessed 18/08/2012
[4] www.ilo.org/global/about-the-ilo/how-the-ilo-works /lang--en/index.htm.accessed 18/08/2012

integral part of the ILO. The participation of all the three parties is necessary to find common ground for social and economic goals. [5]

> *Standards adopted through tripartitism result in a certain degree of dynamism and universality due to the fact that they are adopted by means of a process of consultation and result in a consensus of the diverse opinions of the varies parties. As a result, the standards adopted are more adaptable to differing economic and social situations, while retaining all their universality. At the same time, these human rights at work are closely interlinked with the full range of other human rights, which would lose much of their meaning without the solid basis of fundamental economic and social rights developed by the ILO.*[6]

In a nut shell, International Labour Standards are advantageous because they have been adopted after the deliberation is made by the tripartite bodies and with a consensus arrived by them. This feature makes them to be adoptable in all forms of economic situations.

Ethiopia is a member of ILO since 28/09/1923,[7] i.e., four years after the establishment of the latter. Out of the 22 ILO Conventions ratified by the country, 21 of them are in force.[8] The country ratified the entire eight fundamental or core conventions too.

Emperor Haile Selase I made the first Labour Relations Decree No.49/1962 after an attempt of coup. Then, the decree was re-numbered

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[5] International Labour Office, *Fundamental rights at work and international labour standards*, Geneva, Author, (2003)1

[6] Ibid

[7] www.ilo/dyn/normlex/en/f?p=1000:1:0::No::: accessed 18/08/2012.

[8] ILO, *List of ratifications of International Labour Conventions,webfusion.ilo.org/public/applis/appl-byCtrycfm?lang=EN&CTYCHOICE=0780&HDROFF=1,accessed18/08/2012.*

as Proclamation No.210 in 1963, which led to the establishment of The Confederation of Ethiopian Labour Union (CELU) in April, 1963.[9]

In 1975 Proclamation No.64/1975 was promulgated as a Labour Proclamation by the Provisional Military Government of Ethiopia. CELU was also re-named the All Ethiopian Trade Unions (AETU) in the year 1976. The proclamation was designed mainly to suppress the workers' movement started by CELU and to advocate an ideology of dependency of the workers on the State.[10] The re-naming continued for the third time and the national workers unions become Ethiopian Trade Unions (ETU).[11]After the dawn fall of the military regime, the Transitional Government of Ethiopia promulgated the Labour Proclamation No.42/1993. Following this, the national trade union was re-named for the fourth time as The Confederation of Ethiopian Trade Unions (CETU) and re-established in 1994, with nine Industrial Federations as its affiliates.[12]

The Labour Proclamation was revised in the year 2003 and it is in this proclamation in which the labour cases are treated now. Hence, this research focuses on the extent of compatibility and limitations of the labour Proclamation No.377/2003 vis-à-vis Fundamental conventions of ILO.

The Research paper is divided into three chapters. Under the introductory part of the research, background of the study; statement of the problem; objectives of the study; significance of the study; scope and delimitations of the study; research questions and an overview of methods and sources will be mentioned.

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[9] The Confederation of Ethiopian Trade Unions' Profile, Magazine, Addis Ababa, Ethiopia, (November 2003) (2-3)
[10] Ibid(3)
[11] Ibid
[12] Ibid

Chapter one focuses on the review of literatures. Both International Instruments and national texts that are related with the title of the research will be discussed. The content of the chapter focuses on the following issues. First, the notion of International Labour Standards (ILS) will be discussed. Then, International Bill of Rights that includes: Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) will be mentioned. Thirdly, Fundamental Conventions of ILO that encompasses: freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination related to employment and occupation will be pointed out. Fourthly, the status of fundamental conventions of ILO in relation to human rights will be revealed. At the end of the chapter, the national literatures that are related with the topic of the research will be pointed out.

The focal point of chapter two will be discussing about Ethiopian labour laws and constitutional provisions related to trade union rights. The proclamations that will be discussed on this chapter includes: the labour relations decree no.49/1962; the labour relations proclamation no.210/1963; the labour standard proclamation no. 232/1966; the labour proclamation no.64/1974; labour proclamation no. 42/1993; and the labour proclamation no.377/2003. Since the focus of the research is on the existing labour proclamation, its objectives and scope of application will be mentioned briefly. At the end of the chapter discussion on constitutional provisions related to human rights particularly to trade union rights will be presented.

The central part of chapter three will be doctrinal analysis concerning compatibility and limitations of the labour proclamation no. 377/2003 vis-à-vis fundamental ILO conventions, which is the theme of the research. Observations of Stake Holders (observation of MOLSA, EEF and CETU) and the analysis of the researcher on compatibility of the labour proclamation no.377/2003 will be mentioned under the first part of the research. Then, the views of MOLSA, EEF and CETU concerning the entire limitations and the researchers' reflection on the limitations of the labour proclamation no.377/2003 will be stated in the second part of the research.

Last but not list, conclusion and recommendations of the research will be pointed out.

A. Background of the study

The International Labour Organization (ILO) was founded in 1919 after the coming to an end of the First World War. The ILO's vision set during those times was to pursue *"universal, lasting peace can be established only if it is based on social justice"*.[13] ILO is the recognized International vehicle that can raise issues of International Labour Standard (ILS) and no other organ is capable of performing this task. It has established minimum labour standards, which comprises the ILO Conventions and Recommendations.[14]

After the Second World War, a dynamic restatement and enlargement of the ILO's basic goals and principles was made in the Declaration of Philadelphia in 1944. It reaffirms the fundamental principles on which the ILO is based and particularly emphasized that:

(a) labour is not a commodity;

[13] www. ilo.org/global/about-the-ilo/lang--en/index.htm Accessed: August 12, 2012.

[14] Ibid

(b) freedom of expression and association are essential to sustained progress:

(c) poverty any where constitutes a danger to prosperity everywhere; and

(d) the war against want requires to be carried on with unrelenting vigor within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.[15]

In the year 1998, the International Labour Conference (ILC) adopted *"Declaration on Fundamental Principles and rights at Work"*. In this declaration certain rights are distinguished as "fundamental".[16] In accordance to this declaration all member States have an obligation "*to respect, to promote and to realize in good faith and in accordance with the Constitution*," the eight fundamental conventions that are clustered in to four groups. These are: "*freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour, and the elimination of discrimination in respect of employment and occupation".*[17] The Declaration also claims that these rights to be universally applicable on all States, regardless of their level of economic development. In other words, the obligation of member States arises from the very fact of membership in the organization. [18]

[15] www.ilo.org/ilolex/English/iloconst.htm#annex accessed 18/08/2012.

[16] *ILO Declaration on Fundamental Principles and Rights at work and its follow-up,* Adopted by International Conference at its Eighty-sixth Session, Geneva, 18 June 1998, www..ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm, accessed: 07/07/12.

[17] Ibid

[18] Ibid

Freedom of association is the right of workers that includes the right to form and to join trade union which enables them to protect their interests. It is both an internationally recognized and fundamental right that is incorporated on many international instruments. The right was first and for most mentioned under the ILO Constitution in 1919. Then confirmed in 1944 on ILO declaration of Philadelphia and codified latter by the adoption of ILO conventions No.87 on Freedom of Association and Protection of the Right to Organize Convention, 1948 and No.98 on the Right to Organize and Bargain Collectively, 1949. Moreover, it is not denied that this right is also clearly mentioned under the provisions of Universal Declaration of Human Rights (UDHR) and the twin and main human rights Covenants (International Covenant on Civil and Political Rights and International Covenant on Economic Social and Cultural Rights).

With all the efforts the writer exerted to find a work done that compare the compatibility of the labour law of Ethiopia with fundamental conventions of ILO, it is discovered that, to the extent the knowledge of the researcher goes, no research has been conducted so far. On the other hand, fundamental conventions of ILO particularly freedom of association and the effective recognition of the right to collective bargaining are very important in the day -to -day activity of workers, hence, it is of crucial importance that the compatibility of the labour law of the country with ILO's fundamental conventions shall be studied properly.

Therefore, this research focuses on critical examination of the extent of compatibility of the Labour Proclamation No.377/2003 in light of freedom of association and the effective recognition of the right to collective bargaining (Conventions Nos.87 and 98). More over, the limitations of the labour proclamation in its entirety will be discussed.

Possible recommendations are also set in the research for policy considerations and amendment of the law, so that the country can have a law that trigger with International Labour Standards, particularly to fundamental conventions of ILO.

B. Statement of the Problem

The Constitution of Federal Democratic Republic of Ethiopia (FDRE Constitution) on its article 55 (3) permits the Federal Legislature to make laws on Labour matters for the entire country.[19] Accordingly, the Government has introduced a new Labour Proclamation (Proc No. 377/2003) with a view to attaining a number of objectives. This Proclamation is interesting, in particular concerning the scope of rights of employees and employers to form associations of their choice and engage in collective bargaining with their employer.

The FDRE Constitution under its article 9 (4) mentions that all international agreements (treaties and conventions) ratified by Ethiopia form an integral part of the laws of the country. [20] Thus, one would expect that domestic legislations enacted by House of Peoples Representatives, i.e., the national law making body, are consistent with the relevant provisions of any of the eight ILO Fundamental Conventions ratified by Ethiopia.

Meanwhile, thorough reading of the Proclamation and the Conventions seems to indicate that there is incompatibility between certain provisions of the two legal instruments in question. In other words, certain provisions of the Proclamation seem to be inconsistent to or incompatible with the relevant provisions of the ILO Fundamental Conventions.

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[19] *The Constitution of the Federal Democratic Republic of Ethiopia*, Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia,1st year No.1, Addis Ababa-21st August ,1995.
[20] Ibid.

Therefore, the main focus of this research will be exploring whether or not there is real incompatibility between the Labour Proclamation No.377/2003 in light of freedom of association and the effective recognition of the right to collective bargaining (Conventions Nos.87 and 98),which are ratified and made enforceable in the country. Similarly, this research aims to explore the overall limitations of Proclamation No 377/03.

C. Objectives of the Study

The objective of the research is to explore the extent of compatibility of the Labour Proclamation No.377/2003 with ILO's Fundamental Conventions, particularly to freedom of association and the effective recognition of the right to collective bargaining (Conventions Nos.87 and 98). It also tries to identify the limitations the Labour Proclamation No. 377/2003 had in its entirety. Finally, it propose areas of reforms/amendments for up-grading the Ethiopian Labour Law (i.e., Proclamation No.377/2003) to the extent necessary to meet ILO's minimum labour standards indicated above and to minimize the entire limitations it has.

D. Significance of the Study

This research essentially attempts to critically examine the compatibility of the labour proclamation with out overlooking the limitations the labour proclamation has. As this is an original research that discover the compatibility of the labour proclamation of the country with Fundamental Conventions of ILO and that identify the limitations the Labour Proclamation has, it would definitely serve as one valuable material to which reference can be made in undertaking any further

studies on the issue. This is because it will cover the gaps that are not yet covered so far by other scholars.

Moreover, the research provides appropriate options to policy makers (including public institutions, corporate bodies and labour organizations) for the purpose of developing domestic legal regimes that meet international labour standards. The contribution of the research on this respect is particularly important because the Labour Proclamation is on the initial stage of amendment.[21]

E. Scope and delimitations of the Study

As the title of the research is so broad this paper does not cover thorough discussion of the elimination of all forms of forced labour (Conventions Nos.29 and 105), the abolition of child labour (Conventions Nos. 138 and 182) and the elimination of discrimination related to employment and occupation (Conventions Nos. 100 and 111). In other words, the content of these six fundamental conventions will be highlighted without detailed discussion.

The research shall focus on critical examination of the extent of compatibility of the Labour Proclamation No.377/2003 in light of freedom of association and the effective recognition of the right to collective bargaining (Conventions Nos.87 and 98). Moreover, the evaluations made that highlights the limitations on the Labour Proclamation No.377/2003 will be indicated.

[21] The Ministry of Labour and Social Affairs had had a deliberate discussion with Ethiopian Employers Federation and The Confederation of Ethiopian Trade Unions separately. In addition, a hot debate was held at Adama town on the draft labour proclamation prepared by the Ministry and representatives of the above mentioned stake holders participated on the discussion. This discussion was held before the deliberation of the draft to the advisory board established in accordance with the labour proclamation.

The researcher tried to conducted an in depth interview with many people but he was able to make it with only three personnels from the three stake holders on labour matters. The reason for this is a person can give an interview if and only if he acquired knowledge on both the labour proclamation and the eight fundamental conventions of ILO. Other wise, he can not identify whether the proclamation is compatible with the ILO fundamental conventions or not. For example, the researcher asked to make an interview with Honorable State Minister Dr. Zerihun Kebede and the latter said my answer will be a political one, hence, it is better to make the interview with the director of harmonies relations and the former made it with the said authority. Therefore, due to the above mentioned problems the interview session is not a fertile one.

F. Research Questions

The first question raised in this research is whether there exists compatibility between certain provisions of the Ethiopian Labour Proclamation No. 377/2003 with Fundamental ILO Conventions, particularly with freedom of association and the effective recognition of the right to collective bargaining (Conventions Nos.87 and 98). The second research question is critically examining whether the Ethiopian Labour Proclamation No. 377/2003 has any significant limitations or not.

G. Methods and sources: Overview

For the purpose of analyzing documents, the researcher relies on the relevant and available Fundamental Conventions of ILO, Other International Instruments, FDRE Constitution, and Labour Proclamation No.377/2003. More over, prior labour legislations of the country, related

researches, books and journals were used as a source document in undertaking the research.

In order to properly appreciate the compatibility of the Labour Proclamation No. 377/2003 with Fundamental Conventions of ILO, particularly to freedom of association and the effective recognition of the right to collective bargaining (Conventions Nos.87 and 98) and to clearly show the limitations on it, the researcher prefers to conduct an interview with concerned stake holders on the issue at stake. For this purpose, Ministry of Labour and Social Affairs (MOLSA), Ethiopian Employer's Federation (EEF), and The Confederation of Ethiopian Trade Unions (CETU) are selected. The reason is these are the stake holders that are directly knowledgeable on the matter at discussion.

The research finally forwards the core findings and conclusion derived from the analysis and amalgamation of the sources on the compatibility of the labour proclamation with Fundamental Conventions of ILO, particularly to freedom of association and the effective recognition of the right to collective bargaining (Conventions Nos.87 and 98) and the overall limitations on the labour proclamation.

Chapter One

Summary of International Instruments and of Literature of Review

This chapter will have two major parts. In its first part, the concept of International Labour Standards (ILS) and a brief discussion on International Bill of rights will be presented. Then, the contents of Fundamental Conventions of ILO will be offered with particular emphasis to the two most fundamental conventions and their status with respect to human right will be presented. In its second part the review of national literatures with regard to the topic at stake will be discussed.

I. Summary of International Instruments

The year 1998 was a vital date for ILO in that the delegates of International Labour Conference (ILC) adopted the *"Declaration on Fundamental Principles and Rights at Work."* [22] According to article 2 of the declaration, member States of ILO have an obligation arising from the very fact of membership in the organization to respect, promote and realize, in good faith and in accordance with the Constitution of ILO, the principles concerning the fundamental rights which are subjects of those Conventions, namely:

"(a) freedom of association and the effective recognition of the right to collective bargaining:

(b) the elimination of all forms of forced or compulsory labour:

(c) the effective abolition of child labour: and

[22] The text of the Declaration and its follow-up, www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm accessed 07/07/2012.

(d) the elimination of discrimination in respect of employment and occupation".[23] The above mentioned principles and rights are considered by the conference as fundamental and guarantying them is very important. This is because the rights enable workers to claim freely and on the basis of equality of opportunity, their fair share of the wealth which they have helped to generate and to achieve fully in their human potential.

1.1 International Labour Standards (ILS)

International Labour Standards have been serving as the primary means through which ILO has acted. They are the combination of Conventions and Recommendations. Conventions of ILO are treated as international treaties that bind member States which ratified them. After ratification, member States also commit themselves in a formal way to put the provisions of the conventions into effect both in law and in practice as well. [24] On the other hand, Recommendations are not international treaties rather they supplement the provisions of Conventions and set up non-obligatory guiding principles for national policy and practical use. [25] That is to say, conventions are part of ILS that requires not only ratification by member States but also their obligation to make the conventions feasible both in their legislation and in practice. In other words member States are duty bound to make their labour laws trigger with ILS.

More over, member States that ratified Conventions are duty bound to make a periodic report on how they applied the conventions both in practice and in their legislations. They also have constitutional obligation

[23] Ibid
[24] International Labour Organization, *Guide to International Labour Standards*, Author, Geneva (2006) 234
[25] Ibid

to report on the kinds of measures they have taken to incorporate in their law and implement in practice the Conventions. [26]

Employers associations and workers federations or confederations can present to the ILO their comments on the application of Conventions ratified by their respective countries. [27] That is to say, both parties can serve the ILO as a watchdog for the proper implementation of ratified Conventions. Based on the input gained from its two constituents, the ILO could proceed on the possible measures to be taken.

The reports of the constituents of ILO mentioned above are examined by the Committee of Experts on the Application of Conventions and Recommendations (this is a body independent of ILO). The report of the Committee itself is discussed by a tripartite committee of ILC during its annual meeting. The procedures for representation and complaints for examining the allegations made on Member State that failed to observe the provisions of ratified Conventions are provided on the Constitution of ILO. [28]

The importance of ILS can be measured by their practical effect they can make. They can reflect what has been done practically and the way forward towards social and economic progress. [29] From this one can safely conclude that ILS can have significant impact on existing situations as well as future carriers.

Their significance made ILS to be discussed and adopted by the ILC which is composed of the government representatives together with representatives of employers and workers organizations of the ILO's

[26] Ibid
[27] Ibid
[28] Ibid
[29] Ibid

members States.[30] As mentioned earlier, ILO believes that international labour standards contribute to bring lasting peace, enable to mitigate potentially adverse effects of international market competition and help the progress of international development.

1.2 International Bill of Rights

This section focuses on the three United Nations (UN) instruments that are known as bill of rights. These are the Universal Declaration of Human Rights (UDHR) and the twin covenants, that are, International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). As we will discuss latter, the provisions of international bill of rights gave attention to human rights issues and workers rights are considered as human right in the work place, hence, discussing them is very crucial due to this linkage.

1.2.1 Universal Declaration of Human Rights (UDHR)

The Universal Declaration of Human Rights (UDHR) states the prohibition of slavery and the slave trade in all their forms. It also declares the equality of everyone before the law and the prohibition of discrimination in any form. More over, it is provided that every one has the right to freedom of peaceful assembly and association. This should not be made forcefully rather it should be based on voluntary action of the concerned actor. [31]

On another article of UDHR the following is provided:

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[30] Ibid

[31] Articles 4, 7 and 20, Universal Declaration of Human Rights, adopted by the UN General Assembly on 10 December 1948, www.ilo.org/en/documents/udhr/, accessed 07/07/2012,

1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests. [32]

From the above mentioned provisions of UDHR one can conclude that great emphasis is given to trade union rights. In other words, the right of trade union is considered as human right and every State should strive for the protection of these rights. This is similar to the obligation mentioned on the constitution of ILO with regard to obligation of states to commend them selves to respect conventions they ratify.

1.2.2 International Covenant on Civil and Political Rights (ICCPR)

The prohibition of forced or compulsory labour is stated under the provision of International Covenant on Civil and Political Rights (ICCPR). The exceptional situations that are not considered as forced labour are also mentioned under the same article.[33]

The covenant declared that everyone shall have the right to freedom of association with others, including the right to form and join trade unions

[32] Ibid (article 23)

[33] Article 8, International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly Resolution 2200A (XXI) of 16 December1966,www2.ohchr.org/English/law/ccpr.htm.accessed 07/07/2012

for the protection of his interests. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and … in the interests of national security…public order… the protection of the rights and freedoms of others. [34]

The covenant appears with the same provisions like its predecessor. This shows the great concern held by the international community on trade union rights. That is to say, there was a general concern to protect workers right as a human rights as early as the adoption of the covenant in 1966.

1.2.3 International Covenant on Economic, Social and Cultural Rights (ICESCR)

International Covenant on Economic, Social and Cultural Rights (ICESCR) on the other hand stated that no restriction upon or derogation from any of the fundamental human rights recognized or existing in any country, in virtue of law, conventions, regulations…[35]

ICESCR also emphasizes that State parties should undertake to ensure the right of everyone to form trade unions and join the trade union of his choice… for the promotion and protection of his economic and social interests. The only exception enshrined is ensuring not to contradict with the rules of the organization concerned. [36]

To make certain 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 is also provided. Moreover, the

[34] Ibid (article 22)
[35] Article 5 (2), International Covenant on Economic Social and cultural Rights, adopted by the United Nations General Assembly Resolution 2200A (XXI) of 16 December 1966 www2.ohchr.org/English/law/cescr.htm accessed 07/07/2012.
[36] Ibid (article 7)

right of trade unions to function freely with out any limitations other than those prescribed by law and … in the interest of national security or public order… for the protection of the rights and freedoms of others is stipulated.[37]

It was indicated earlier that trade union right was considered as civil and political right. But the above mentioned provisions indicated that, that was not the only case. This means, trade union right in its one wing has civil and political issues and in another wing economic, social and cultural aspects. In a nut shell, trade union right has all the elements of the twin covenants in it.

1.3 Fundamental Conventions of ILO

The ILO Declaration on Fundamental Principles and Rights at Work, adopted in June 1998, mentioned set of core labour principles endorsed by the international community. The Declaration covers the following four main areas for the establishment of a collective ground in the world of work:

- *freedom of association and the effective recognition of the right to collective bargaining;*
- *the elimination of all forms of forced or compulsory labour;*
- *the effective abolition of child labour; and*
- *the elimination of discrimination in respect of employment and occupation.*[38]

The above mentioned principles and rights have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental both within and outside the Organization.

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[37] Ibid (article 8)

[38] International Labour Office, The International Labour Organization's Fundamental Conventions,2nd edition, Author, Geneva (2003),7

The following ILO Conventions have been identified as fundamental, and are at times referred to as the core labour standards:

- *Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)*
- *Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*
- *Forced Labour Convention, 1930 (No. 29)*
- *Abolition of Forced Labour Convention, 1957 (No. 105)*
- *Minimum Age Convention, 1973 (No. 138)*
- *Worst Forms of Child Labour Convention, 1999 (No. 182)*
- *Equal Remuneration Convention, 1951 (No. 100)*
- *Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*[39]

As it was discussed earlier the fundamental conventions are designed in such a way that obligates member States to respect, promote and realize the above mentioned eight fundamental conventions for the mere fact of being a member of the ILO whether they ratified them or not.

Due to the fact that the research is limited to make a critical examination of the extent of compatibility of the Labour Proclamation No.377/2003 in light of freedom of association and the effective recognition of the right to collective bargaining (Conventions Nos.87 and 98), this part of the research will discuss thoroughly about the two conventions mentioned and highlighted very briefly the other six conventions.

1.3.1 Freedom of association and the effective recognition of the right to collective bargaining

The principle of freedom of association is at the heart of the ILO's values. In 1919 the ILC enshrined it in the ILO Constitution for the first time.

[39] Ibid (8)

Then it was also made feasible in the ILO Declaration of Philadelphia in1944 and the ILO Declaration on Fundamental Principles and Rights at Work make it part of the eight fundamental conventions in1998. As we have seen earlier it is also a right proclaimed in the Universal Declaration of Human Rights in1948. [40]

Although the right to organize is the prerequisite for sound collective bargaining and social dialogue there are a continued challenges in applying these principles. In many countries of the world public employees and workers in export processing zones and other categories of workers are denied the right to form a union. In other countries illegal suspension or interference with labour organization matters is very common. Some other countries even encourage or systematically ignore the killing of unionists. The denial of the rights of association to employers in some countries becomes a factor for restraining of effective tripartite social dialogue. In some other countries workers' and employers' organizations are illegally suspended or interfered with, and in some extreme cases trade unionists are arrested or killed. But the ILO standards, in conjunction with the work of the Committee on Freedom of Association and other supervisory mechanisms, pave the way for resolving these difficulties and ensuring that this fundamental human right is respected all over the world.[41]

Freedom of association ensures that workers and employers can associate to negotiate efficiently the work relations between them. When sound collective bargaining practices are combined with strong freedom of association, they are able to ensure that employers and workers have an equal voice in negotiations and that the outcome will be fair and equitable for both. In other words, collective bargaining allows both sides

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[40] freedom of association,www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/freedom-of-association/lang--en/index.htm, accessed 25/08/2012

[41] Ibid

to negotiate a fair employment relationship and prevents costly labour dispute. [42]

It is pointed out in some researches that countries with extremely harmonized collective bargaining have a tendency to have less inequality in wages, lower and less persistent unemployment, and fewer and shorter strikes than countries where collective bargaining is less established. Therefore, ILO standards promote collective bargaining and help to ensure that good labour relations benefit everyone.[43]

ILO standards and principles on freedom of association and collective bargaining embody a very useful source of assistance for the world community as well as for all nations by ensuring social justice within the context of globalization. In 2008, the International Labour Conference reaffirmed the importance of the above mentioned principles for the full realization of the ILO strategic objectives, including the promotion of employment, enhancing social protection and promoting social dialogue and tripartism.[44]

Full respect for freedom of association and collective bargaining is necessary in order to translate economic development into social progress and vise versa. Based on this fact, the ILC mentioned that "*freedom of association and the effective recognition of the right to collective bargaining are the key enabling rights for the attainment of all other rights at work*".[45] This means the right to freedom of association and bargaining collectively are the two foundations on which other rights

[42] collective bargaining,www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/collective-bargaining/lang--en/index.htm, accessed 25/08/2012
[43] Ibid
[44] International Training Center, ILO, *Freedom of Association and Collective Bargaining*, Electronic Library, Conceived by: Bernard G, Alberto O., and Horacio G.,(2010 version)
[45] Ibid

of workers are established on. In other words, other rights are derivatives of the two most fundamental rights mentioned.

1.3.1.1 Freedom of Association and Protection of the Right to Organize Convention (No. 87)

ILO member States are commenced to give effect to the provisions provided under Freedom of Association and Protection of the Right to Organize Convention (No. 87). [46]

Article 2 of the convention provides 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.[47]

It is also prescribed on article 3 of the convention that, Workers' and employers' organizations shall have the right to draw up their respective constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes. In addition to this, the public authorities are duty bound to refrain from any interference which would restrict this right or impede the lawful exercise thereof. [48]

Article 4 of the convention states that workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority.[49]

Workers' and employers' organizations shall have the right to establish and join federations and confederations and any such organization,

[46] Article 1, Freedom of Association and Protection of the Right to Organize Convention (No. 87) Adopted: 9 July 1948, Entered into force: 4 July 1950.

[47] Ibid

[48] Ibid

[49] Ibid

federation or confederation shall have the right to affiliate with international organizations of workers and employers.[50]

In exercising the rights provided for in this Convention workers and employers and their respective organizations, like other persons or organized collectivities, shall respect the law of the land. But 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.[51]

The only exception enshrined in the convention is the extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police. It states that it shall be determined by national laws or regulations. However, the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.[52]

Each Member of the ILO for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely their right to organize.[53]

In a nut shell, the convention on freedom of association and protection of the right to organize is not a right given only to workers rather it is designed to serve employers as well. That is to say both of them can enjoy the fruits of this right since it is given for all. More over, it serves as a foundation not only for the remaining six fundamental workers rights but also for the right to organize and collective bargaining as well.

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[50] Ibid (article 5)
[51] Ibid (article 8)
[52] Ibid (article 9)
[53] Ibid (article 11)

1.3.1.2 Right to Organise and Collective Bargaining Convention (No. 98)

Article 1 of Convention No.98 (Right to Organize and Collective Bargaining) provides that workers will be protected against acts of anti-union discrimination, including dismissal because of union membership or participation in union activities and free from requirements that a worker not to join a union or abandon union membership for employment. [54]

On the other hand, it is mentioned under article 2 of the convention 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. 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 this Article.[55]

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize as defined in the preceding Articles. More over, measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers'

54 Right to Organize and Collective Bargaining Convention (No. 98) Adopted: 1 July 1949 Entered into force: 18 July 1951

55 Ibid

organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.[56]

The extent to which the guarantees provided for in the Convention shall apply to the armed forces and the police shall be determined by national laws or regulations. But the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.[57]

One can safely conclude that, the two conventions, freedom of association and protection of the right to organize and the right to organize and bargaining collectively are intertwined together and exercising them separately can not be realistic. In other words, having the right of freedom of association and protection of the right to organize without the right to organize and bargaining collectively is some thing pointless.

Lenin said, *"Theory with out practice is pointless and practice with out theory is mindless"*.[58] This means a legal theory that did not experienced would be pointless and legal practice out side of a theoretical context would be mindless. Hence, the researcher believes that, the right of freedom of association and protection of the right to organize can be taken as a theory and the right to organize and bargaining collectively as a practice. Therefore, the right of freedom of association and protection of the right to organize can be realistic if and only if, it is backed by the right to organize and bargaining collectively and both rights will have meaning if they are knotted together.

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[56] Ibid (articles 3 &4)
[57] Ibid (article5)
[58] HLT, *Jurisprudence and Legal theory*, text book, 6th edition, The HLT group Ltd, 1995, 4.

1.3.2 The elimination of all forms of forced or compulsory labour

The Forced Labour Convention (No.29) demands suppression of the use of forced or compulsory labour in all its forms within the shortest possible period. Forced labour is defined on the convention as any work or service which is exacted from any person under the threat of any penalty and for which the person has not offered him or herself voluntarily. The convention also mentions the exception to this general principle. It stated that, work or services exacted in virtue of compulsory military service laws, as a consequence of a conviction in a court of law, in cases of emergency, which forms part of normal civic obligations, and minor community services are not considered as a forced labour. The persons allowed to do the said exceptional works and the age limit that include in the exception are mentioned clearly under the convention. [59]

The Abolition of Forced Labour Convention, 1957 (No. 105), that supplements Convention No 29, asks to manage and not to make use of any form of forced or compulsory labour as a means of political coercion, education or punishment. It also prohibits using forced labour as a method of mobilizing and using labour for purposes of economic development, as a means of labour discipline, or as a penalty for having participated in strikes, or still as a means of racial, social, national, or religious discrimination.[60]

The ILC shows its concern with regard to the elimination of all forms of forced or compulsory labour by making two conventions in this regard. In other words, the international community shows its willingness

[59] (articles 1,2, 4(1), 11(1), 12, 21, and 25) Forced Labour Convention, 1930 (No.29).Adopted: 28 June 1930 Entered into force: 1 May 1932

[60] (article 1),Abolition of Forced Labour Convention, 1957 (No. 105) Adopted: 25 June 1957 Entered into force: 17 January 1959

towards the abolition of any form of forced or compulsory labour as earlier as possible. The conventions also make possible exceptions for those social services mentioned not to be considered as a forced or compulsory labour. The social services mentioned on the conventions should be interpreted narrowly and should be made to benefit the society at large not individuals.

1.3.3 The Effective Abolition of Child Labour

The Minimum Age Convention, 1973 (No. 138) sets a general minimum age for admission to employment or work that shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years. Yet the minimum age for light work was set to be 13 years. For hazardous work the minimum age is 18 and under strict conditions it could possibly be made 16 years. [61]

The Worst Forms of Child Labour Convention (No.182) was adopted by the ILO in 1999, and supplements Convention No. 138. It requires member states of the ILO to eliminate all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage, forced or compulsory labour, and the forced or compulsory recruitment of children for use in armed conflict. Additional activities prohibited in the convention includes: the use, procuring or offering of children for prostitution and pornography; the use, procuring or offering of children for unlawful activities such as the production and trafficking of drugs; and work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. [62]

[61] (articles 1, 2 (3), 3, 6, and 7),Minimum Age Convention, 1973, (N0. 138) Adopted: 26 June 1973 Entered into force: 19 June 1976

[62] (articles 1-6), Worst Forms of Child Labour Convention 1999, (No. 182) Adopted: 17 June 1999 Entered into force: 19 Nov. 2000

The convention requires ratifying States to make available an access to free basic education and, wherever possible or appropriate, provide vocational training for children that are detached from the worst forms of child labour. It also calls for States to provide the means to remove children from the worst forms of child labour and for their rehabilitation and social integration. [63]

One can see from the above two conventions that great emphasis was also made for the effective abolition of child labour. But, particularly the convention on worst forms of child labour convention was adopted by the ILC in 1999 which shows it is a very recent phenomenon. Although the researcher believes this should not be the case the protection designed for children should be given a great emphasis. Because, the conventions pointed out that rights of future generation should be protected without affecting the interest of the current generation, which is the concept of sustainable development.

1.3.4 The Elimination of Discrimination Related to Employment and Occupation

The term "*remuneration*" is broadly defined under article 1 (a) of the Equal Remuneration Convention, No. 100, and it includes the ordinary, basic or minimum wage or salary and any other compensation payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the workers' employment relation with his employer. According to the convention the term equal value means that men and women who have different positions should be paid equally if the content of their job is objectively of equal value. According to this concept, Convention No. 100 requires member States to evaluate the

[63] Ibid (article 7)

respective value of different jobs in order to stop the under evaluation of jobs mostly performed by women.[64]

The second fundamental convention related to equality is Convention No 111: Discrimination (Employment and Occupation). It defines discrimination as any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. The convention requires countries which ratify it to implement policies designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in employment and occupation with a view to eliminating any discrimination in this area. A member State is expected to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy. It is also important to notice that prohibition of discrimination should cover not only the conditions of employment but also recruitment and access to vocational training and guidance. [65]

According to Equal Remuneration Convention, No. 100, equal remuneration is defined as equal payment for works of equal value. Hence, member States are required to evaluate the respective value of different jobs in order to stop the under evaluation of jobs mostly performed by women. On the other hand, according to convention on Discrimination (Employment and Occupation) No 111, countries which ratify it are required to implement policies designed to promote equality of opportunity and treatment in employment and occupation with a view to eliminate any form of discrimination.

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[64] (articles 1-3) Equal Remuneration Convention, 1951, (No. 100) Adopted: 29 June 1951 Entered into force: 23 May 1953

[65] (articles 1-3) ,Discrimination, (Employment and Occupation) Convention, 1958 (No111) Adopted: 25 June 1958, Entered into force: 15 June 1960

1.4 Status of Fundamental Conventions in relation to Human Rights

Virginia indicates that:

> "ILO *conventions and human rights treaties differ from many other treaties since their aim is to change the internal policies of States, but they continue to be the main form of instruments used for labour standards and human rights obligations."* [66]

He further argues that, both international instruments mentioned above are *'law making '* rather than creating contractual obligations between States. They are intended for national application rather than application in interstate relations and there is no reciprocity for their implementation. In other words, their implementation is promoted through international supervision made by the concerned United Nations agency. [67]

Moreover, Virginia argues that ILO conventions have characteristic features that differentiate them from other conventions that lead some of the earlier commentators to consider them as either international legislations or draft national legislations. While other conventions are adopted by conference of States ILO conventions are adopted by ILC, which composes workers' and employers' representatives in addition to government representatives, he said.[68]

As indicated by Virginia *'workers rights are human rights'*, nevertheless little attention has been devoted by the international human rights movements towards workers rights. Workers organizations and their

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[66] Virginia A. *" Form Follows Function ": Formations of International Labour Standards-Treaties ,Codes, Soft Law, Trade Agreements*, Fanagan R. and Gould Iv W. (editors),*International Labour Standards, Globalization ,Trade, and Public Policy* ,Stanford University Press, Stanford, California,(2003),179

[67] Ibid (183)

[68] Ibid

leaders themselves ask the support of human rights groups for the defense of their rights very rarely. The human rights movement and the labour movement run on tracks that are some times parallel and rarely meet; this is where the paradox lies. [69]

As it is mentioned by Virginia, the condition of workers' rights in a given country is a clear indication of the position of human rights in that country. For example, the violation of freedom of association, which is the most fundamental workers' rights, is the first sign of deteriorating situation in that country. [70]

History showed that in a tyranic form of government, the rulers aimed at controlling or destroying trade unions. For instance, in Chile widespread killings and arrest of trade union leaders occurred and the legal personality of the main trade union organization was cancelled during the first week of Pinochet regime. The same was true during the regime of apartheid in South Africa that led the withdrawal of the country from the membership of ILO. [71]

Virginia indicates that, although there is a close association between workers' rights and the general human rights situation the concerned humanitarian organizations showed a little concern for workers rights as such.[72] The reason for this may be the tendency of most human rights organizations to focus on civil and political rights and to neglect economic, social and cultural rights such as workers rights. But the right of association is considered as both civil right and an economic right.

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[69] Virginia A., *The paradox of Workers Rights as Human Rights*,Coma L. and Diamond S. (editors), H*uman rights, Labour rights and International trade*, University of Pennsylvania press, Philadelphia, (1996) 22

[70] Ibid

[71] Ibid 23

[72] Ibid 24

This can be seen from the twin covenants where provisions of freedom of association are offered.[73]

Virginia reveals that labour advocates partly contributed for the failure to address workers' right as human right. Because, they tend to rely on their own organizations for promoting and protecting their right, by ignoring the additional support that could possibly provided by human rights organizations, he concluded.[74]

From the above circumstances one would possibly conclude that, by their very nature ILO conventions differ from other conventions both in their making and in their implementation. Hence, they have to be treated as international legislation or draft national laws that need ratification process. Moreover, workers' organization should ask for the support of human rights organizations in order to promote and protect their rights other than being combating alone. In other words, the paradox will be resolved if the workers organizations and the human right organizations are able to work together for the promotion and protection of workers' right which is a human right.

II. Literature Review

In 1984 a committee was formed from the executive members of the then All Ethiopian Trade Union (AETU) and made a study under the title of *"Ye'etyopia serategnoch enkisikase"*. This study tried to focus on the Ethiopian workers movement before the formal establishment of the first national workers confederation known as Confederation of Ethiopian

[73] Ibid
[74] Ibid (25)

Labour Union (CELU) till its dawn fall due to the coming to power of Derg.[75]

The committee mentioned that the fifth annual meeting of CELU discussed the problems related to labour laws enacted and passed a resolution and sent to the then government. The resolution was about problems related to interpretation, execution and limitations of laws. [76] The general congress claimed for an amendment of the law basically in relation to firing of workers in good cause. They justified their argument that good cause was not clearly defined and left for the interpretation of the employer himself and the assembly was afraid of firing of many of its members. More over, there was a demand for a better wage as well.[77]

On the other hand, the general assembly asked for the enactment of the following rights based on the limitations the labour law had:

- domestic workers, casual workers, civil servants and agricultural workers should be unionized;
- minimum wage should be implemented;
- pension schemes should be established;
- the employment act of Eritrea should be incorporated, since it had provisions that had better right for workers; etc.[78] This shows that even though the then workers organization was not much developed it was trying to ask for compatibility of the labour proclamation by comparing it with the ILO conventions and other countries experiences. The writer believes that this was an encouraging start.

[75] AETU, "*Ethiopian Workers Movement*",(written in Amharic language) ,Part I, (unpublished)Addis Ababa,(February 1984)
[76] Ibid 73
[77] Ibid 76
[78] Ibid 78

The other study was conducted under the title of *"Ye'etyopia Serategnoch Tarik"*, which literal means the history of Ethiopian workers, from CELU organizing Committee to All Ethiopians Trade Unions (AETU) 2nd annual meeting part II.[79]

Under the document it was clearly stipulated that Labour Proclamation No. 64/1976 was a result of the workers struggle and it never mentioned the draw backs and the limitations it had had.[80] It was mentioned that Ethiopia ratified only eight conventions during that time,[81] the question of the compatibility of the law with ILO conventions was not even the question of the day. It rather focuses on describing the political tension in the ILO due to the cold war.[82] It was said that the re-establishment of Ethiopian Trade Union was designed in such a way that it could have been led by the political party by taking a direction from the latter.[83] The dissolution of the Ethiopian Employers Federation, which is recognized by the convention on the freedom of association, was accepted as an appropriate measure by AETU.[84] That is simply meant the government annexed the workers organization not to be free in all aspects. Hence, no one was able to challenge the labour proclamation and ask for its compatibility with ILO instruments in those times.

George Graf, the then labour advisor of the Ethiopian government, wrote an article under the title of "*An Introduction to Labour development in Ethiopia*".[85] He mentioned that, *"The Revised Constitution of Ethiopia of 1955, the one operative, does not even mention 'labour', to which*

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[79] AETU, *"Ye'etyopia Serategnoch Tarik"*, from CELU organizing Committee to All Ethiopians Trade Unions (AETU) 2nd annual meeting, (written in Amharic language),Part II (un published) Addis Ababa,(February 1984)
[80] Ibid 28
[81] Ibid 94-95
[82] Ibid
[83] Ibid 97
[84] Ibid 13
[85] Graf, G. *An Introduction to Labour development in Ethiopia,* Journal of Ethiopian Law, Volume II No. 1 Faculty of Law, Haile Sellassie I University, Addis Ababa (1965), 101

Constitutions in other countries devote whole chapters.[86] He added that, Federation of Ethiopian Employers was created in March, 1964 and the Confederation of Ethiopian Labour Unions (CELU) was founded one year earlier.[87] He further argued that, in 1962 only two government representatives were attending the ILO Conference acting as an observer and the employers' and workers' representatives were still lacking. The fact that the Labour Relations Proclamation was not yet issued made the formation of employers associations and trade unions impossible. In June 1963, for the first time in the history of the country, Ethiopia was represented by a full tripartite delegation.[88]

The writer of the above article was in deed focuses only on the title he chooses and do not compare the labour law with ILO Conventions because it is beyond his scope. Although Ethiopia joined the ILO in 1923 its unique characteristic feature, i.e, tripartitism was possible in the country after the lapse of 40 years. The reason for this was the country did not have the labour law that govern labour relation and allows the formation of workers and employers organizations.

Daniel Haile, former Dean of the Faculty of Law of Haile Sellassie I University, wrote under the title of *"Workers participation in Management under Ethiopian Law".*[89] According to him, workers participation include various arrangements by which workers and their representatives have their own say in the decision making process at the level of the undertaking or enterprise. He further argues that workers participation

[86] Ibid
[87] Ibid 107
[88] Ibid109
[89] Daniel Haile, *Workers participation in Management under Ethiopian Law*, Journal of Ethiopian Law, Volume XIII, Faculty of Law, Haile Sellassie I University, Addis Ababa (1986), 123

encompasses those institutions ranging from collective bargaining all the way to self- management.[90]

Daniel further argued that, one of the rationales for the participation of workers in the management of an organization is to raise the level of production that targets at increasing the efficiency of an undertaking by associating workers with the decisions taken.[91] He said the Ethiopian Trade Union (ETU) was obliged to participate in the study and preparation of labour laws, regulations and directives, and ensure their implementation by workers upon their issuance. ETU was also obliged to participate in the preparation of the political, economic, social and cultural plans of the country. [92] But its participation was merely based on advisory capacity, which did not generate the necessary enthusiasm on the part of workers.[93] Daniel suggested that the workers participation should also encompass the privately owned undertakings as well.[94] Daniel tried to discuss the need of workers participation at all levels that would help for the development of an enterprise. He did not mention about compatibility of the labour proclamation with ILO conventions due to the limited scope of his article.

Dr. Syoum Gebregziabher made a research under the title of *"The development of some institution concerned with Labour Relations in Ethiopia."* [95] He mentioned that, although the workers of Ethiopia were not familiar with modern forms of trade union they organize themselves in one way or another even prior to the enactment of Labour Relations Decree of 1962. He stated as an example the existence of the Workers

[90] Ibid
[91] Ibid 124
[92] Ibid 131
[93] Ibid 132
[94] Ibid 133
[95] Dr. Syum Gebregziabher, *The development of some institutions concerned with Labour Relations in Ethiopia,* Haile Selassie I University, Department of Public Administration, Addis Ababa, (1969)

Associations of Franco-Ethiopian Railway Company in 1947 and other associations as well even though there was a great opposition in the side of employers. But they were not formed as trade unions as it was understood by the time the writer wrote his article. [96]

Dr. Seyoum mentioned that, Mr. Johnson, representative of International Confederation of Free Trade Unions (ICFTU), was the first to influence the emerging unions in Ethiopia. After returning back to Brussels he sent Mr. Ramounjan to Addis to make feasible the concept of united association. Up on the arrival of the representative the decree had been promulgated and limited numbers of unions were getting registered with the then Ministry of National Community Development. A Seminar was organized by Haile Selassie I University and ICFTU and entirely and passionately attended by 29 union leaders, which were already registered by the Ministry.[97]

The main objective of the seminar was pointed out by Dr. Seyoum and it was to give the trade union leaders a sufficient back ground to re-orient them on the principles of labour union. The subjects discussed during the meeting were declared to include the following:

1. *Basic features of a democratic union;*
2. *Problems of union leadership;*
3. *Preparing for collective agreements;*
4. *the reason why labour unions are important;*
5. *method of administering unions; and*
6. *Techniques of conducting union meetings.*[98]

Dr. Seyoum also stated that at the end of the seminar the prepared constitution was endorsed and adopted by the general assembly gathered

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[96] Ibid 51
[97] Ibid 55-56
[98] Ibid

from registered trade unions. Following this a general election was held and reception was tendered. [99] He concludes that the Labour Relations Decree was neither too advanced nor too progressive. He recommends the need for progressive and advanced legislation that can make feasible labour relations on sound and healthy foundation and this could in return create economic development and expansion of production.[100]

The researcher hopes that upon his research he found out that this is the first incidence that challenge the Decree and indicate the necessity of compatible law that paves the way to development. More over, he proposes the need for progressive and highly developed legislation that can make the labour relations practicable and based on sound and healthy foundation so that it can create economic development and expansion of production.

Awlachew Desalegn made a research under the title of "*Impact of ILO Conventions on Ethiopian Labour Law*". He discussed the contents of nine conventions of ILO. He stated that "*ILS have exerted and continue to exert their impact on the development and structure of labour laws in Ethiopia.*" The fact that led him to this conclusion was the general review of national legislation and its comparison with internationally adopted instruments. [101]

Awlachew reached to this conclusion with out interviewing any of the stake holders in labour matter. In other words, it was simply his personal observation with out an additional input from others that had concern in labour affairs. Checking the Impact of ILO conventions on the Ethiopian labour law was the focus of his research and does not go further which was beyond the scope of his study.

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[99] Ibid

[100] Ibid 132

[101] Awlachew Desalegn, *Impact of ILO Conventions on Ethiopian Labour Law, Addis Ababa University Faculty of Law (Unpublished) (1996)*

On the other hand, Yohannes Adamu made a research beneath the title of "*Labour Administration under the labour proclamation No. 377/2003 and the ILO standards concerning labour administration"*. He mentioned that "*despite the existence of many international instruments, Ethiopia… has not yet ratified almost all ILO standards concerning labour administration except Employment Service Convention, 1948, (No.88)"*. He also stated that although Ethiopia promised to ratify Labour administration Convention No 150, which is the most important convention with respect to labour administration, she did not keep her promise.[102]

But the interview made by Yohannes Adamu was not full because it lacks the interview of the national workers representative (CETU), which is the third wing of the tripartite body of ILO. Hence, he could not able to show the balanced thought of the three stake holders due to this constraint. More over, the writer tries to focus on labour administration under labour proclamation No. 377/2003 and the ILO standards concerning labour administration. This tells us that the focal point of the paper was not testing the compatibility of the labour proclamation with ILO fundamental conventions.

Another writer by the name Haile Tamirat wrote under the title "*The Prohibition of Forced or compulsory labour and its exceptions under the FDRE Constitution: Comparative Analysis"*. His attempt was to examine the prohibition of forced labour under the constitution with its exceptional situations in light of some countries experiences and international instruments.[103] More over, he recommends that the

[102] Yohannes Adamu, *"Labour Administration under labour proclamation No 377/2003 and the ILO standards concerning labour administration", Addis Ababa University Faculty of Law, (Unpublished) (2004)104.*

[103] Haile Tamirat, *"The Prohibition of Forced or compulsory labour and its exceptions under the FDRE Constitution: Comparative Analysis" Addis Ababa University, Faculty of Law,(unpublished),(2006)64.*

effective implementation of the constitutional provision needed the back up of subordinate and detailed legislations. [104]

Haile Tamirat did not make any interview and the reflection of the stake holders is not stated in his paper, which makes the paper insufficient. Although the convention on forced labour was one of the ILO fundamental conventions the writer prefers to compare it with the constitution instead of checking its compatibility with the labour law.

The last paper reviewed was that of Mulugate Ashagre, whose title was "*Equal Remuneration for equal work in employment relationship in Ethiopia."* He first discussed the contents of Convention 100.Then define what an equal work is all about, objective of evaluating of jobs and basic methods of job evaluation.[105] He recommends that Ethiopia should have to have a special legislation for the implementation of the principles of the convention on equal remuneration.[106]

The interview conducted by Mulugate Ashagre was made only with some individual employers and government representatives by ignoring both organizations of employers and workers. The researcher believes that making this would make the conclusion of the writer inadequate. This is because both employers and workers organizations are equally important on labour issues and if some one is not able to make them participate his research will be insufficient. Like it was said earlier, the convention on equal remuneration is also a fundamental convention of ILO and the writer was expected to compare it with the labour proclamation but that was not the case.

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[104] Ibid

[105] Mulugeta Ashagre, *Equal Remuneration for equal work in employment relationship in Ethiopia, Addis Ababa University, Faculty of Law,(unpublished)(2007)9.*

[106] Ibid

Although searching for compatibility of the existing labour proclamation with ILO fundamental conventions should be a question to be raised after the coming to force of the proclamation the research made by Dr. Seyoum tried to challenge the then Decree to be compatible with ILS. Nevertheless, recent researches made after the enactment of the existing labour proclamation did not test its compatibility with ILO's fundamental conventions. Hence, the absence of checking the compatibility of the labour proclamation make it mandatory to make a research and the writer tried to make it possible by doing this research.

Chapter Two

Ethiopian Labour Laws and Constitutional Provisions related to Trade Union Rights

In the first part of the chapter, the labour proclamations starting from the first Decree until the existing labour proclamation will be discussed briefly. Then, provisions of the FDRE Constitution that are related with trade union rights will be discussed.

2.1 The Labour Relations Decree No.49/1962.

For the first time in the history of the country, Emperor Haile Sellassie I made the first labour relation decree in the year 1962. The title of the decree was "The Labour Relations Decree of 1962."[107]

As it was mentioned on the preamble of the decree its objectives were:

- To enhance a harmonious and voluntary co-operation of labour and enterprise in order to promote a higher standard of living;
- To make possible the creation of prosperous labour conditions in all enterprises;
- To settle disputes through collective bargaining between the employers and employees or their lawful representatives;
- To establish principles that govern relations between labour and employers; and
- To create an institutional framework within which these principles may be applied.[108]

[107] Decree No 49, Labour Relations Decree ,Negarit Gazeta 21st Year No.18,1962
[108] Preamble of the Decree No. 49

The decree clearly mentions that, it would not be applicable on workers holding managerial post, domestic servants, on a farm having less than ten permanent employees and on public servants.[109] This is to make an exclusionary provision with regard to the scope of application of the decree.

Article 20 of the decree provides that employers and employees are allowed to join associations of their own. But sub article (c) of the same provision mentions that the minimum possible number of workers to form a labour union in an organization was 50.[110]

Although it was allowed by the decree to bargain collectively and to have collective agreement, article 24 (b) gave power to the board to waive the collective agreement before its date of expiry in the event of a major change in an economic conditions.[111]

As it was mentioned earlier Dr. Seyoum said that the Decree was neither too complex nor too progressive. But as a first start it was a foundation that enables the formation of both The Ethiopian Employers Federation and The Confederation of Ethiopian Labour Unions, which were not formally established before. Although the decree limit its application to certain categories of workers and power is given to the board to waive the collective agreement in force before its expiry the enactment of the decree by it self was an encouraging move. To put it briefly, with all the draw backs it had the enactment of the decree contributed a lot and serve as a foundation for the enactment of its successor labour proclamations.

[109] Ibid Art 2(f) (i)-(iv)
[110] Ibid
[111] Ibid

2.2 The Labour Relations Proclamation No. 210/1963

In 1963 Proclamation No.210 was promulgated with the following amendments:

1. The labour relations Decree (Decree No.49 of 1962) was to be re-numbered as Proclamation No. 210 of 1963;
2. The word Decree was replaced by Proclamation and article 5 (b) was to be amended by deletion of the phrase "… may be invited…" and replaced by the phrase "… shall be invited…";
3. Article 19 (a) was amended by the deletion of the phrase "… with-in the period of two (2) weeks…" and the phrase "… within the period of thirty (30) days…" was substituted;
4. Changes in language were made in the Amharic version of articles 2 (b), (f), (l), 3 (g), 5 (c), 12 (a), 22 (e); and 22 (f) without modification of the English text.[112]

The provisions that were mentioned on the proclamation as an amendment did not bring any significant change as such. Hence, it can be said that the purpose of the proclamation was simply changing the Decree to the labour proclamation.

2.3 The Labour Standard Proclamation No. 232/1966.

In the year 1966 Labour Standards Proclamation, i.e., Proclamation No. 232/1966 was promulgated. The preamble of the proclamation mentions that the objective of the proclamation was setting forth and defining

[112] Proclamation No.210, Labour Relations Proclamation, Negarit Gazeta, 23rd Year, No.3, 1963.

labour standards that can protect the life, physical integrity, health and moral standing of the workers.[113]

Regarding the scope of application of this proclamation, article 4 provides that it shall apply to the following:

(1) *industrial enterprises, as that term is defined herein;*

(2) *carried on in conjunction with an industrial enterprise, agricultural enterprises, to the extent that they are engaged in the processing or transformation of crops grown by said agricultural enterprises;*

(3) *construction work;*

(4) *any other enterprise with respect to which legal arrangements are in force; and*

(5) *such other classes of enterprises as the Minister may from time to time designate by regulation published in the Negarit Gazeta.*[114]

The proclamation also affirms about the establishment, composition and functions of the labour standards board; powers and duties of labour inspectors; enforcement of the proclamation by labour inspectors; and the responsibilities of employers.[115]

More over, special protection was given by the proclamation for minors. To mention some of them: employing child under fourteen years of age in undertaking other than owned by his immediate family was prohibited; no child was permitted to be employed without the express written consent of his parent or guardian; a minor was prohibited by the proclamation to work during night times, i.e., between 10:00 p.m. till

[113] Proclamation No.232, Labour Standards Proclamation Negarit Gazeta, 25th year, No.13, 1966
[114] Ibid
[115] Ibid

6:00 a.m.[116] Employers were duty bound to provide equal remuneration for works of equal quality regardless of sex difference between employees.[117]

The researcher admires that, having such kind of labour standards during those times was by itself an encouraging move though the proclamation did not include all the labour standards known by ILO. The provisions of the proclamation mentioned that great emphasis is given to children and women. This means the conventions on minimum age and equal remuneration were reveal under the proclamation which tantamount to incorporating the provisions of the fundamental conventions of ILO.

2.4 The Labour Proclamation No.64/1975.

Due to the coming into power of the Derg regime, the Labour Proclamation No. 64/1975 was promulgated as a labour proclamation to govern the labour relations. Particularly the Amharic title given to the proclamation that is "*Ye serategna guday awage*" which literally means labour affairs proclamation tells us that the proclamation gave emphasis to workers based on socialist ideology the regime wanted to follow. This means the rights of employers was overlooked. This can be easily understood from the following words of the preamble. *"The harmonious relations between workers and management can be realized through the strict observance of socialist legality."*[118]

Regarding the scope of application of the proclamation, article 2 (27) mentions that the following shall not be considered as workers and hence, the proclamation is not applicable on them.

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[116] Ibid Article 13
[117] Ibid Article 14
[118] Labour Proclamation No.64,Negarit Gazeta, 35th Year,No.11,Addis Ababa,1975

- *members of the Armed Forces and any other bodies administered in accordance with military discipline and regulations;*
- *members of the Police Force and other bodies which are administered in accordance with Police Force discipline and regulations;*
- *Judges of Courts of law, prosecutors and court registrars;*
- *members of the Provisional National Advisory Commission;*
- *employees of state administration;*
- *domestic servants employed by a person or family in his or its home; and*
- *the manager and deputy manager of an undertaking or any of its branches and all those officials accountable to such manager or deputy manager.*[119]

This shows the exclusion was meant to rule out many categories of workers not to be governed by the labour proclamation, which is practically the same as prohibiting them from exercising particularly the right to freedom of association and collective bargaining.

According to Article 49 of the proclamation, only workers were allowed to form a trade union. [120] That is to say employers were not allowed to form an association of their own. Due to this fact the Ethiopian Employers Federation was officially closed. This was mentioned by Ato Tadele Yemer, President of the Ethiopian Employers Federation on the conference held at Ghion Hotel on August 22-23, 2011 under the title

[119] Ibid
[120] Ibid

“Promotion of Trade Union Rights ", which was organized by CETU in collaboration with International Trade Unions Confederation (ITUC).

Moreover, only one trade union was allowed to be established in an organization and the minimum number of workers required to form a union was 20. The unions were allowed to join industrial unions and the latter were also able to establish jointly the so called All Ethiopian Trade Union (AETU).[121]

The researcher is very much amazed by the acts of the Derge, which is disallowing the employers’ not to be organized. This is because the employers were denied the right to organize and their national organization was officially closed twelve years after the ratification of convention 87 by Ethiopia. More over, many of the provisions of the proclamation tried to propagate about the socialist ideology the provisional government of Ethiopia was preferred to follow. Even though the regime propagate that it was a great supporter of the working class it tried to control all the activities of the workers by the labour proclamation itself.

2.5 Labour Proclamation No. 42/1993

After the downfall of the Derge regime, Labour Proclamation No.42/1993 was promulgated by the Transitional Government of Ethiopia and was put into effect until 2003.

Some of the objectives of this proclamation includes: enabling workers and employers to maintain industrial peace; work in the spirit of harmony and co-operation towards the all round development of the country; promising the right of workers and employers to form their

[121] Ibid

respective associations; to engage in collective bargaining; and to lay down the procedures for the expeditious settlement of labour disputes.[122]

Acontrario reading of Article 3(2) of the proclamation showed that only workers in public enterprises and private enterprises were allowed to be governed by the labour proclamation. The provisions of the proclamation may be inapplicable, by the regulation made by council of ministers, on employment relations between Ethiopian citizens and foreign diplomatic missions or international organizations operating within the territory of Ethiopia as well as employment relations established by religious or charitable organizations.[123]

On the one hand, the labour proclamation made both express as well as implied exclusion to prohibit many categories of workers not to benefit from the proclamation. On the other hand, it tried to make feasible that both workers and employers have the right to form their respective associations that was denied for the latter in its predecessor. In addition, engaging in collective bargaining and laying down the procedures for the expeditious settlement of labour disputes was also given emphasis by the proclamation.

2.6 The Labour Proclamation No.377/2003

A. Objectives of Labour Proclamation No. 377/2003

The existing labour proclamation is designed in such a way that it can play a pivotal role towards the all rounded development the country aspires. Unlike its antecedents this proclamation tries to maintain compliance with the international conventions and other legal

[122] Labour Proclamation No. 42/93, Negarit Gazeta, 52nd Year,No.27,Addis Ababa, 20th January 1993.
[123] Ibid Article 3(2)

instruments to which Ethiopia is a party. The following statements taken from the preamble assures this fact:-

- ensuring worker- employer relations are governed in accordance to the basic principles of rights and obligations;
- making possible the maintenance of industrial peace by joint effort of workers and employers and enabling them to work in the sprit of harmony and protection;
- guarantying workers and employers to establish their own associations and bargain collectively through their lawful representatives;
- creating an enabling environment for peaceful settlement of labour disputes arising between workers and employers;
- defining clearly the powers and duties of labour inspectors that are duty bound to look for labour administration, particularly in labour conditions, occupational safety and health, and work environment;
- strengthening the power of inspectors so that they can be able to perform their duties in accordance to the law; and
- making sure that the basic principles that govern labour relations should take in to account the political, economic and social policies of the government and to make the labour law in conformity with international conventions and other legal instruments to which Ethiopia is a party. [124]

As it was discussed earlier member States of ILO are duty bound to respect, promote and realize the fundamental conventions of ILO because of their membership in the organization. Ethiopia signed all the eight fundamental conventions of ILO and as a member state she is duty

[124] *Labour Proclamation No 377/2003*,Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia, !0th year, No. 12,Addis Ababa Ethiopia, February 26, 2003, Preamble

bound to do so both in her legislation and in practical terms. Hence, we will discuss whether some of the provisions of the labour proclamation in force are compatible with the ILO conventions particularly with two most important conventions mentioned earlier.

B. Scope of Application of the Labour Proclamation No 377/2003

As it is mentioned by Assistant Professor Mehari Reade, the proclamation does not govern all kinds of labour relations. Rather there are some categories of employment relations that are excluded from the application of the proclamation. To put it simly,*"the scope of application of the Labour Proclamation is employment minus the exclusion,"* Mehari said. According to him, the exclusions are of two types. The first category is an expressed exclusion and the other one is conditional exclusion.[125] The discussion on each of them will be briefly pointed out.

I. Express exclusion

Under the category of express exclusion we found out public servants, management staff and domestic employees. They are all excluded from the application of the labour proclamation. Public servants that include parliamentarians, ministers, judges and their support staff are all outside the application of the labour proclamation. Professor Mehari said, the rights and obligations of civil servants are to be regulated by Civil Servants' Proclamation of the country.[126]

In the opinion of the researcher, making a different law for civil servants that does not include the right to organize and collective bargaining is

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[125] Mehari Redae, *a simplified guide to the Ethiopian Labour Proclamation*, Addis Ababa ,Ethiopia, ILO (2008), 4

[126] Ibid 5

meaningless and this kind of exclusion is not based on sound argument. This is because the rights mentioned on the two most important conventions do not allow such kind of discrimination between workers.

Management staffs in an enterprise are the other category of employees that are excluded from the application of the labour proclamation. According to Professor Mehari, the labour proclamation prefers to follow the functional approach to identify management members from others. This approach determines members of the management staff based on the function they perform rather than focusing on the managerial position they held in an enterprise.[127]

An employee is classified as a manager if he is engaged in one of the following activities in his decision making process;

- *"laying down and executing management policies;*
- *hiring and firing of employees;*
- *promoting or demoting of employees; and*
- *disciplining of employees".*[128]

From the very fact of holding the managerial position the mangers in an organization can be excluded from the application of the labour proclamation. This is because the owner hired them to protect his interest and if they become member of trade union there will be a conflict of interest between their own interest and the interest of the owner who delegates them. As it is known from the law of agency, the agent should work for the best interest of his principal and there should not be conflict of interest between them. The same is also true between the owner and the person holding the managerial position in a certain organization.

[127] Ibid 7
[128] Ibid 7-8

The third groups of employees excluded from the application of the labour proclamation are domestic employees. These are workers who are dealing in the house hold activities of their employer in his dwelling that include, among other things, cleaning, cooking, guarding and gardening of the entire compound. [129] The researcher believes that those groups of people should have been covered by the labour proclamation.

There are also other categories of employees that are excluded from the application of the labour proclamation. These are: contracts for the purpose of upbringing, treatment, care or rehabilitation; contracts for the purpose of educating or training other than apprentice; contracts relating to a person who performs an act for consideration at his own business or professional responsibility.[130] The exclusion of those groups of workers seems sound enough for the researcher.

II. Conditional exclusion

Professor Mehari reveals that, the conditional exclusion of certain groups of employees from the application of the labour proclamation has also two categories of employees. The first one is conditional exclusion of employees of diplomatic missions and international organizations. In order to respect diplomatic culture, the legislature opted to have two options through which the labour proclamation could be avoided. The first option is empowering the council of ministers to issue a regulation that expressly excludes the applicability of the labour proclamation on local staff of the diplomatic mission. The second alternative is based on an international agreement to which Ethiopia is a signatory and that may prohibit the application of the labour proclamation on their local staff.

[129] Ibid 9
[130] Labour Proclamation (ft.nt.124) Article 3 (a-f)

But in this approach the case is determined based on the international agreements signed by Ethiopia with specific country in question.[131]

The second categories of employees that are conditionally excluded from the application of the labour proclamation are employees of religious and charitable organizations. For these categories of employees, the council of ministers has been empowered to issue a regulation which will have the effect of avoiding the applicability of the labour proclamation, Mehari said.[132] In the opinion of the researcher there should not be a conditional clause whatsoever that is intended to prohibit different group of workers.

The researcher strongly argues that under its scope of application the existing labour proclamation either expressly or conditionally excludes many categories of employees not to be governed by it. This means those categories of employees are denied the most fundamental rights ratified by Ethiopia that prohibit any kind of discrimination between workers to exercise their right to freedom of association and protection of the right to organize (C 87) and the right to organize and collective bargaining (C 98).

2.7 Constitutional provisions related to Human Rights particularly to Trade Union Rights

This section deals with constitutional provisions of Federal Democratic Republic of Ethiopia (FDRE) that are related to human rights. Particular emphasis is given to provisions that focus on trade union rights.

[131] (ft.nt.125) 13-14
[132] Ibid 15

Art 10 of FDRE constitution provides that human right and freedoms emanating from the nature of mankind are inviolable and inalienable.[133] The three elements of this article are:

- emanating that means the rights are naturally given to all mankind irrespective of any difference ;
- inviolable means unbreakable or unchallengeable; and
- Inalienable means absolute or indisputable.

Art 13 (1) stipulates that the three branches of government are duty bound to respect and enforce the provision of chapter three that mentions about fundamental rights and freedoms.[134] These are stated under Article 14-44 of FDRE Constitution. Where as human right provisions are stipulated from article 14-28 democratic rights are granted under article 29-44. Moreover, article 13 (2) of FDRE constitution states that the rights and freedoms specified under chapter three shall be interpreted in compliance with the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia.[135]

The constitution declares the prohibition of forced or compulsory labour under its article 18 (3). It also stated the exceptional situations that are not considered as forced labour under the next sub article of the same article.

According to the provision of article 25 all persons are equal before the law and are entitled without discrimination to the equal protection of the law. Moreover, it also describes that all persons are guaranteed equal and effective protection without discrimination on grounds of color, sex,

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[133] FDRE Constitution (ft. nt. 19)
[134] Ibid
[135] Ibid

religion, etc. The right to equality of women with regard to employment, promotion, pay and the transfer of pension entitlements is provided in a mandatory way under article 35 (8).[136] This in a nut shell means the principle of identical treatment for all.

The guarantee of every person to the right to freedom of association for any cause or purpose is declared under article 31. The only exception mentioned in this regard is that the association should not have the purpose of violating the appropriate law or should not be formed for illegal activity to subvert the existing constitutional order.[137]

Art 36 (1) (d) declares that every child has the right not to be subject to exploitative practices. The protection of children from hazardous work that is harmful to their education, health or well-being is also mentioned in the same article.[138]

The Constitution clearly indicates that many categories of workers have the right to form trade unions and other associations to bargain collectively with employers or other organizations that have an effect on their interests. This right also includes the right to express grievances including the right to strike. According to this article government employees that should enjoy the rights provided under sub articles (a) and (b) of this article shall be determined by law. Sub article (d) of the above article states that women workers have the right to equal pay for equal work. [139]

The above mentioned provisions of the constitution illustrate some provisions of the fundamental conventions of ILO. Particularly the provision on article 42 is very clearly as to the right to freedom of

[136] Ibid
[137] Ibid
[138] Ibid
[139] Ibid(article 42)

association and collective bargaining. According to this article the rights declared for workers include the right to form trade unions and to bargain collectively with employers that have an influence on their interests. It is also provided that the right to express grievances including the right to strike.

Chapter Three

Doctrinal analysis concerning compatibility and limitations of the labour Proclamation No. 377/2003 vis-à-vis Fundamental ILO Conventions

As it was discussed previously the international community has largely come to consensus in favour of having ILS due to their significant importance. More over, it is also apparent that conventions are international treaties that have power of binding member States which ratify them. This means, ratifying States shall compel themselves to implement the convention both in the form of legislation as well as in practice.

It is stipulated earlier that Ethiopia is a member State of ILO since 1923 and ratify all the eight fundamental conventions of the latter. As a member State she is expected to put into effect the conventions she ratified in the form of legislation as well as to make them practical.

The title of the research mentioned that it is designed to test the compatibility and limitations of the labour Proclamation No. 377/2003 vis-à-vis Fundamental Conventions of ILO. But, space does not permit extended discussion of all the eight fundamental conventions of ILO, and hence, special mention should be made on the extent of compatibility of the Labour Proclamation No.377/2003 in light of freedom of association and the effective recognition of the right to collective bargaining (Conventions Nos.87 and 98), which are taken as the most fundamental conventions with regard to workers right.

3.1 Reflection of Stake Holders on the compatibility of the Labour Proclamation No.377/2003

One would normally expect that the labour proclamation would be formulated in such a way that there would be the maximum possible degree of compatibility with Fundamental Conventions of ILO. More over, it is illustrated on the labour proclamation that, one of its objective is to make the labour law in conformity with international conventions and other legal instruments to which Ethiopia is a party. To test whether this is a reality or not, it is important to see the content of the proclamation and stakeholders view towards it.

In this regard, an in depth interview has been made with representatives of Ministry of Labour and Social Affairs (MOLSA), Ethiopian Employers Federation (EEF) and The Confederation of Ethiopian Trade Unions (CETU). They are selected for an in depth interview for three reasons. Firstly, they are the stake holders on labour matters and constituent elements of ILO. Secondly, they are the ones that are knowledgeable on labour matter. Thirdly, the selected representatives are the key informants that represent their respective organizations.

3.1.1 Reflection of MOLSA

Ato Solomon Demissie [140]contends that Article 3 of the labour proclamation is compatible with C 87 Freedom of Association and Protection of the Right to Organize Convention, 1948 and other ILO Fundamental Conventions as well. He said, one of the principles in applying conventions is flexibility and the labour proclamation is made in

[140] Director, Directorate of Harmonies Industrial Relations, MOLSA (Interview with Ato Solomon was made in his office on December 20,2011)

such a way that it can maintain this principle. In addition to this, Article 42 (1) (c) of the Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution) mentions that government employees who enjoy the right of freedom of association and collective bargaining shall be determined by law.[141] But this is not yet determined by law.

Ato Solomon further argued that the exclusion under article 3 (2) (a) is made due to the fact that applying the labour proclamation on such type of relation is very difficult. The organization at stake, may give every necessary support for those persons in order to upbringing them or treatment or care or rehabilitation purpose and expect them to do some thing during their stay in that organization. But the organizations are not doing this for the purpose of employing the needy people rather to rehabilitate them so that they can become self confident. Hence, abiding those organizations to be governed by the labour proclamation might have discouraged them to continue those services. Therefore, the government chooses their exclusion from the application of the labour proclamation.

Ato Solomon also argues that the exclusion under article 3 (2) (b) is meant that contracts that aimed at education or training purpose should also be excluded from the application of the labour proclamation. This is because the relation between an organization that gives education or training and those that needs these services should not be taken as having an employment relation.

Ato Solomon contends that civil servants that are mentioned under article 3 (2) (e) are also excluded from the application of the labour proclamation. He said, although some States use a single labour proclamation for both civil servants and other employees, the

[141] FDRE Constitution (ft. nt. 19).

government of Ethiopia chooses to make a different law for civil servants that enables them to exercise the right of association and collective bargaining enshrined under the provision of the constitution. The reason for making this decision is a policy consideration of the government, he added.

Ato Solomon asserted that conditional exclusion provided under article 3 (3) (a) of the same article mentioned above has good reasons. He said, in order to respect bilateral as well multilateral treaties between countries and based on the principle of immunity it was left for the discretion of the Council of Ministers to make a regulation that prohibit the application of the labour proclamation on employment relation between Ethiopian citizens and foreign diplomatic missions or international organizations. But since the Council did not promulgate the said regulation the labour proclamation can be applied on them too.

Regarding religious or charitable organizations the conditional exclusion is made on different scenarios, Solomon said. The conditional exclusion for religious institutions may base it self on the principle of secularism enshrined on the FDRE Constitution, he added. That is to say, the government intended the possibility of excluding the application of the labour proclamation since the workers in religious organizations are most of the time give ritual services even though they have employment relations, he said. He alleged that with regard to charitable organizations the conditional exclusion was made necessary based on charitable activities the organizations engaged in. Forcing them to be abided by the labour proclamation may discourage them to do their charity, and hence, it is better to give a room for the Council of Ministers to have a regulation that might exclude them, Solomon said. Since the Council did not come up with a regulation, workers in these two categories can make use of the labour proclamation as well.

The research contends that workers should be permitted to exercise the fundamental rights of ILO particularly the right to freedom of association and the effective recognition of the right to collective bargaining. In this respect, there should not be any sort of exclusion that forbids workers from exercising these rights. But the position of representative of MOLSA shows that making a difference between different categories of workers with regard to the two rights mentioned seems some thing acceptable by the principle of ILO. But this is not a sound argument. Hence, the researcher believes that the exclusion made on the scope of application of the labour law is a discriminatory clause that makes a difference to many categories of workers.

3.1.2 Reflection of EEF

Ato Negalign Mulata,[142] on his part argues that to some extent the Labour Proclamation No. 377/03 is compatible with Fundamental Conventions of ILO. He said, article 3 of the proclamation limits the freedom of association given to all workers with the exception of Armed forces and the Police.

He further argues that, the freedom of association is the right given to all workers that have contract of employment with their employer. If we agree that all employees are qualified as a worker, civil servants and others shall be governed by the labour proclamation due to the work relation they had with their employer. That is to say, if they are included in the definition of a worker, they have to have the right that is given to all workers without discrimination. He is of the opinion that unionization of employees has the capacity to strength the employer. If all workers are not given the right to freedom of association, they cannot make a collective bargaining. Hence, it can be concluded that the above

[142] Director of EEF (An interview with Ato Negalign Mulata was made on Decemebr 20,2011 ,in his office)

mentioned article is against both convention 87 and convention 98, Negalign said.

The representative bases his argument on the definition of what a worker is all about. This leads to the conclusion that the manager that is not an owner would qualify the definition of a worker due to the fact that he had had an employment contract with his employer. This would create a problem because managers could not form a trade union with workers. With regard to avoidance of any sort of discrimination between workers the researcher agrees with representative of EEF.

3.1.3 Reflection of CETU

Ato kassahun Follo[143] started his answer for the interview by defining what a labour proclamation is all about. He contends that labour proclamation does not simply contain matters related to employment relations. It rather has an element of human rights, economics, social affairs and politics in it. In other words, it encompasses many things and therefore needs critical enforcement mechanisms and adjudication processes. When one talks about labour relations, he is addressing all the elements mentioned above that are supposed to be contained in labour proclamation, Kassahun added.

He alleged that the Labour Proclamation No.377/2003 is not compatible with the Fundamental Conventions of ILO. He substantiate his argument by mentioning that, although the Fundamental Conventions of ILO are eight, two of them, (Convention 87 and Convention 98) are the most fundamental and important ones that are clearly stipulated on international instruments as well as national legislations. He mentioned as an example the following instruments:

[143] President of CETU, (An interview with Ato Kassahun Follo was made in his office on January 19,2012)

- Article 23 (4) of the Universal Declaration of Human Rights states these rights as human rights;
- The constitution of the Federal Democratic Republic of Ethiopia under its article 42 clearly mentions freedom of association and the right to collective bargaining as workers rights;
- Convention 87 (freedom of association and protection of the right to organize) and convention 98 (the right to organize and collective bargaining) are ratified by Ethiopia and article 9 (4) of the FDRE Constitution provided that ratified agreements are integral part of the law of the land.

The above mentioned international instruments as well as national legislations support the conclusion that the labour proclamation currently in force is not compatible with Fundamental Conventions of ILO, Kassahun said. This is because article three of the labour proclamation narrowed the application of the proclamation by excluding large categories of workers either expressly or impliedly. And this exclusion is against the two most fundamental conventions illustrated above, Kassahun concluded.

Ato Kassahun concluded that the exclusionary clause stated on the labour proclamation is equivalent to discrimination between certain groups of workers which is clearly prohibited by convention on freedom of association and protection of the right to organize. Even though he reached to this conclusion by referring only to one article of the labour proclamation the researcher agrees with his conclusion.

3.1.4 Analysis of the researcher on compatibility of the labour proclamation no.377/2003

Although the Fundamental Conventions of ILO are eight, the Convention on Freedom of Association and Protection of the Right to Organize and The Convention on the Right to Organize and Collective Bargaining widely acknowledged as the most fundamental ones. This is because these two rights are essentially enabling rights for workers that facilitated the way to form and join workers' organizations of their own choice in order to promote common organizational interests. In other words, the remaining rights can be appropriately exercised if and only if the two rights do exist. That is to say, with out having these two rights exercising the other rights would be problematic.

In the battle field of trade union, collective bargaining is the key weapon. Trade unions need their own organizations which are free, strong, democratic and independent that makes them enable to negotiate with their employer.[144] This shows that the convention on freedom of association can not be exercised with out the convention on the right to organize and collective bargaining. This means the two conventions are intertwined together.

International instruments also magnify the fundamental importance of the convention on freedom of association and collective bargaining. As it is discussed in chapter one International Bills of Rights, i.e., UDHR and the twin covenants, mentions that the right of association is considered as both civil and political right and an economic and social right. In addition to this, the violation of freedom of association, which is the most fundamental workers' rights, is pointed out as the first sign of deteriorating situation in a country.

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[144] ILO, *Trade union pluralism and proliferation in French-speaking Africa,* Geneva, Switzerland, 2010

Moreover, it is also indicated that not only workers in the private sector of the economy, but also the civil servants and public service employees in general are guaranteed the right to unionize. The ILO standards promote for collective bargaining and help to ensure that good labour relations benefit every one.

As it is pointed out under chapter two the preamble of the existing labour proclamation clearly indicates that one of its objectives was to make it compatible with conventions ratified by Ethiopia. But there are provisions on the labour proclamation that indicate express as well as conditional exclusion under its scope of application. This is a signal that the government intends to exclude many groups of workers not to exercise their right of freedom of association. This indicates that the provision is against article 3 (2) of Convention 87, which prohibits any interference which restrict the exercise of freedom of association. [145] This is because member States should undertake to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize.[146] More over, it is provided that 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 the convention. [147]

The researcher strongly argues that making the scope of application narrower is a sign of distinction and this tantamount to incompatibility of the provision when compared with freedom of association and protection of the right to organize. In other words, making an express as well as conditional exclusion on the labour law is impairing the rights mentioned on Convention 87. Since the right to freedom of association is a foundation for other conventions a contravention on it is an infringement to other conventions too.

[145] Article 3(2) C87 (ft.nt.46)
[146] Ibid article 11
[147] Ibid article 8

Article 9 of Convention 87 stated that the only exception left for the determination of national laws or regulations is the extent to which the guarantees provided on the convention shall apply to Armed forces and the Police.[148] This shows that even the Armed forces and the Police can enjoy the above mentioned rights but the extent of their enjoyment is left for the determination of the national legislations of member States. Hence, intending to have another law for civil servants will be contrary to the convention on freedom of association and protection of the right to organize. This means the exceptional clause left for the national legislation is pertaining to the armed force and the police and countries are not allowed by the convention to make any sort of exclusion between workers that amount to making distinction between workers.

The provision on the proclamation made it unlawful if the employer impede the worker in any manner in the exercise of his right or coerce any worker by force or in any way to join or not to join or to cease membership in the union.[149] But this only serves for workers that are allowed to be governed by the labour proclamation not to all workers. This shows if the scope of application of the labour proclamation was meant to include many categories of worker this article of the labour proclamation would serve its purpose entirely.

The proclamation provided that all workers and employers shall have the right to form their own organization.[150] Trade unions are also allowed to form federations and confederations jointly and to be an affiliate of international organizations.[151] Even though the two provisions seem in compliance with article 5 of Convention 87 [152] the researcher believes that the conformity is unclear. Because article 8 (2) of the convention

[148] Ibid

[149] Article 14 (1) (a) and (d) ,Labour Proclamation No 377/2003 (ft.nt.124)

[150] Ibid article 113 (1)

[151] Ibid article 114 (3) and (6)

[152] C87 (ft.nt.46)

clearly indicates that the law of the land shall not to impair, nor shall it be so applied to impair the guarantees provided under the convention on freedom of association and the right to organize. Hence, the above mentioned two provisions as well are aimed to serve workers that can only benefit from the labour proclamation.

Article 120 of the labour proclamation mentioned that the Ministry may apply to the competent court so that the latter can order the cancellation of the certificate of registration whenever one of the conditions stated on the same article are fulfilled.[153] This is one and the same as to the provision revealed on article 4 of the convention on freedom of association and the right to organize which prohibit the dissolution or suspension of the formed organizations by administrative authorities.[154] But the researcher strongly argues that we can talk about dissolution of an organization if it was allowed to all workers without any distinction whatsoever.

In contrary, article 121(3) allowed the Ministry to suspend the organizations to abstain from the act which is prohibited by the proclamation or opposite to the objective revealed on its constitution. [155] But the researcher considers that the suspension of an organization should also be made by the order of the court.

As it is stated above even though the labour proclamation made it interference of an employer with trade union matters unlawful, it is not well provided. This is because according to article 2 of the convention on the right to organize and collective bargaining, workers' and employers' organizations shall enjoy adequate protection against any act of interference by each other. More over, it is clearly stipulated that making

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[153] Ibid
[154] C87 (ft.nt.46)
[155] Labour Proclamation No 377/2003 (ft.nt.124)

workers organizations under the domination of employers or their organizations or supporting the former aiming to make it under the control of the latter or its organization shall constitute interference. [156] But under the contested labour proclamation there is no such a clear provision that is designed to protect workers and their organization and that makes the labour proclamation not to be confirmed with the right to organize and collective bargaining convention.

More over, article 3 of the above mentioned convention stated that there shall be appropriate machinery in place that facilitates the ensuring of respect of the prohibition of interference. [157] There is no such a provision in our labour proclamation that was very useful for the protection of particularly workers organizations which are vulnerable in most situations due to absence of this provision.

Even though there are provisions with regard to collective bargaining and collective agreement under articles 124 through135 of the labour proclamation[158]there is no provision that indicates appropriate measures shall be taken that encourage and promote the full expansion and exploitation of machinery that helps voluntary negotiation between employers' organizations and workers' organizations.[159]

From the above the researcher concludes that, some articles mentioned on the disputed labour proclamation are incompatible with the two most fundamental conventions (the right to freedom of association and protection of the right to organize and the right to organize and collective bargaining). This is practically the same as being in compatibility with the rest of ILO fundamental conventions.

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[156] C98 (ft.nt.54)
[157] Ibid
[158] Labour Proclamation No 377/2003 (ft.nt.124)
[159] Article 4, C98 (ft.nt.54)

Although other reasons can be mentioned for drafting articles for the revision of the labour proclamation, the researcher believes that it is aimed to make the labour proclamation compatible with the Fundamental Conventions of ILO. This is because the provisions mentioned on forced labour convention, abolition of worst forms of child labour convention and minimum age convention have been clearly indicated on the draft labour proclamation prepared by MOLSA. This means MOLSA is trying to fill the gap of the labour proclamation by taking provisions from different fundamental conventions that is an indication of lack of compatibility in the existing labour proclamation.

Therefore, the researcher strongly argues that the initiation for the amendment of the labour proclamation is also an indication of lack of compatibility of the labour proclamation when compared with the fundamental conventions of ILO, particularly the right to freedom of association and protection of the right to organize and the right to organize and collective bargaining.

3.2 The Limitations of the Labour Proclamation No.377/2003.

Ministry of Labour and Social Affairs (MOLSA) initiated for an amendment of Labour Proclamation No.377/2003. One of the reasons for this amendment is to make the proclamation compatible with international instruments particularly the ILO Fundamental Conventions and the other reason can be to minimize the limitations it had.

The Ministry has formally invited the stake holders, i.e., Ethiopian Employers Federation (EEF) and The Confederation of Ethiopian Trade Unions (CETU) to bring an amendment provisions in the year 2009. Then it had made repeated discussion with them separately. Currently, the

draft amendment provision have been prepared and ready to be presented to the advisory board (which comprises five members from each of the three stake holders) for discussion before it will be sent to the Council of Ministers.

During an in depth interview made with the three stake holders on labour matters, all of them mentioned that since the Labour Proclamation No.377/2003 is on the process of amendment it is better to look at the amendment provisions prepared by them to sort out the limitations of the proclamation. The first part tries to deal with the draft amendment document forwarded by MOLSA, which initiated the amendment and is the responsible government body in the drafting and enforcement of the Labour Proclamation. The second part of the discussion is based on the document prepared by MOLSA (The stand of the Ministry on draft prepared by both EEF and CETU on the revision of the labour proclamation No. 377/ 2003 and minutes of the committee). And the view point of the two stake holders, which represent the employers and the trade union respectively, will be mentioned based on this document. At the end comes the observation of the researcher.

3.2.1 MOLSA's view on the Limitations of the Labour Proclamation No.377/2003

MOLSA contends that the following provisions of the Labour Proclamation No 377/2003 need an amendment and additional provisions are also included that are understandably intended at least to minimize the limitations that the proclamation has.

- Article 2 (4) is deleted and the following has been provided.
    - The definition of Minister is separately made, and

- Ministry is redefined to include MOLSA and other bodies in the region that are responsible for the enforcement of the labour proclamation.

- New sub articles 8,9,10 and 11 are added under article 2 of the labour proclamation (sub article 8 defines "sexual harassment"; sub article 9 "sexual character"; sub article 10 "social dialogue"; and sub article 11"managerial employee").
- Article 3 (2) (c) is deleted and under the new sub article only a phrase "managerial employee" is mentioned.
- Under the new sub article (d) of Article 3 (3) the Council of Ministers is responsible to make a regulation of work condition of managerial employee.
- Sub article 5 is added on Article 6 that mandates the ministry to prepare a model employment contract.
- Registration of workers about their status of HIV/AIDS is clearly excluded under article 12(6).
- An additional phrase is made on Article 14 (1) (d) that stated the prohibition of interference that forces a worker to be a member of one association after terminating his membership from another association.
- Discrimination of a worker due to his status of HIV positive is prohibited under sub Article 14 (1) (f).
- Provisions mentioned under C 29 Forced Labour Convention, 1930 Article 2 (2) was acknowledged on the new sub article 14 (1) (g).
- The following new sub articles are designed to be part and parcel of Article 14:
    - Sub article 3 made it unlawful the interference of a worker, an employer and their representative organizations to the affairs of one another ; delaying collective bargaining without any good cause and in bad faith is also made unlawful;

- Sub article 4 made sexual harassment unlawful when committed during recruitment and employment relation; and
- Sub article 5 mentions that it is unlawful to compel a worker or an employer.

- There is a new statement made on Article 22. "The employer shall reinstate an employee maintaining his job grade and status".
- A phrase is inserted under Article 28 (1) (g) that indicates there should be uninterrupted performance evaluation of a worker.
- Under Article 29 (3) a new phrase "giving information" is added.
- The two sub articles of Article 61 was exchanged their position.
- It is mentioned on Article 72 (1) that there is a possibility of applying the labour proclamation on commercial travelers or representatives through employment contract or collective agreement.
- There is a new sub article 6 under Article 79 that states the obligation of an employer to pay money for the annual leave transferred for more than two years due to the reason attributed to him.
- Paternal leave of 5 days is allowed under Article 81(2).
- The prohibition of discrimination on women due to their sex is enlarged to include: discrimination during recruitment, promotion, re-deployment and remuneration. This is mentioned under Article 87(1).
- Article 87 also mentions women should be given priority during recruitment, promotion and re-deployment if they have equal grade when competing with men.
- There was a drastic change made on Article 89 starting from the title. The title is reframed as: "Protection of children from worst forms of child labour and working conditions of young workers".
- Under its sub article "A", Article 89 defines what a child is and the prohibition of employing a child. Then its sub article 3 provides

issues mentioned under Article 3 of C 182 Worst Forms of Child Labour Convention, 1999.

- Under its sub article "B", Article 89 defines the minimum age required to be considered as young worker. Then, the issues provided under Article 5 of C 138 minimum Age Convention, 1973 is stipulated.
- Sub article 2 of Article 92 includes the phrase "the capacity and education of the safety officer" shall be determined by the directives given by the Ministry.
- Sub article 5 of Article 92 clearly mentions that medical examination of a worker does not included examination of HIV/AIDS.
- Article 92 is also designed to have sub article 9 that provides the employer should register his work place on the document prepared by the Ministry.
- In order to make the wordings of the labour proclamation to be consistent with the newly proclaimed pension Proclamation No 715/2011, both sub articles of Article 109 are rephrased.
- The Amharic word of Article 126 that stands for the English word representation is replaced by appropriate word.
- New sub article is provided under article 128 and its content is the inclusion of social dialogue in collective agreement.
- Article 129 has new sub article 7 that allows social dialogue forum at the enterprise level.
- The dead line for the registration of collective agreement is stated to be 3 days. The consequence of delaying of registration of a collective agreement is also mentioned under article 131 (2).
- Article 141 is amended in such a way that the power of the conciliator should include individual labour disputes in addition to collective labour disputes. Moreover, the conciliator can be

assigned at federal level and at all levels of regional administrations.

- Article 142 also mentions that individual labour disputes enshrined under Article 138 is included to be under the power of a conciliator.
- Sub article "h" of Article 170 (1) is modified as a mandatory provision. The provision obliges the employer to have an insurance coverage for the payment of employment injury.
- New sub article 3 that allows the establishment of advisory board at the regional level is mentioned under Article 170.
- Three new sub articles are added under article 177 and their contents are the following:
  - The ministry is empowered to give license and renew it for special kinds of works that require special skill;
  - The ministry is also mandated to give directives regarding controlling mechanism of private employment relationship; and
  - The amount of payment for controlling private employment services will be provided by the regulation of Council of Ministers.
- Sub articles 1 (c) and 2 (d) of Article 184 are revised. The fines are made progressively from birr 3,000 up to birr 15,000 and from birr 5,000 until one year imprisonment respectively.
- Article 2 (1) (h) of Proclamation No. 494/2006 was rephrased to give it a clear meaning.
- Article 4 (1) and (2) of the above proclamation is also revised. In sub article 1 the fine goes from 5,000 birr up to 6 month

imprisonment, where as, in sub article 2 the fine started from 5,000 birr and ends by 1 year imprisonment. [160]

The above mentioned provisions are designed by MOLSA as an amendment provisions that show the limitations the labour proclamation has.

3.2.2 EEF's view on the Limitations of the Labour Proclamation No.377/2003

EEF believes that the following articles of the labour proclamation should be revised due to the reasons mentioned adjacently. And it also argues that some new articles should be added that can possibly fill the limitations the proclamation has.

- Since article 10(2) needs repeated vacancy announcement and making of employment contracts it should be revised as: the contract of employment shall not exceed 90 consecutive days and until the completion of the work started. The reason is to avoid the interruption of the work.
- Particular emphasis should be given to construction works and article 10 of the proclamation should clearly indicate that the construction works should be covered.
- There should be clear provision under sub article 2 of Article 14 which makes an act of a worker unlawful whenever that worker is unwilling to perform an order given to him by his boss.
- The lapse day of terminating contract of employment that is mentioned on article 27(3) should be extended until 90 working days. Because the process of sorting out the reasons for the termination of the employee may take longer time.

[160] A draft document on Labour Proclamation No.377/2003, prepared by MOLSA 2011

- Articles 24, 27 and 28 limit the right of the employer to hire and fire his employees at any time he desired to do. Therefore, EEF suggested that the employer should be allowed to fire his employee upon giving proper compensation. Because, if this right of an employer is not satisfied it will discourage growth of an investment.
- There should be an alternative provision under sub article (1) (c) of Article 28 that shows "whenever either an undertaking or division of an undertaking moves and the worker is unwilling to move to a locality".
- EEF believes that the provision on article 38 that allows three months wage for the delay of payment is not fair. He asserted that the delay may be caused due to work load or due to negligence of the worker that was responsible to do the payment. Hence, it should be rather put "if the worker asked the employer both in writing and orally and if the latter refused to pay, then the former has the chance of payment for the delay".
- Article 39 (1) (f) should be revised. Because if the disability was caused due to the fault of the worker himself, he should not be paid severance payment upon termination of his contract of employment.
- The word "multiplied by", which is mentioned under sub article 3 of Article 40, should be deleted because it becomes controversial in the court of law. Instead it should be stated as monthly salary.
- The provision made on article 41 leads the employer to a double payment; hence, it should be revised to avoid this. It should be qualified and put "those employees who served for 20 years and attain an age of 55 should not get this kind of payment".
- The provision mentioned on article 43 limits the right of the employer. Hence, it should be amended so that the employer can have the right to terminate the employee by giving prior notice.

- Whenever a worker is reinstated in accordance to article 43 (1), the employer should have the right to re-deploy him in whatever position he wishes. Because the former position may be occupied by another employee for the sake of continuity of the work.
- Rather than making the order of dismissal of the worker upon payment of compensation mentioned under Article 43 (3), it has to be left for the discretion of the employer himself. Because the employer that believes the reinstatement of the worker will endanger the business of the organization should have to decide whether to reinstate him or to terminate upon paying compensation.
- Article 54(2) does not take into account the situation of enterprises. It should be better if the article is replaced as, "if it is beyond the control of the employer, the employee should not be paid but should get annual leave without payment. Due to force majeure like that of interruption of electricity, fuel, and lack of foreign exchange the work of the enterprise may be stopped."
- The time limit made on article 63 that allows an extension of two hours on the daily limits of eight working hours should be stretched out up to four hours a day. Because some enterprises like The Ethiopian Air Lines and hotels may be endangered if the time is not extended for more than two hours.
- The wording of article 73 is vague, hence, it should be rather made public holidays mentioned on the government agenda than holidays observed under the relevant law.
- Article 75(2) is not clear regarding the payment of two public holidays coincided in one day.
- The annual leave mentioned on Article 77 (1) (b) should not be more than 35 working days.

- The phrase on Article 81(1) (b) that states, "Another relative by affinity or consanguinity up to the second degree" is not clear and needs revision.
- Article 153 prohibited an appeal on issues of fact but there has to be an appeal right on factual issue as well.
- The appeal right mentioned under Article 154 should also include questions of fact as well.
- There should not be severance payment to workers who reach the age of retirement in accordance to Article 39 (1) and proclamation No 494/2006. Because there is a new pension proclamation, i.e., Proclamation No 715/2011 that is designed for privately owned enterprises and others. Moreover, the service year that qualifies a worker for severance payment should be made 10 years instead of 5 years. [161]

The Ethiopian Employers Federation wished the addition of the following new issues on the labour proclamation.

- The worker should pay court fee upon filing any court case. Because making the court proceeding free of charge led to the multiplication of many labour cases.
- The worker should pay income tax upon receiving severance payment.
- Since the labour proclamation is proclaimed by the federal government all cases should be brought to the Federal. [162]

EEF strongly argued that the labour proclamation has the limitations that are pointed out above and, hence, they need revision in order to minimize the limitation the labour proclamation has.

[161] A document prepared by MOLSA (The stand of the Ministry on draft prepared by both EEF and CETU on the revision of the labour Proclamation No. 377/2003 and minutes of the Committee), (February 2011)

[162] Ibid

3.2.3 CETU's view on the Limitations of the Labour Proclamation No.377/2003

CETU on its part contends that the following articles of the labour proclamation either need revision or an addition of new provisions should be made. There are reasons against each of the articles proposed by CETU.

- Since article 3 (2) merged the definition of managerial position with exclusion provision, it has to be revised. Since freedom of association is a constitutionally guaranteed right the provision on article 3 (2) (f) is contrary to both Fundamental Conventions of ILO and the Constitution of FDRE. Hence, it has to be deleted.
- Under article 14 (1) (d) a sentence that shows the prohibition of an employer not to interfere in trade union matters either by force or any other means should be made. This is because interference of an employer or its organization in trade union matters is clearly prohibited by the two conventions (Convention 87 and Convention 98) and this has to be clearly put in our labour law as well.
- There should be a phrase on article 22 that mentions: *"a trade union leader that was under temporary suspension will be re-deployed on the job grade with his fellow employees that have equal service year with him"* after the suspension period is over. The reason is many trade union leaders have been suffering by being re-deployed on positions that do not fit their professional capacity and in the long run this may lead to discourage trade union leaders not to come to the leadership front.
- Article 27 (1) (a) is not clear as to how many times does an action repeated to be considered as a repeated action. Hence, there should be a clear provision that abandoned the confusion.

- The phrase on article 27 (1) (c) and (f) that says *"according to the weight of his fault"* rise the question by whom and how to measure the fault. Therefore, it has to be determined by collective agreement.
- There should be a phrase on article 28 (1) (a) that shows,*" if the ability of the worker was declining and this is witnessed by evaluations made in different times and if he does not improve his ability after getting trained by the employer".* This is because it is unfair to fire a worker before evaluating him repeatedly and with out giving him an opportunity to be trained and made to improve his ability.
- Before implementing reduction of workers under article 29 (3), the employer should consult trade union leaders. The reason is consulting them will at least minimize further disputes that probably arises after implementation.
- There should be a phrase on article 38 that mentions *"when the employer delayed the payment, the worker should be paid his salary considering that he was on duty.*" Because the worker should not be penalized by the default of the employer and this may make employers to be careful not to delay payments.
- Making a due date for payment of compensation on article 39 (1-3) is irrelevant and against the right's of many workers. Hence, it has to be deleted.
- Article 43 (3) is not a clear provision. It has been interpreted by the court of law and being abused to dismiss workers by mentioning that in order to create a peaceful environment in an industry the worker should be dismissed. Because of this article many workers have been fired by the order of the court due to the allegations by the employer that mentions the return of the employee will interrupt the peace in the industry. Hence, this article should be deleted.

- The phrase mentioned on article 59 (1), i.e., *"work rule"* should be deleted. This is because work rule is produced only by the employer and it is not fair to make it mandatory on employees.
- Under article 79 (5) it is mentioned that annual leave is not transferred for more than two years. But if the worker was forced to work during his annual leave with the consent of the employer, he should not loose his annual leave. He should be either compensated in money or his leave should be transferred to the next year. There should be an obligatory phrase on the revised provision that allows either of the two alternatives.
- Under article 108 (2) of the labour proclamation, there should be a phrase that mentions *"the worker should be fully paid until he is cured or the medical board certified and decided that he is not able to work"*. Because the condition of the worker should be decided by the medical board and until such decision is passed he should not be penalized by reduction of his salary.
- The payment mentioned on article 109 (1) should be effected in accordance to sub article (3) of the same article. Because the other alternative mentioned on this article could not be feasible.
- The provision mentioned on article 115 (1) (a) seems contradictory to the provision stipulated on article 118 (1).Hence, it should be revised to make the two provisions consistent.
- The word on article 126 (1) (a) and (b) *"talking"* should be replaced by a word *"bargaining"*. Because it is not a simple talking rather it is a bargaining process that is aimed to be undertaken between the two parties.
- Under article 130 (6) it should be made in such a way that the former collective agreement should stay effective until the new bargaining is completed. This is because if the limitation mentioned on the

proclamation is removed employers should easily come to collective bargaining.

- List of essential services that is mentioned on article 136 (2) should be minimized so that it should be compatible with ILO convention. Since essential service is related with the right to strike and making the number of essential services too many will weaken the power of trade unions, i.e., the right to strike, their number should be minimized.
- Some provisions of individual labour disputes mentioned under article 138 and collective labour disputes mentioned under article 142 are not clear and this leads to different interpretations in the court of law. These are article 138 (1) (c) that deals about working hour and leave; article 142 (1) (d) that focuses on recruitment and promotion; article 142 (1) (a) that provides salary and other benefits; and article 142 (1) (h) reduction of workers. Hence, it is better to make a clear provision as to which one belongs to which category.
- Although the provisions on articles 139 and 140 mentions that appellate courts do not have appellate jurisdiction on factual matters, they are dealing with them, which is out of their jurisdiction. The reason for this happening is the unclearness of the provision.
- Regarding the composition of board members mentioned on article 145 (1), the professionals assigned by the Minister should not be made decision maker rather they have to serve the purpose of consultation. This is because, if it is left as it is the number of Government representatives will prevail over that of the representatives of the employers and employees and the decision will always fever the government(which is an employer in public enterprises). Hence, this article should be revised.
- The provision under article 171 mentions about advisory board but in accordance to Convention 144 there should be a tripartite forum, which allows discussions to be made at all levels, starting from bilateral

forums at an organization level till tripartite discussion forums at national levels.

- Article (2) (h) of Proclamation No.494/2006 provided that compensation should be made even for sick workers that are not able to work and heirs of a diseased if service was given at least for five consecutive years. But compensation should be effective if a worker was sick and unable to work or died before serving 5 years.
- Although article 2 (3) of Proclamation No.494/2006 mentioned the penalty clause it did not clearly stipulated for how many times the employer will be penalized. Hence, there should be a time limit for the payment of pension due to delay of collective bargaining.[163]

New provisions Proposed by CETU

- Paternal leave is not mentioned on the labour proclamation. But the father should have given ten days of paternal leave.
- A women worker that was forced to abort by the advice of a doctor for medical reasons should be given two months leave of absence with pay.
- There should be an affirmative clause that allows women workers during recruitment and promotion.
- According to the provision on article 142 the conciliator has no power on the absentee after summon has been dually served. But he has to have some power at least for the purpose of enforcing his work of conciliation.
- Although there is a penalty provision on article 184 (1-2), it was not enough to teach as well as to refrain employers from doing wrongs mentioned on the provision. Hence, there should be a grave penalty that can teach them.

[163] A document prepared by MOLSA (ft. nt. 161)

- There should be a provision that protects workers living with HIV and AIDS.
- There should be a provision that penalizes government officials in public enterprises that are found guilty of illegal activities prohibited by the Labour proclamation instead of effecting the payment from government account.[164]

3.2.4 Researchers expression on the limitations of the labour proclamation no.377/2003

From the document prepared by MOLSA the researcher observes that 13 sub articles are proposed for an amendment and 14 sub articles are made to be newly added. Moreover, 4 articles of the labour proclamation were made for an amendment and another 4 articles are proposed as an addition. This made the number of draft provisions prepared by MOLSA that either need some revision or totally replaced by new provision to be 35 articles and sub articles.

The researcher also examines that EEF wishes for the amendment of 12 articles and 11 sub articles based on the reasons mentioned on the draft document. In addition to this the Federation proposed for an addition of 3 new articles. This makes the number of articles proposed by EEF that had limitations to be 26 in number.

Further more, the researcher scrutinize that among the 32 articles and sub articles proposed by CETU 13 sub articles and 5 articles need revision and an addition of 3 new sub articles and 7 articles should be added.

There was a hot debate conducted at the Ministry of Labour and Social Affairs regarding the proposed amendment provisions of CETU. In the

[164] Ibid

presence of his Excellency Dr. Zerihun Kebede State Minister of MOLSA and three of his staff members and Ato Kassahun Follo, President of CETU and four other executive members including the researcher attended the debate held on September 2, 2011. But due to the time constraint the discussion requires another date for debate. Hence, Ato Solomon Demissie, Director, Directorate of Harmonies Industrial Relations of MOLSA with his three staffs and Ato Kassahun Follo, President of CETU, and three other executive members including the researcher made a second round debate on 26 September 2011.

MOLSA in collaboration with ILO held a two days workshop at Adama town on January 4 and 5, 2012 and one of the topics was discussion on the draft Labour Proclamation No.377/2003. The researcher attended this workshop too. As it is made clear earlier there was a hot debate during the discussion sessions mentioned above and at the workshop held at Adama and the researcher scrutinize that the most contentious provisions of the Labour Proclamation No.377/2003 were the following:

- Article 3 (2) that state the scope of application;
- Article 22 effects of expiry of the period of suspension;
- The provision about essential services (Article 136(2));
- Strike and lock out provisions (Articles 157-160); and
- Penalty provisions (Articles 183-185).

Ethiopia as a member State of ILO is duty bound to make her legislation to be compatible with Fundamental Conventions of the latter. The draft provision of MOLSA included Article 2 of C 29, Forced Labour Convention, Article 3 of C 182, Worst Forms of Child Labour Convention and Articles 5-7 of C 138, Minimum Age Convention. The researcher contends that in the same way the draft proclamation should include some articles of the remaining fundamental conventions in order to make the labour proclamation compatible with the fundamental conventions

and to minimize the limitations it has. But from the above mentioned categories of limitations the researcher asserts that the labour proclamation in question has a variety of limitations and is not compatible with the Fundamental Conventions of ILO.

More over, out of the most contentious provisions mentioned above MOLSA was ready to reconsider only the revision of the penalty provision. But the researcher believes that it has to reconsider the other provisions as well so that our labour proclamation can be compatible with Fundamental Conventions of ILO and to minimize the limitations it has.

Conclusion and Recommendations

A. Conclusion

International Labour Standards are the combination of conventions and recommendations and they have been serving as the primary means through which ILO has acted. Member States of ILO are duty bound to make their labour laws trigger with ILS. As it was mentioned earlier, ILO believes that ILS contribute to bring lasting peace, facilitate to tone down potentially adverse effects of international market competition and help the advancement of international development.

The right of trade union is considered as human right and every State should strive for the protection of these rights. This is similar to the obligation mentioned on the constitution of ILO with regard to obligation of States to commend them selves to respect conventions they ratify. Trade union right in its one wing has civil and political issues and in another wing economic, social and cultural aspects. In a nut shell, trade union right has all the elements of the twin covenants and the Universal Declaration of Human Rights.

As it was discussed earlier the fundamental conventions are designed in such a way that obligates member States to respect, promote and realize the eight fundamental conventions for the mere fact of being a member of the ILO whether they ratified them or not. More over, ILO standards and principles on freedom of association and collective bargaining embody a very useful source of assistance for the world community as well as for all nations by ensuring social justice within the context of globalization.

It was referred that full respect for freedom of association and collective bargaining is necessary in order to translate economic development into

social progress and vise versa. Based on this fact, the ILC mentioned that freedom of association and the effective recognition of the right to collective bargaining are the key enabling rights for the attainment of all other rights at work. This means the right to freedom of association and bargaining collectively are the two ground rules on which other rights of workers are established on. In other words, other rights are derivatives of the two most fundamental rights mentioned.

Based on the above mentioned fact the researcher concludes that the labour proclamation under dispute is to some extent compatible with the fundamental conventions of ILO. But it is not compatible with the two essentials on which other rights of workers are established on. This is because, on the one hand, the contested proclamation clearly prohibits certain group of workers not to exercise their right of freedom of association and the right to organize, and on the other hand, it does not include the provisions of the two most essential conventions, which makes it insufficient. More over, the researcher concludes that the proclamation under discussion has many limitations that either needs revision and/or an inclusion of new provisions that possibly minimize the limitations it has.

B. Recommendations

The researcher recommends for the ratification of the following conventions that are highly interrelated with the two most fundamental conventions, i.e. freedom of association and protection of the right to organize, convention,1948 (No.87) and the right to organize and collective bargaining convention,1949 (No.98).

Although Convention No.98 refers to the protection which shall be enjoyed by workers and trade union members, it does not specifically address the question of the protection of workers' representatives, nor

the facilities necessary for them to carry out their functions. [165] Hence, the researcher recommends the Ethiopian government to ratify the workers representatives' convention, 1971 (No.135), since it supplements the provisions of convention No.98 relating to anti-union discrimination. This means ratification of convention no.135 will fill the gap on convention 98 and support it.

The researcher also recommends for the ratification of Convention No.141. This is because the convention sets forth the right of rural workers to establish and join organizations of their own choosing with a view to participate in economic and social development and in the benefits resulting from it. These organizations must be independent, established on a voluntary basis, and must remain free from all interference, oppression or despotism. The Convention reaffirms the principles set out in Convention No.87 concerning respect for law of the land and the acquisition of legal personality. [166] Hence, ratification of convention 141 will pave the way to enable workers in rural areas to set up and join their own organization like workers in industrial sectors that will assist convention 87.

The Labour Relations (Public Service) Convention, 1978 (No.151) was adopted considering the fact that Convention 98 does not cover certain categories of public servants and Convention 135 only applies to workers' representatives in enterprises. Convention 151 is designed to be applicable to all persons employed by public authorities. Nevertheless, it is left for national laws to determine the extent to which the guarantees provided for in the convention shall apply to: high-level employees whose functions are normally considered as policy-making or managerial; employees whose duties are of a highly confidential nature; and the

[165] *Fundamental rights at work and international labour standards, (ft.nt.*5)(8)
[166] Ibid (9)

armed force and the police. In a nut shell, Convention No.151 provides that public employees shall have similar civil and political rights as other workers which are essential for the normal exercise of freedom of association, subject only to the obligations arising from their status and the nature of their function.[167] Due to their significant importance, the researcher recommends for the ratification of this convention as well.

[167] Ibid (11)

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