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The Legal Framework for Trade Unionism in Ethiopia: A  
Historical Perspective

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**Abstract**

This article attempts to assess the emergence and development of the legal framework for trade unionism in Ethiopia in the last forty years. The forty years period covers the time when the first legal instrument for trade unionism was issued until the issuance of the labour law currently in force (i.e. 1963-2003). As Ethiopia has been a member of the International Labour Organisation (ILO) since 1923 and a signatory to the relevant ILO conventions for freedom of association since 1963, whether the national legal framework has been in line with the dictates of the ILO standards in this regard shall be the major task of the present exercise. Interestingly, the last forty years of Ethiopian history has witnessed three governments one succeeding and replacing the other by force. Each of them has also had their respective labour laws reflecting their political and socio-economic policies which were also different from one another. Regardless of such diversity in policies between the successive Ethiopian governments, however, their laws on unionisation have been consistent with each other in being inconsistent with the ILO standards on freedom of association.

**Keywords**

Trade unionism, union membership, independence and autonomy, Ethiopia

## Introduction

It has been frequently stated that human beings are social animals in that it is unimaginable to think of a normal human person out of a collective way of life. In fact, traditional societies managed to overcome the hardship emanating from nature and beasts through their collectivity and collective action. Hence, collectivisation is an inherent character of the human family and denial of associating would be unnatural. In modern world too, collectivisation is believed to be a source of strength, power and a manner of expressing 'organised voice' on issues of common interest.

From the perspective of industrial relation, ILO, ever since its establishment, has been of the view that the issue of freedom of association is 'of urgent importance' owing to its contribution to the attainment of social justice and lasting peace. Indeed, the very existence of the ILO is dependent upon social organization as it presupposes a tripartite arrangement in which governments, employers' and employees' representatives are expected to actively engage. In Ethiopia, laws allowing for trade unionism have been in place since 1963. Within this period, three governments have come and pass the one replacing the other by force. The Imperial regime was overthrown, after 44 years in power, by the military regime (locally known as the *Dergue*) and the latter was forcefully removed, after 17 years in power, by the current government some twenty years ago. Each of the government possesses its own labour law reflecting its respective socio-economic and political set up. This piece argues although Ethiopia has been an ILO member since 1923 and a signatory to both ILO conventions No.87 and 98 since 1963, its levels of compliance towards these international instruments in terms of formulating domestic laws consistent with the conventions is yet to be desired.

## Freedom of Association: International sources

The principal legal sources pertaining to freedom of association at international level are the international human rights instruments both of a global and regional coverage. Among the instruments of global application are: the Universal Declaration of Human Rights (UDHR) (1948), International Covenant on Civil and Political Rights (ICCPR) (1966), and International Covenant on Economic Social and Cultural Rights (ICESCR) (1966). Content wise, Article 20(1) of the UDHR provides that 'everyone has the right to freedom of peaceful assembly and association'. Art.22 of the ICCPR, on its part, provides: 'everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.' The ICESCR too has a provision on 'the right of everyone to form and join the trade unions of his/her own choice'.

There are also instruments of regional application in which the right to freedom of association has been spelt out. These include instruments such as the European Convention on Human Rights (1950),<sup>i</sup> The American Convention on Human Rights (1969)<sup>ii</sup> and the African Charter on

Human and Peoples' Rights (1981)<sup>iii</sup>. They are destined to apply to signatories in Europe, Americas and Africa respectively.

The way the international human rights instruments have been drawn up is a broad framework in the sense that it enables every human person to have the right to associate. They cover all social, political and economic combinations of social life. This may range from formation of political parties and consumers' associations to associations of hobby clubs (Wedderburn 2003, p. 249). In the context of employment relations, this right is available both to employers and employees. In fact, the Treaty of Versailles of 1919, the source document for the ILO, underlined that 'the right of association *for all lawful purposes* by the employed as well as by the employers'<sup>iv</sup> was held to be among the 'principles of special and urgent importance.'

The Philadelphia Declaration of 1944 reaffirmed the ILO's commitment to four most important principles among which freedom of association is one. In addition to these, membership to the ILO has been conditioned upon formal acceptance of the Constitution including the Declaration of Philadelphia where the principle of freedom of association has been enshrined in both (ILO 1996, para.10). Nevertheless, it is with the coming into being of Convention No.87 (1948) that this fundamental principle was translated into specific enforceable rights and obligations available to employees and employers as well (Dunning 1998, p. 163).

It is important to underline, however, that though the right is available both to employees and employers, in practice, it is the employees who demanded and badly needed associations. This desire for collectivization emanated from their weak bargaining positions when and if they were to bargain individually. It was stated earlier that association is a source of strength. Records of the Committee on Freedom of Association confirmed that most of the complaints before it which are associated with impediments to freedom of association have been brought to its attention by trade unions (ILO; 1996). It should be noted that 'the individual employer is already a collective power in being a holder of capital' (Deakin and Morris 2009, p.675).

In fact, the framers of various international instruments seemed to duly appreciate this fact when they introduced a specific provision on 'the right to form and join trade unions' which has been addressed specifically to employees in addition to the general provision on freedom of association which entitled both employers and employees to associate. This should not however lead us to the conclusion that freedom of association is irrelevant to employers' altogether. On the contrary, on the face of organized labour, single employer may, relatively, prove to be weak and hence the need for employers' association would be seriously felt as well.

In the African context unionisation was very much associated with the introduction of industrialisation and the latter was closely connected with colonisation. As industrialisation and industrial relation were brought with colonial powers into the African continent, unionisation, in

the African context, had multiple objectives and responsibilities to attain (Bean 1994, p.221). The colonial industrial relation expressed itself, among other things, in discriminatory treatment in general and discriminatory payment in particular between the foreigners and indigenous labour force. Militating against such a discriminatory treatment appeared to be one among the many objectives of trade unionism in Africa. Moreover, unionisation was instrumental in expressing organised voice against exploitation of labour by capital. Last but not least, it was also an aspect of the struggle against colonisation (Bean 1994, p.214). It, thus, had human, economic and political dimensions as a result of which significant overlap between the various goals was being observed.

### **Early days of labour combinations in Ethiopia**

Development of labour relation was very much associated with the emergence of industries and industrial relations. The economic basis for labour relation has been the productive interaction, and at times the confrontational engagement, between capital and labour. From this perspective, it must be admitted from the outset that capitalist mode of production has been slow in pace and low in development in Ethiopia (Baudissin 1965, p.101). Ethiopian labour relation is more or less an out come of such a slow and prolonged economic and social transformation. It is also argued that the cultural and legal conditions that prevailed in the country have negatively contributed to the sluggish development of capitalist relation.

Culturally, Ethiopian society had looked down labour and labourers and the tendency of despising both trade and manual work (Redden 1968, p.13; Seyoum 1969, p.6; Voice of Labour 1971, p.12; Guadagni 1972, p.1). In fact, there has been an Ethiopian proverb which states that *'from cleverness of hands comes serfdom and from cleverness of tongue the master'*. Such a societal attitude towards labour had annoyed Emperor Menelik II, the early twentieth century ruler of the country, who promulgated, the following Decree in 1908:

*'Let those who insult the worker on account of his labour cease to do so. You by your insults and insinuations are about to leave my country without artisans who even make the plough. Hereafter any one of you who insults these people is insulting me personally (Mahteme Selassie 1949, p.432).*

It was at the beginning of the twentieth century that capitalist mode of production began to emerge in Ethiopia (Daniel 1984, p. 157). The victory at the Battle of Adwa (1896) against the Italian invasion by Ethiopian forces was a significant success for Emperor Menelik II subsequent to which his international visibility was enhanced (Bahru 2002, p.111). This paved the way for the Emperor to discuss matters of common interest and concern with European powers on an equal footing. As a result, the Emperor began to establish formal diplomatic ties with the European super powers of the time (Britain, France and Italy) that had colonial presence bordering the Ethiopian territories.

The present neighbouring countries of Ethiopia by then were under the occupation of these European powers. Eritrea was then under Italian colonial administration; the Sudan was under British rule; Djibouti was under the French domination while Kenya belonged to the British colonial system. Moreover, each of the colonial powers had territorial possessions in the present day Somalia (Italian Somaliland, French Somaliland, and British Somaliland). Through the long and porous borders of the country capitalist elements, ideas and attitudes were being introduced into the then feudal Ethiopia through the medium of, among other things, missionaries and missionary schools; merchants and diplomatic envoys. Thus, unlike the situation in Europe where capitalism was a result of internal dynamism and transformation, initial capitalist relations in Ethiopia were transplantations and spillovers from the neighboring colonized territories (Bahru 2008, p.104).

The conventional path towards capitalist development as observed in many industrial countries has been a transformation from peasant farming to mechanised agriculture and from artisans and handicrafts to factory and machinery establishments. In a sense, it was the agriculture and the manufacturing sectors that developed first and the service sector emerged and developed at a later time in social transformation (Sheehan 2008, p.5). In light of this, it could be contended that the Ethiopian capitalist development was an 'unconventional' one in that the initial capitalist manifestations in Ethiopia expressed themselves through the establishment of the service sector. Railway, telecommunication and banking services were the earliest capitalist establishments in Ethiopia.

The commencement of the construction of Franco-Ethiopian Railway (1889) by the Franco-Ethiopian Railway Company, and the establishment of telephone and telegraph connections along the railway lines (Paul and Clapham 1967, p.319; Aberra 2000, p.111) by the same company; and the incorporation of the Bank of Abyssinia by the National Bank of Egypt (1905) were the early manifestations of capitalist development in Ethiopian history (Aberra 2000, p.113; Bahru 2008, p. 104). Such economic establishments tend to reinforce the argument that Ethiopia's initial capitalist development was not a result of an internal dynamism but rather primarily and predominantly an imported one.

Whichever way the industrial development moved, however, these establishments attracted appreciable number of unskilled labour from the countryside. As the skilled labour for those industries was coming from abroad, Ethiopians had the opportunity to work with or under the supervision of foreigners, particularly with the French and Italian nationals. The collegial work enabled Ethiopian employees to gain experience as to how industrial relation operated in continental Europe. In fact the Franco-Ethiopian railway company employees had regular contacts with workers in France (CETU 1991, p.161).

The fact that Ethiopian employees had the opportunity to work alongside with Europeans enabled and exposed them to a fairly enlightened mode of industrial relations that was being exercised in the part of the world where industrial relation has had stronghold. Particularly, with the Italian occupation of Ethiopia during the Second World War, and the influx of many Italians as workers and supervisors, such exposure to modern industrial relation became more visible. Nevertheless, working in close proximity with foreigners, though advantageous in terms of acquiring experience in industrial relation, was associated with discriminatory treatment in general and discriminatory payment in particular. Even though, all employees had common grievances against their employers, Ethiopian employees had additional grounds for dissatisfaction due to the fact that foreigners were preferentially treated and relatively well paid compared with their Ethiopian counterparts in comparable job positions (Pankrust 1971, p.32).

Be that as it may, there were common concerns to all workers in working conditions such as excessive working hours and absence of paid leaves of any sort were some of them. There was, for instance, an incident resulting in discontent of workers which was associated with sick leave of a certain employee. This incident was related to the 'Ethio-fiber factory' which employed 200 workers at the time. 'A certain female employee of the factory fell sick and was absent from work. Her relatives communicated this fact to the employer in due time. But the employer was suspicious as to the accuracy of the information and demanded that the employee should somehow appear before it. Relatives of the employee took her to the premises of the factory on a stretcher. Unfortunately, the patient employee died while at the shoulder of the people carrying her back home, after verifying to the satisfaction of the employer that the employee was indeed seriously ill' (CETU 1991, p.38).

Immediately after this incident, a wildcat protest erupted within the workers' community in general and within the premises of Ethio-fiber factory in particular. Indeed, prior to this incident, there had been another strike, in Dire Dawa, at the Franco-Ethiopian Railway Company<sup>v</sup> where around 1500 workers consisting of French, Italian, Greeks, Djiboutian and Ethiopian nationals unanimously demanded for, among other things, a wage increment, reduction of daily working hours and improved working conditions (CETU 1991, p.22). The coordinated measures showed to all concerned that employees' differences in nationality or other variables did not necessarily pose any threat to waging a united struggle towards a common good.

Initially, the Franco-Ethiopian Railway Company employees had established a 'self help' association, in the name '*Syndicate des Cheminots Ethiopien*' (Voice of labour 1971, p. 13) through which employees were horizontally assisting each other in times of economic need. As formation of trade unions was not allowed by law, that was the possible and feasible form of combination. With passage of time and change of events, however, the *syndicate* at the Franco-Ethiopian Railway Company managed to obtain *de facto* recognition by the employer in 1947. Consequently, it gained concessions from the employer in narrowing the wage differential

between Ethiopian and expatriate employees; in limiting the employer's measure of dismissals and other issues pertaining to working conditions (Voice of labour 1971, p.5).

Being inspired by the successes of the employees of the Franco- Ethiopian Railway Company, many employees in various enterprises engaged themselves in establishing 'mutual insurance' and friendship societies locally known as *Idir*, *equb* and *meredaja* in their respective premises (Voice of labour 1970, p.13). These associations of mutual assistance had helped to mitigate the employees' economic hardships created by employers' unilateral and arbitrary measures such as dismissals, uncompensated employment injuries, old age and illnesses (Morehous 1970, p.242).

Thus at the early stages of labour movements in Ethiopia, as formation of trade unions was not permitted by law, employees were inclined to associate themselves in the form of mutual assistance, cooperative and self-help associations which did not have direct dealings with employers. This historical trend seemed to be consistent with the early labour movements in other jurisdictions where 'friendly societies' of employees were the way towards helping each other horizontally in times of need (Slomp 1996, 32).

### **Constitutional Recognition of Freedom of Association in Ethiopia**

With the promulgation of the 1955 Revised Constitution of Ethiopia, on the occasion of the silver jubilee of the Emperor Haileselassie's coronation, freedom of association was for the first time officially and constitutionally recognised in the country. The then Emperor, Haileselassie I, handed down the provisions of the 'Revised Constitution' to his 'subjects' with the following introductory remark under the preamble:

*We, Haileselassie I, (...).hereby proclaim and place into force and effect as from today the Revised Constitution for the benefit, welfare and progress of Our beloved people.*

The 1950s was a time when the negative social effects of the Second World War were fresh in the memory of mankind and hence concern for human rights was high on the agenda of the international community. Particularly, it was a period immediately after the unanimous adoption of the Universal Declaration of Human Rights (UDHR) of 1948 that incorporated labour rights was by the UN General Assembly. As noted previously, Ethiopia was one of the oldest members of the League of Nations, having joined in 1923 (Teferra 2007, p.3) and maintained its membership after the League's transformation into the United Nations. Furthermore, this same period witnessed the adoption of the two important ILO conventions on the subject matter under discussion (i.e. Convention No.87 on Freedom of Association and Convention No. 98 on Collective Bargaining) by the ILO in 1948 and 1949 respectively.

An additional factor to be considered here is that, Eritrea which was an Italian colony from 1890-1946 was associated with Ethiopia through a federal arrangement by the decision of the UN in 1950, as part of the UN's resolution on the fate of former Italian colonies based on the Paris



Peace Conference of 1946 between the allied powers and Italy (Bahru 2002, p.183). Consistent with this federal arrangement, the Ethiopian government issued a Federal Act, in 1952, declaring the integration of Eritrea into Ethiopian sovereignty as a federated member. While under Italian colonial rule, Eritrean labour force had a relatively better opportunity for unionisation than the situation of labour in Ethiopia (Baudissin 1965, p.102; Seyoum, 1969) possessing a lawfully established trade union since the 1940s (Stutz 1967, p.38). Compared to the hinterland Ethiopia, industrial development and industrial relations were more advanced in Eritrea due to the long and uninterrupted colonial presence of the Italians there. Therefore, it was politically expedient to preserve, within the federal set up, the rights of the Eritrean labour that had been already acquired under Italian colonialism so that the Eritrean labour force would feel at home in the federal arrangement with Ethiopia.

Moreover, even within the mainland Ethiopia, labour had shown relative numerical increase and geographic concentration due to the establishment of textile, beverage and sugar factories which by their very nature were labour intensive. Although, the total number of the workforce was no more than 50,000 at the time, it was geographically concentrated within and adjacent to the Addis Ababa- Dire Dawa railway route (Bahru 2002, p. 200; UNDP 2003, p. 85) an economic corridor where transport facility, communication and electric power were relatively more secured. Such geographical concentration provided the labour force with the leverage to exert pressure on the government to address the concerns of labour. Therefore the inclusion of labour sensitive provisions within the Revised Constitution seemed to have been dictated both by national and international circumstances.

The Revised Constitution of 1955 devoted a full chapter (Arts. 37-65) towards ‘Rights and Duties of the People’. Among the rights enshrined in the latter instrument which were relevant to labour relation were ‘freedom of speech’ (Art.41); the right to ‘peaceful assembly’ (Art.45) and ‘the right to form or join associations in accordance with the law’ (Art.47). But in the words of Bahru, the ‘provisions of human rights, such as freedom of speech and of assembly, were inserted [in the Constitution] largely for purposes of formality in the sense that in most cases they were accompanied by such a limiting phrase as ‘in accordance with the law’ or ‘within the limits of the law’ (Bahru 2002, p.206). They, in Bahru’s view, were more of public relation exercises meant to mainly appease international partners rather than a genuine attempt at respecting and implementing the specified rights.

Most of the fundamental rights enshrined in the Constitution, including the provision on freedom of association, were accompanied by the phrase ‘(...) *in accordance with the law*’<sup>vi</sup>. This implied the need to issue an ordinary law necessary to its implementation (Morehous 1970, p.242). Hence, the Revised Constitution should have been followed by implementing legislation providing the details such as minimum number of membership for trade union formation, procedures for registration and the registering authority if the rights were to be meaningfully

exercised (CETU 1991, p.171). But until the adoption of Labour Relations Proclamation of 1963 no implementing instrument was put in place. Admittedly, prior to 1963, the Civil Code of 1960 had also provisions for the establishment of civil associations but it was not drafted in a manner towards enabling trade unions to bargain in order to protect their interests.<sup>vii</sup>

In a nutshell, it may be argued that the Revised Ethiopian Constitution of 1955 had been an important step towards the development of labour rights (Morehous 1970, p.242), but its limitation should not be underestimated either. The Constitutional provisions on freedom of association, as indicated above, did not bring implementation legislation with them because of which their practical implementation was delayed for years. They allowed freedom of association '(...) *in accordance with the law*' but the anticipated law and its contents were not readily available for about eight years whether by default or by design. This put the era of the Emperor, as contended by Bahru, under suspicion as to its political commitment towards respecting and ensuring freedom of association.

As a result, workers in the meantime were compelled to undertake clandestine meetings as to how best they should deal with their employers. For instance in 1961, leaders from workers' organisations representing eleven companies met secretly in Addis Ababa to discuss on a 'united front' on how to deal with the government and their respective employers. Following this, a series of wildcat strikes and demonstrations were held at the larger companies (Morehous 1970, p.243). The most serious of the strikes was the one that lasted more than a month which was called by the famous France-Ethiopian railroad workers (Seyoum 1969, p.28). The Frequent and wild strikes not only negatively affected production process and industrial peace but also began to harm social stability. They also began to endanger the apparent political stability of the Imperial rule as witnessed by the 1960 attempted *coup*. Consequently, the need to minimize and regulate strikes came to the forefront so that production process could be unhampered and social and political stability maintained.

### **Formal establishment of industrial unions in Ethiopia**

As indicated above Ethiopia has been a member of the ILO since 1923. Even though the ILO Constitution required member states to commit themselves to the 'fundamental principles of the Organisation' among which freedom of association is one, Ethiopia, for long, appeared to drag its feet in laying down the requisite legal framework for the formation of associations. It was in 1963(i.e. after 40 years of ILO membership) that it introduced a law (i.e. Proc. No.210/1963)<sup>viii</sup> on formation of industrial associations and their mode of operation. Incidentally, it is also worth reminding that, it was at this time (in 1963) that the two important ILO conventions on the subject matter under discussion (i.e. Conventions No.87 and 98) were also ratified by the country.

The 'Labour Relations Proclamation' (Proc. No.210/1963) underlined the importance of associations and collective bargaining in its preamble by stating that:

*(...) the promotion of a higher standard of living is greatly dependent upon the harmonious and voluntary co-operation of labour and enterprise; and such cooperation should have as its objectives the creation of prosperous labour conditions in all enterprises and the settlement of labour disputes through collective bargaining between employers and employees or their lawfully established representatives.*

As soon as the Labour Relations Proclamation (1963) entered into force, 109 trade unions consisting of 60,000-70,000 workers were formed and registered within less than a year's time (Teferra 2007, p.21)<sup>ix</sup>. The significantly high number of trade unions being formed within a short period tended to indicate that workers were eager for unionisation. It seems fairly obvious, as indicated above, that it has been the weaker party that badly needs to associate as leverage towards collective and organised voice. History of labour movements worldwide and grievances submitted before the ILO Committee on Freedom of Association indicated that the demand for freedom of association has been predominantly and mainly the concern of employees rather than employers.

Within months of the promulgation of the Proclamation, the Confederation of Ethiopian Labour Union (CELU) was established, in April, 1963, as a labour organisation at the national level (Voice of labour, 1970). The employers had also an organisation of their own in those times. The formation of associations both for the employees and employers' enabled an Ethiopian tripartite delegation (composed of governmental, workers' and employers' representatives), for the first time, to attend the 47<sup>th</sup> annual General Conference of the ILO in June 1963 (CETU 1991, p.161; Ananaba 1979, p.46; Baudissin 1965, p.109)<sup>x</sup>.

Art. 3 of the ILO Constitution required member states to compose their respective core delegation with two government representatives, one employers' association representative and another one a trade union representative. Until this time, although Ethiopia was a member of the Organisation, it did not possess the proper representation at the previous ILO conferences as it had no full-fledged tripartite delegation as required by the ILO Constitution (Morehous 1970, p.243). Consequently, prior to this, Ethiopian government representatives had occasionally attended ILO conferences as observers (Stutz 1962, p.32).

The decision to adopt the Labour Relations Proclamation, it can be argued, might have been dictated, as usual, by a combination of domestic, regional and international factual situations. Domestically, as indicated above, it had been witnessed that repeated demands for respect to unionisation was accompanied by wildcat strikes. Whilst the labour force was displaying such a sense of dissatisfaction against the then existing legal and social order, an attempted military coup in 1960 had promised, among other things, the expansion of the industrial and educational

base of the country, the establishment of new factories, respect for fundamental and democratic rights (Bahru 2002, p.213; Kale Kristos 2005, p.118; Adejumobi 2007, p.123).

Establishment of new factories would have created employment and respect for fundamental and democratic rights would have addressed many of the collective demands of labour. Hence, the coup organisers seemed to have sought the support of the Ethiopian labour force by making such promises. Even though the coup failed, the government felt that there was a political necessity to avoid further and similar attempts by, among other initiatives, positively responding to and addressing some of the promises made by the coup organisers with a view to securing the support of the labour force.

There was also a regional factor to be considered here. With some African countries gaining independence beginning from the second half of 1950s, preparation for the establishment of Organisation of African Unity (OAU) was underway. Addis Ababa (the capital city of Ethiopia) was selected for a seat of the OAU and it was scheduled to host the first meeting of the African Head of States in May, 1963. Most of the newly independent African states by then had vibrant trade union movements symbolising an organized voice against both exploitation and colonialism (Stutz 1962, p.35). It was an embarrassment to the 'non-colonised' and 'symbol of independence' Ethiopia to appear devoid of trade unionism in the face of those 'guests of honour' who would expect more liberated labour relation in Ethiopia than in the newly independent African states (Seyoum 1969, p.32; Morehous 1970, p.244; Ananaba 1979, p.45).

Internationally, formal participation at the ILO conferences demanded tripartite representation and hence formation of associations was a prerequisite to this. The ratification of the two conventions (i.e. Conventions No. 87 and 98) had also required an implementing instrument to give them effect in domestic setting. Furthermore, the period after the Second World War, particularly the 1960s, was a period when Marxist-Leninist parties and 'dictatorship of the proletariat' had significant coverage in Eastern and Central Europe, parts of Asia (China, North Korea and Vietnam) and Cuba. Moreover, the Civil Rights' Movement in the US was also a movement of the 1960s when the need to address concerns of the historically disadvantaged sector of society (labour, color and gender were among the factors) was of paramount importance.

At the level of international private actors too, during this same period, both the International Confederation of Free Trade Unions (ICFTU) representing the 'Western bloc' labour movement and the World Federation of Trade Union (WFTU) as a representative of the 'Eastern bloc' labour movement were actively involved in African labour movements with a view to broadening their ideological sphere of influence (Stutz 1962, p.36) and putting pressure on the introduction of laws for unionisation everywhere. In general, it would be safe to state that the 1960s was a period of labour primacy and militancy worldwide. Thus, all these internal and

external factual circumstances seemed to have pressurised the then Ethiopian Emperor to issue the labour relations instrument urgently without even waiting for the parliament to reconvene from its recess.

Although its adoption was considered a success to the labour force, the Labour Proclamation appeared to have an implicit objective of restricting and monitoring trade union activists and activities more closely. For instance, the law empowered the registering authority to require the list of names and addresses of the founding members; members of the organisation and officers of the organisation (Art.21; Proc. No.210/1963) which had intimidating effect to union activists. In this connection the then Secretary General of CELU, Beyene, in his recent book put the challenge of the time in the following manner:

*(....) we [the labour activists] continued organizing workers in enterprises; however, the political atmosphere was very tense and members of the National Security and the Palace were hindering the progress of our undertakings. Some of our members would be arrested while others were physically intimidated (2010; p.67).*

Moreover, with a view to regulating strikes, the Proclamation laid down mandatory negotiation and conciliation requirements towards resolving labour disputes as a precondition to embarking on industrial actions. Hence, the law, while granting the right to unionisation on the one hand, had on the other hand the objective of avoiding strikes to the maximum extent possible (Ananaba 1979, p.45). In this regard the following highly critical narration of a certain union activist in a bakery is quite revealing and worth quoting at length:

*Your union has tied our hands and feet. Before you organized us [unions were allowed] we used to get substantial concessions from employers by merely threatening to walkout. The employers know that we do not kid when we threaten-the work, the flour even the equipment was not safe. Yet now you have advised us that through the union we have first to discuss with our employers, then if we are not satisfied we have to submit our grievances to the Labour Relations Section of the Ministry and if we are not reconciled by the Section we have to lodge our dispute with the 'Labour Relations Board'. The case does not stop there; either employers or employees can appeal to the Supreme Imperial Court on the decision of the Board(...) Yes, your union has weakened our unity. We neither have the money, the time nor the manpower to follow up our disputes through these channels. Your union has only tied us to the benefit of our employers (Voice of Labour 1970, p.11).*

On the other side of the ledger, however, the employers' side for its part was of the view that the coming into effect of a law which legalized unionisation was not appropriate to the then prevailing stage of industrial development of the country. An employer in a major enterprise had, then, spelt out his objection to the Proclamation in the following manner.

*'Trade unionism to developing Ethiopia is a luxury. You merely follow the system and practices of developed countries like England and France and are crippling our budding economy. You are discouraging foreign investment [by issuing such a law]'* (Voice of Labour 1970, p.11).

Resistance emanating from self-interest to the introduction of new policies and working systems has been natural in social interaction and the above interest oriented views reflected such a social reality. Although the representativeness of the above mentioned views may be debatable, in general terms, labour activists seemed to consider the law as restrictive while employers were of the opinion that it was a premature and untimely instrument to then existing industrial setting.

Nevertheless, regardless of the divergent views mentioned above, the coming into effect of the 'Labour Relations Proclamation' paved the way for the development of labour law as a distinct branch of law out side of the Civil Code in terms of structure and content. Its distinct nature may be inferred from the contents of the proclamation among which the following three considerations are particularly noteworthy. First, the new instrument incorporated special rules (other than the provisions of the Civil Code) for formation of associations in the industrial sector together with spelling out their rights and obligations.

Second, detailed rules on collective bargaining and collective agreements together with rules on strikes were put in place. Third, the Proclamation provided a Labour Relations Board, unique tripartite labour dispute settlement machinery out side of the ordinary courts.<sup>xi</sup> These all were significant departures from the Civil Code and a paradigm shift in the way labour relations and the dispute resolution thereof should be distinctly viewed and understood.

With these transformations, however, the Proclamation had its provisions of concern in terms of minimum number of membership for unionisation and prohibition of organisations from political engagement. The law provided that 'no labour union may be created in an enterprise employing less than fifty employees' (Art.20(c); Proc. No 210/63). Admittedly, the Committee on Freedom of Association of the ILO, in principle, has not been against laws prescribing minimum number of membership to form a trade union but it has been of the view that 'union formation should not be considerably hindered or even rendered impossible by fixing too high a figure'. In this connection, the Committee on Freedom of Association had expressly stated that a law that required a minimum membership of fifty employees was too high (ILO 1996, para.255). Hence, when viewed in the light of the ILO prescription, the labour proclamation which required a minimum of fifty employees for basic trade union formation was excessive. This excessive number of membership was also unrealistic in the sense that given the low level of industrial development in the country at the time, there were very few enterprises that met such an amount of labour force. As a result, the higher threshold of membership fixed by the law significantly limited the exercise of the right to unionisation at those times (MOLSA 1983, p. 47).

In addition to this, the law had an express provision prohibiting associations from engaging in any political activity whatsoever (Art.22(c); Proc. No.210/1963) other than economic issues. It is debatable whether politicisation of labour movement was a well-founded fear at the time. But the fact was that unlike trade unions in most parts of the African continent whose trade unions' activities were combined and at times overlapping with the struggle against colonialism, this was not the case in Ethiopia as it was not physically colonised by any foreign power. Nonetheless, the express exclusion of industrial associations from political activities was also geared towards 'neutralising and depoliticising the labour force' in its relation with the governmental machinery. However, such a generalised prohibition of trade unions from engaging in any political activities is held to be incompatible with the principles of freedom of association (ILO 1996, para: 455). To sum up, therefore, although the promulgation of the labour law providing for union formation was a step forward in the right direction, the excessively higher threshold for union membership and the total exclusion of trade unions from politics proved to be against the spirit and object of the relevant ILO instruments.

### **Industrial unions under the Military Regime**

The military regime dethroned the Emperor in 1974 and assumed political power as a 'provisional' government and remained in power for about seventeen years. As soon as it assumed power it declared that its economic policy shall follow a socialist path of development as a result of which all privately owned major means of production and distribution were put under state hands by law. In terms of democratic set up too, the 'dictatorship of the proletariat' was formulated. With this economic and ideological orientation, the military regime repealed the Labour Proclamation of 1963 which was framed in such a way that employers and employees were provided with equal opportunity in the formation of associations. In its stead another Labour Proclamation No.64/1975 that single handedly entitled employees to form trade unions with out providing similar opportunity to the employers was adopted.

In line with the then prevailing ideological orientation and with a view to creating favourable condition for unionisation, the Labour Proclamation of the military regime set the minimum number of membership to form a trade union at enterprise level to be twenty employees(Art.49(2); Proc. No.64/1975). Reduction of minimum number of membership from fifty to twenty created an enabling environment for employees in smaller enterprises to unionise. As a result, the indirect restriction to unionisation of the Imperial era by providing unattainable threshold of union membership was rectified by reduced membership requirement to a reasonable level. Being initiated and encouraged by the new socialist political setting and relaxed legal framework, around 290,000 employees were organised under various industrial unions within a short span of time (Beyene 2010, p.165).

Unlike the time of the Emperor when some employers were inclined to take retaliatory measures against trade unionists and union organisers, there was no fear of retaliation associated with

unionization and union leadership during the military regime as long as they were not working against the political system (Tamiru *et al.* 2005, p.40). Incidentally, it should be mentioned that though private enterprises were nationalised, in some instances, the management staff remained in office managing those enterprises as replacing them within short span of time was unfeasible. Thus, workers' associations were considered as 'vigilante group' entrusted with the power to check the possible 'economic sabotages' of the management group which was ideologically hostile to the new socialist system (Daniel 1986, p.125).

However, the labour law of the military regime prescribed that it was only a single trade union that could lawfully be established at enterprise level (Art.49 (2); Proc. No.64/1975) thereby expressly declaring the 'monopoly union' principle. This principle was logically consistent with the uncontested single and ruling 'proletariat party' at the level of political leadership. Not only that there were single union and single lawful party but also that, at times, there existed overlapping of responsibilities in the sense that trade union officials were at the same time influential figures in the political set up.<sup>xii</sup> Interestingly enough, as indicated above, the Imperial regime was doing everything at its disposal, including legislative measure, to restrict trade unions from involving in political affairs. Conversely, the military regime brought about a paradigm shift by engaging and encouraging trade unions to step into the political arena. Hence politicisation of trade unions became the order of the day.

A point to note however is the 'politicisation' of trade unions was not a blank cheque given to the unions in the sense that they were not at liberty to make affiliation with any political party of their own choosing. In fact there was only one legally recognised party which was the ruling party at the time. In this regard, the national labour organisation was entrusted by law 'to guide and supervise the labour movements and issue directives to unions to ensure their functioning inline with *socialist* principles (Art.52 (3); Proc. No.64/1975; Art.4; Proc. No.222/1982). Hence, the military government was determined to organise the labour force in a way that fitted its political orientation. As a result unions were mere 'conveyer belts' between the governments in power and the 'working class' without having real autonomy and an independent action plan.

Furthermore, the law made first level trade unions subordinates to higher ones (Art.50 (4); Proc. No.64/1975) thereby introducing 'democratic centralism' a position which tended to undermine freedom of association in its full-fledged form by restricting the autonomy of the basic trade unions. Moreover, Art. 50(7) provided that 'lower trade unions shall be obliged to accept and implement the decisions of the higher trade unions'. As a result, basic trade unions were in effect considered as branch offices to the higher ones. Finally, it prescribed the establishment of an 'All Ethiopia Trade Union' as a single umbrella trade union at national level (Art.51 (2); Proc. No.64/1975) instead of leaving such issues to be decided internally by the unions themselves. Even though, the relevant ILO conventions allow associations at all levels to freely establish international affiliations (ILO 1996; para: 623), the labour law of the time limited the



establishment of international cooperation to be undertaken only by the national association at the top without offering similar opportunity to first level or mid level employees' organisations.

In a way it must be admitted, therefore, that the apparently favourable legal framework towards unionisation during the military regime had a trade off in terms of loss of autonomy and independence as they were made politically affiliated with the regime in power and first level unions were made accountable to higher level unions in addition to their accountability to members thereby introducing the concept of 'double subordination'. In this connection, the ILO is of the view that 'the subjection of grass-roots organisations to the control of trade union organisation at a higher level (...) constitutes a major constraint on the right of the unions to establish their own constitutions and organise their activities and formulate their programmes (ILO 1996; para: 349). Denial of employers to form organisations of their choice and legislative prescription of unitary union without providing room for the establishment of diverse unions have also been against the ILO's jurisprudence in freedom of association.

### **Downfall of the military regime: A new path to trade unionism**

It was with the downfall of the military regime in 1991 that a change in ideological orientation, economic policy and labour relation were introduced into the country's political, economic and social settings. The international climate since the early 1980s was one of economic liberalisation mainly manifested through large scale privatisation together with market and price deregulation. The fall of the 'Berlin Wall' and the disintegration of the 'communist bloc' were also displayed at those times thereby eroding the ideological basis for a highly visible state presence in the economy.

Above all, however, domestically, the socialist rhetoric of the military regime which was associated with poor economic performance had cultivated hostile attitude towards socialist tendencies. Consequently, although the incoming force, the EPRDF (i.e. Ethiopian People's *Revolutionary* Democratic Front) which toppled the military regime appeared to have been socialist in words and deeds<sup>xiii</sup>, it was neither willing nor capable to ignore such a visible change of circumstances (Tamiru, *et al.* 2005, p.34). Generally, the national and international climate was not conducive to governments with communist inclinations. Therefore, regardless of whether the measure was by design or default, the apparently socialist 'revolutionary front', the EPRDF, ended up to be 'promoter' of a free market economy once it seized power.

With a free market orientation and policy framework, the government expressed its readiness to withdraw from micro-managing state enterprises with a view to providing autonomy and economic space to private sector development except in those 'commanding heights' of the economy. No sooner than its assumption of power, privatisation of state owned enterprises was commenced. In conformity with this political and economic disposition, a new labour proclamation was issued in 1993(i.e. Labour Proclamation No.42/1993). Unlike the labour law of

the military regime which was framed in line with the ‘dictatorship of the proletariat’, the new labour law was relatively accommodative to the interests of both the employers and employees and flexible in its approach.

To cite few incidents which appeared to be favourable to the employers in the new law, unlike the labour law of the military regime which denied freedom of association to employers, formation of organization was fully recognised and became evenhandedly available both to employers and employees. From the labour force perspective too, minimum number of membership to form a first level trade union was maintained at twenty by the labour proclamation of 1993 and this number has been reduced to ten by virtue of labour proclamation of 2003, which further enabled employees of smaller enterprises to unionise. Possibility to establish plural unions in an enterprise has also been expressly legislated. Moreover neither political affiliation to the ruling party nor subordination of first level trade unions to that of the higher ones were express requirements for associations to operate. Thus, the current labour law attempted to relax issues of unionisation and autonomy of trade unions that were not reliably secured by the labour proclamations of the previous regimes. In this sense it is a significant improvement from the past.

Nevertheless, it must also be admitted that the current labour law brings about its own deficiency from the angle of suitable legal framework for trade unionism. Unlike the situations in the Emperor’s and the military periods in which the ‘management staff’ was narrowly defined thereby offering the substantial section of the labour force an opportunity for unionisation, the new labour law broadened the definition of the term ‘management staff’ as a result of which many potential union members were excluded from membership due to their categorisation within the ambit of the ‘management team’<sup>xiv</sup>. The labour proclamations of the previous regimes normally defined the management team from a structural perspective in which only those officials directly accountable to the general manager or its deputy are categorized within it and hence excluded from union membership. The remaining section of the labour force out side of this structural link was entitled to establish or join unions of their own choosing.

The current labour law, however, defined the ‘management staff’ from the angle of function rather than structure. Accordingly all higher or mid level officials engaged in managerial functions, regardless of their structural positions are considered as members of the management staff. For the purpose of the law, managerial function includes, *inter alia*, possessing the power to ‘(...) take disciplinary measure (...)’ (Art.3 (2) (c); Proc. No.377/2003). Ordinarily, disciplinary measure ranges from issuance of reprimand (even oral warning for that matter) to imposition of dismissal decisions. Hence, as far as the formulation of the law is concerned, any employee who is authorized to render any or many of such measures is categorized as a member of the management team. This generous definition accorded to the ‘management staff’, according the President of the Confederation of Ethiopian Trade Unions (CETU), managed to exclude

knowledgeable and skillful potential members of the labour force from union membership. In this connection, it is important to note that the ILO Committee on Freedom of Association is of the view that the scope for managerial staff should not be defined so widely as to weaken trade unions by depriving them of a substantial proportion of their potential membership (ILO 1994, para.66). Thus, the current labour law has failed to meet the expectation of the ILO standard in this regard.

### **Conclusion**

The ILO jurisprudence in connection with freedom of association requires member states, among other things, to respect the right to form associations; to fix reasonable minimum number of membership; to provide conducive legal and policy frameworks for plural, independent and autonomous organisations; and to narrowly define the ‘management staff’ so as not to weaken union membership. In this respect, it has been generally noted that the last forty years (1963-2003) of Ethiopian labour history witnessed transformation in fixing minimum number for membership required to form a trade union. The figures show that it has been consistently going down from 50 employees in 1963, to 20 employees in 1975 and 1993 and further down to 10 employees in 2003 providing an opportunity for employees of small size enterprises to unionise.

Regardless of such a positive development, however, during the Imperial era, since the size of labour force to form a trade union was fixed at a higher threshold of fifty employees, many employees working in small enterprises were not beneficiaries of the law. This was rectified by a subsequent labour legislation issued by the military regime in which the minimum number of membership was reduced to twenty.

Although the significant reduction for minimum number of membership during the military regime was a step forward in the right direction as far as ILO prescription is concerned, there were other outstanding issues to the disadvantage of unionisation. As indicated above, trade unions during the military regime had no independence due to legally prescribed ‘monopoly’ union principle and their partisan affiliation with the ruling political system of the time (i.e. the ‘Workers’ Party of Ethiopia’ (WPE)). Their autonomy was also at issue due to the ‘democratic centralism’ principle in that first level trade unions were made subordinate to higher level trade union organizations. Furthermore, it was being legislated that international affiliation should only be undertaken through the ‘umbrella’ national organization at the top rather than providing opportunity of international affiliations to first and mid level trade unions. It is important to note that lack of independence and autonomy is tantamount to lack of organisation at all.

The existing legal framework substantially reduced the required minimum number of membership of the Imperial era. The restriction on unions’ independence and autonomy created by the legislation of the military period has also been avoided by the new law. However, the present law has, on its part, come up with its own restriction owing to the fact that it broadly

defined 'management staff' with the effect of excluding technocrats and predominantly 'white collar' employees from union membership. As a result, the net effect in all these periods in Ethiopia is that the various legal frameworks for trade unionism have been consistent in being inconsistent with the dictates of the relevant ILO convention one way or the other. Hence, Ethiopia's conformity with its international obligation in this regard is yet to be desired even after almost ninety years of ILO membership.

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<sup>i</sup> Art.11  
<sup>ii</sup> Art.16  
<sup>iii</sup> Art.10

<sup>iv</sup> See, Art. 427 of the Treaty of Versailles of 1919. The phrase ‘for lawful purpose’ was feared to have counterproductive effect as it would pave the way for heavy handed interference by governments against ‘unwanted’ associations on the pretext that the purpose is ‘unlawful’. (See, Dunning; 1998: 156)

<sup>v</sup> This company was a joint venture between France and Ethiopian government. France by then was colonizing Djibouti. It was later converted into Ethio-Djibouti Rail way Company after Djibouti got independence from France.

<sup>vi</sup> Incidentally, it is important to recall that the way the revised Constitution’s provision on freedom of association was crafted had resemblance with the provision in the Treaty of Versailles which provided ‘the right of association for all lawful purposes by the employed as well as by the employers. See, Art. 427 of the Treaty of Versailles of 1919. The phrase ‘for lawful purpose’ was feared to provide heavy handed interference by governments against ‘unwanted’ associations on the pretext that the purpose is ‘unlawful’. (See, Dunning; 1998: 156)

<sup>vii</sup> Of course the Civil Code Possessed a Chapter on the ‘Formation and Administration of Associations established for non profit purposes (Arts.404-482 of Civil Code). But it was only relevant for self help associations rather than for trade unionism in which dealing with the employers is of paramount importance.

<sup>viii</sup> In fact this Proclamation was first issued in the form of ‘Decree’. Decree in the then prevailing Ethiopian legal parlance was a legal instrument emanating from the Emperor at a time when the parliament was not in session and *an urgent circumstance occurs*. Constitutionally, its submission to parliament was mandatory once the Parliament reconvenes. Normally, end of June to the beginning of November had been parliamentary recess at those times. The Decree was issued in September 1962 designated as Decree No.49/1962. It was later deliberated upon by Parliament and obtained its approval, with minor amendments, to be renamed as Proclamation. No.210/1963. It appears that the pressure for the drawing up legal framework to the implementation of freedom of association was an issue that required urgent action at the time.

<sup>ix</sup> *Beyene Solomon*, the then Secretary General of the Confederation estimated the membership to be no more than 65,000 and the number of trade unions to twenty nine (Beyene; 2010:78). This seems difficult to accept as such a huge number of employees can not be accommodated under only twenty nine trade unions. Ananaba(1979:45) stated that within six months of the promulgation of the law, forty-two unions representing 10,000 members had been registered.

<sup>x</sup> Beyene has had a slightly different story in this regard in the sense that though the tripartite Ethiopian delegation went to attend the 47<sup>th</sup> ILO Conference, it, together with other African delegates, boycotted the meeting in protest of the South African Apartheid Regime attending the same Conference.

<sup>xi</sup> The establishment of the Labour Relations Board did not take out all labour disputes from the jurisdiction of courts. It was only the so-called ‘collective labour disputes’ that the Labour Relations Board had exclusive power. In connection with individual labour disputes arising from individual contract of employment, it was at the choice of the employee to take his/her case either to the court or to the Board. For elaborate discussion on this point, (See *Mammo Yinberberu v. Yirgu Abebe. Journal of Ethiopian Law (1964)*, Vol.I p.36. In this relation it is also important to note that the Proclamation required the then Ministry of Justice to establish labour divisions within the ordinary court structure in order to ensure expeditious disposition of labour cases (Art.34).

<sup>xii</sup> At a certain point in time, in 1980s, the President of the All Ethiopia Trade Unions (AETU), Tadesse Tamrat, was at the same time a Central Committee member of the Workers’ Party of Ethiopia (WPE).

<sup>xiii</sup> The EPRDF was a united front of various ethnic armies. The TPLF (Tigray People’s Liberation Front) which was more experienced and powerful at the time than the other members of the Front had an Albanian style Marxist-Leninist party at its leadership named ‘Marxist-Leninist League of Tigray’. (See generally, *Aregawi BERHE (2008) A Political History of the Tigray People’s Liberation Front (1975-1991): Revolt, Ideology and Mobilization in Ethiopia*). The other members of the Front had similar political orientations. Printed and broadcasted works of the Front were socialist oriented (if not communist).

<sup>xiv</sup> Under the previous proclamation ‘management staff’ was defined structurally in the sense that any official who was accountable to the General Manager or to the deputy thereof fell within the category and hence excluded from unionization. Under the later law, ‘management staff’ has been defined in terms of function in the sense that it was the function rather than the post where one occupies in the structure of the enterprise concerned that will determine. Managerial functions have been broadly defined to include not only policy formulation and strategic decision making but also recruitment and disciplining. In a decentralized enterprise structure, the latter could be undertaken by lower superintendents as a result of which they are excluded from membership. (For more elaborated understanding it is advisable to compare Art. 2(27)(g) of Proclamation No.64/1975 and Art.3(2)(c) of Proclamation No.42/1993)