Ethiopian Civil Service University

Institute of Federalism and Legal Studies

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING: THE LAW AND PRACTICE IN ETHIOPIA

PREPARED BY: - Mesfin Seleshi Haile

ADIVISOR : **Woldemichael Missebo, Lecturer**

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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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Annex

Acronyms

1. BOLSA- Bureau of Labour and Social Affairs

2. CETU –The Confederation of Ethiopian Trade Unions

3. CELU- The Confederation of Ethiopian Labour Union

4. EEF- Ethiopian Employers Federation

5. FDRE-Federal Democratic Republic of Ethiopia

6. ICCPR- International Covenant on Civil and Political Rights

7. ICESCR- International Covenant on Economic, Social and Cultural Rights

8. ICFTU-International Confederation of Free Trade Unions.

9. ILC- International Labour Conference

10. ILO –International Labour Organization

11. ITUC- International Trade Union Confederation

12. MOLSA- Ministry of Labour and Social Affairs

13. UDHR –Universal Declaration of Human Rights

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Chapter One: Introduction

Freedom of association includes the right of workers 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 preamble of ILO Constitution in 1919.[1] 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).

The Confederation of Ethiopian Trade Unions (CETU) and its affiliate industrial federations are facing problems to organize the unorganized ones and to effectuate the right to collective bargaining. The objective of the research is to explore the legal status and the level of application of freedom of association and collective bargaining in Ethiopia. In doing so, it will investigate the extent of the knowledge gap on government and its social partners with regard to these rights. The basic question of the research is twofold. The first question is, whether the law in Ethiopia hinder the right of freedom of association and collective bargaining or not? The other question is whether the practical situations in the country facilitate or worsened the exercise of these rights or not? The research 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. The contribution of the research on this respect is particularly important because the Labour Proclamation is in the process of amendment. The variables of the research are the degree of implementation of freedom of association and the right to collective bargaining in recent years in our country. Structured interview, direct and indirect

[1] Constitution of the International Labour Organization and selected texts, International Labour Organization, 2009

observation methods were employed during the collection of data for the research and qualitative research method is being employed.

When we look for the legal condition of freedom of association and collective bargaining in Ethiopia, the country constitutionally recognizes both rights. She also ratifies them and they become integral part of the law of the land as per the constitution. The Labour law also recognizes them as well. But it seems that there exists a gap between the national laws and international instruments ratified by the country. Moreover, the practical situation existed in the country dictate that although there are improvements through time there are problems in exercising the right of freedom of association and collective bargaining.

The paper tries to address issues the right to freedom of association and collective bargaining in five chapters. First of all introductory remark is mentioned. The second chapter of the research discusses theoretical foundations that indicate the need for freedom of association and collective bargaining and review of some literatures. Then the third chapter deals with the status of freedom of association & collective bargaining in relation with international instruments that include: constitution of ILO; international bill of rights; convention No. 87; and convention No. 98. The fourth chapter incorporates two parts. Whereas the first part focuses on the legal and practical conditions of freedom of association & collective bargaining in Ethiopia that indicate the position of national legislations on freedom of association and collective bargaining. Its second part indicates the practical circumstances of freedom of association and collective bargaining in Ethiopia that incorporates observation of Ministry of Labour and Social Affairs and its social partners that will be followed by observation and analysis of the researcher. Last but not least Conclusion and Recommendation of the research will be presented in the fifth chapter of the research.

Chapter Two

Theoretical Foundations: the need for freedom of association and collective bargaining

In this chapter of the research the conceptual frame work of freedom of association and collective bargaining will be discussed. First definition of some terminologies will be presented very briefly in each section. Then the reason that necessitates the need to have freedom of association and collective bargaining will be presented.

2.1 The concept and historical development of freedom of association and collective bargaining

2.1.1 The concept and history of freedom of association in general

According to the definition given by Black's Law dictionary, freedom of association is the right to join with others in a given enterprise in a lawful manner.[2] When we see the definition given to the right of assembly; it is the right of people to congregate in a peaceful way for public expression of religion, politics or grievances.[3] This indicates that the right of freedom of association is an enabling right that can possibly help employees to join hands to exercise their right collectively by forming their organization that includes expressing grievances.

Organizing is an act that attributed to form a whole consisting of interdependent or coordinated parts that pave the way for united action, for example organizing a committee to do certain activity. More appropriately, it can also be defined as the act of recruiting or an attempt to

[2] Garner B.(Editor in chief),*Black's Law Dictionary,* (seventh edition),St. Paul Minn., West Publishing Co. (1999)
[3] Ibid

procure into a labor union that perpetuates to organize workers. In simple terms it is an act of forming a trade union or it is a process of unionization of workers. [4] On the other hand, unionization is the process of organizing the employees of a company into a labor union which will act as an intermediary between the employees and company management. Most of the time a union can be authorize if it can be able to attain a majority vote of the employees in the company. Accordingly, if a trade union is established in a given company it is said the company is unionized.[5] From the above two definitions one can conclude that the two terms organizing and unionizing complement one another or one can replace the other. Hence, the researcher can use them interchangeably because of their similarity or having the same meaning.

A literature shows that the oldest independent associations were established in religious vicinity particularly in churches. The Roman Catholic Church that represented the official religion can be considered as the most notable of those independent religious institutions. It had also a variety of affiliated religious societies to which clergymen or common people could belong that includes the knightly orders that participated in the Crusades. [6]

Later on commercial towns and cities that gained the status of autonomous corporations were developed during middle ages. "*They fostered merchants' associations, artisans' guilds, and other groupings, often with the blessing of the monarch*". Trading associations established through royal charters later evolved to become instruments of state colonialism that can be witnessed from "*the British East India Company and its Dutch counterpart"*.[7]

History showed us that the philosophical Enlightenment of the 17th and 18th centuries featured the emergence of free associations with no economic, religious, or royal connection, which is different from the previous ones. It is undeniable fact that individual members played significant roles in the Enlightenment age during the American and French Revolutions, and other historical events and movements. It has been said that:

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[4] http://dictionary.reference.com/browse/organising, Dictionary.com, LLC ,accessed on April 25,2014

[5] http://www.businessdictionary.com/definition/unionization.html, Web Finance, Inc. accessed on April 25,2014

[6] Democracy web, *Freedom of Association: History*, http://www.democracyweb.org/association/history.php,accessed on 7th of June 2014.

[7] Ibid

> *The rise of more overtly political secret societies at the time of the French Revolution prompted the British Parliament to pass the Unlawful Societies Act in 1799, one of the first anti association laws of the modern era…. The fear of social unrest in that period also resulted in the Combination Acts of 1799 and 1800, which banned trade union activity.*[8]

The open economic environment of the United State of America pave the way for the growth of businesses, corporations, and other commercial associations, as well as workers' and fraternal organizations. Participation of citizens in the country was expressed by civic groups and political parties arose out of America's colonial heritage of relative freedom and social purpose, and the nation's new form of self-government.[9]

According to French politician Alexis de Tocqueville, in his classic study "Democracy in America", he mentioned that in democratic countries association was *'the mother of science'* which serves as a basis for all other forms of progress.[10]

Freedom of association has played a unique role in history through its often violent clashes with political and economic liberalism. The economic side of liberalism allows the making of a contract between employer and workers without any interference. "*Thus many reformers who campaigned for the abolition of slavery were also opposed to collective bargaining and organized labor. For example, William Wilberforce, a great leader of the British abolitionist movement, supported the suppression of trade unions through the Combination Acts".*[11]

Since owners want to protect their property right and workers struggle for their right of freedom of association there was a clash between these two rights and workers were disadvantaged in it. *Because of the threat posed by the Combination Acts and anti conspiracy laws, many early unions in Britain were formed in secret.* Because of the rise of the British labour movement the act was repealed and the number of trade unions became large enough to establish the first

[8] Ibid
[9] Ibid
[10] Ibid
[11] Ibid

national federation of unions in 1833. [12]

The action of employer against unions that includes: violence, lock out, dismissal and other continued throughout the 19th century. Trade unions were also took collective actions that include: mass petition campaigns, national strikes, and related working class efforts but they failed to give trade unions decisive political power. The scope of freedom of association becomes an issue at stake until today.[13]

2.1.2 Brief history of Freedom of Association in Ethiopia

During the construction of rail way lines in 1919 around Methara area the company was not able to hire workers because of shortage of food and drinking water. Due to this fact the company was forced to hire foreigners such as Egyptians, Yemenians and other foreigners. This led it to pay different prices based on the nationality of the worker. For example, European Construction Head was paid 21 Franc per day; Egyptian Construction head was paid 9 Franc per day; Egyptian Construction worker was paid 5 Franc per day; and Ethiopian Construction worker was paid 1 Franc per day.[14]

The workers in the factories and road construction sector were earning a very minimal amount of money that was not adequate for their means of survival and this forced them to lead a deteriorate form of life style. Because of this Construction workers made a strike in 1915 and 1917, which is registered as the first. The next and that has strong position in history was the strike made in March 28, 1925.[15] Foreigners that were employed in Ethiopia (citizens of French, Greece, Italy and Djibouti) were part of the strike and it was an indication that foreigners were also abused by the companies. Although there was no trade union established the rail way workers were asking for salary increment, reduction of working hours and betterment of working

[12] Ibid
[13] Ibid
[14] AETU,"Ye Etiopia Serategnoch Enqisiqase, Kifle 1", (written in Amharic language), (unpublished)Addis Ababa,(February 1984) 18
[15] Ibid 21

conditions openly. [16]

After many struggle the rail way workers were establish a syndicate and adopted it in July 14, 1946. In March 5, 1947 the syndicate made a strike and the theme was: opposing unlawful termination of employment; resisting discrimination made between foreigners and nationals with regard to recruitment, salary, and allowance and requiring establishment of pension right. During this time an association called "Syndicate de Shumno Ethio" was established.[17] Among the great contributors for the foundation of The Confederation of Ethiopian Labour Union (CELU) was associations leaders of Sisal factory, particularly Ato Abera Gemu (later on become Honored President of CELU). They started their struggle because they worked for ten hours a day; they were not given sick leave and annual leave and there was an interference in personal matters of workers. To reverse the situation having an association was a must but not allowed and hence, they established a social association locally named "Edir". By using it they raised questions such as respect workers job security, prevention of hazardous works, different kinds of leaves and reduction of working hours. They went to the Emperor with these and other questions on October 10, 1961 returned without concrete answer.[18]

The year 1955 was a vital year and was a time when many "Edir" associations were established enormously to provide a solution for temporary problems of workers. The Edir leader of Sisal factory was Ato Abera Gemu.[19] The Wonji Sugar factory was also a great contributor for the establishment of CELU. Workers representatives of the factory discuss the issues of workers with government representatives and achieve the reduction of working hour in to eight hours a day, the daily payment should be increased in to birr 1.10 and an ambulance should be available. This was taken as a great achievement and workers were very much excited.[20]

The "Edir" leaders discuss their issues and agreed to form an association called "Ye Etiopiawian Serategnoch Hibret Dirijit Mahiber Sindica", which is equivalent to Association of Ethiopian

[16] Ibid 22
[17] Ibid 31
[18] Ibid37-38
[19] Ibid 40-46
[20] Ibid50

Workers. Ato abera Gemu was elected as President of the Association.[21]

Dr. Syoum Gebregziabher 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 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.[22]

The writer also describes 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 in collaboration with ICFTU and entirely and passionately attended by 29 union leaders, which were already registered by the Ministry.[23]

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:

- *Basic features of a democratic union;*
- *Problems of union leadership;*
- *Preparing for collective agreements;*
- *The reason why labour unions are important;*
- *Method of administering unions; and*
- *Techniques of conducting union meetings.*[24]

Dr. Seyoum further stated that at the end of the seminar the prepared constitution was endorsed and adopted by the general assembly gathered from registered trade unions. Following this a

[21] Ibid 51
[22] 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) 51
[23] Ibid 55-56
[24] Ibid

general election was held and reception was tendered. [25] He concludes that although the Labour Relations Decree was neither too advanced nor too progressive it becomes a foundation for the establishment of both the Confederation of Ethiopian Labour Union and the Ethiopian Employers Federation. 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.[26]

2.1.3 Collective bargaining

Collective bargaining is defined on Black's law dictionary as a negotiation made between an employer and representatives of organized employees to determine the conditions of work at the enterprise.[27] This definition clearly indicates that the act of bargaining highly demands organization of workers. In other words, unionization is a pre requisite to collective bargaining in the absence of which the act of bargaining could not be feasible.

The "*Collective Bargaining Manual"* prepared by MOLSA summarizes the definition of collective bargaining in the following statements: Collective bargaining;

- requires voluntarism and consent;
- requires the existence of at least two parties;
- needs decision making process of parties involved;
- is a machinery that can synchronize the interest of employer and workers; and
- is an agreement that determines working conditions of an undertaking. Moreover, in collective bargaining one party requires something from the other.[28]

This clearly indicates that collective bargaining is an action that requires joining of hands of workers through their legal representatives and this can only be true with the existence of trade union. In other words only the trade union leaders as legal representatives of workers that are capable of bargaining with the employer and it can't be an individual act of an employee.

[25] Ibid
[26] Ibid 132
[27] Black's Law Dictionary, Supra Note 2
[28] Ministry of Labour and Social Affairs, "*Ye Hibret Diridir Manual"*, (written in Amharic language) Birhanena Selam Printing Enterprise, Addis Ababa (November 2007) 4

Hence, the right to freedom of association is a prerequisite to the right to collective bargaining and they are intertwined together.

Collective bargaining is said to be in place when a group of employees negotiate as a unit with their employer over pay, benefits and working conditions in the undertaking. The theme of this principle is that, employees would have more strength or bargaining power if they collaborate together than negotiating with their employer individually. Because of this characteristics feature collective bargaining is inherently a democratic process since a majority of employees select the subjects they bargain over and vote on whether they agree to a contract.[29] It is undeniable fact that the will of the majority may disfavor particular employees or employee groups that have higher levels of skill than the average employee. Hence, unions must fairly represent all employees in the unit.[30]

On February 26, 2011, the Human Rights Watch made a press statement urging the United States to honor public employee bargaining rights. The statements were made in the following words: *"The reason why collective bargaining is recognized as an international human right is that the compromises resulting from a process in which workers have an autonomous voice reflect principles of dignity, equality, and democracy consistent with human rights principles".*[31] This is a clear indication that the right to collective bargaining is a human right.

Employers can enjoy unregulated right of hiring and firing of workers if the system is a laissez-faire one. This makes them to have an upper hand and more bargaining power that enables them to dominate workers in every way they think appropriate. They disgust statutes that likely disadvantage them because they inherently prefer to decide terms and conditions of employment by their own. This tendency of employers brought collective bargaining to the surface. In order to strike a balance between the strong bargaining power of the employer against weak and unorganized workers the recognition of united power becomes mandatory. Collective bargaining becomes a foundation for this movement and the statute favors the trade union that represents

[29] Democracy web*, Freedom of Association: Essential Principles* **http://www.democracyweb.org/association/principles.php** accessed on 7th of June 2014

[30] Leslie D., *Labour Law in a nut Shell*, West Publishing Company, St. Paul, Minnesota 55165, (1979)

[31] Democracy web*, Freedom of Association: History*, Supra note 5

workmen.[32]

There are controversies in defining collective bargaining. In 1960 the Manual published by the International Labour office defined collective bargaining as: a negotiation made between employer or organization of employers and representatives of workers or their organization regarding working conditions and terms of employment.[33]

The analysis of collective bargaining demands the existence of parties to collective bargaining, subject matter of collective bargaining and objects of collective bargaining and they are discussed very briefly here in under.

A. Parties to collective bargaining

Collective bargaining involves two parties. One of them is the management, which is represented either alone or through Employers' Association or federation. The other groups are workers that are represented either through a union or workers' federation. These two parties are directly participated in the process of collective bargaining.[34]

B. Subject matter of collective bargaining

The International Labour Organization divided the subject matter of collective bargaining in to two broad categories. The first part sets out the employment standards that are applicable up on all individual workers with respect to work relations with their employer. These includes subjects such as wages, working hours, holidays with pay and period of notice upon termination of contract of employment. The second one regulates the relationship of parties to the agreement themselves and could not have any effect up on worker and employer relationship. These includes but not limited to: enforcement provision; dispute settlement methods, grievance procedures; duration of the agreement; undertaking not to resort to strike or lockout during the

[32] Srivastava S. C., *Industrial Relations and Labour Laws*, fifth edition, third reprint, Delhi, Kay kay printers (2009) 132

[33] Ibid 132-133

[34] Ibid 134

period etc.[35]

C. Objects of collective bargaining

The International Free Trade Union called collective bargaining as *'A Workers Bills of Rights'* and enumerated the following as objects of the union in collective bargaining:

- *to establish and build up union recognition as an authority in the work place;*
- *to raise workers' standards of living and win a better share in company's profits;*
- *to express in particular terms the workers' desire to be treated with due respect and to achieve democratic participation in decision affecting their working conditions;*
- *to establish orderly practices for sharing in these decisions and to settled disputes which may arise in day to day life of the company;*
- *to achieve broad general objectives such as defending and promoting the workers' interests throughout the country.*[36]

Although the parties started their negotiation with divergent views the object of collective bargaining is to try to reach a compromise. This indicates that the primary motive of collective bargaining is to resolve the differences between the parties with regard to subject matter of collective bargaining of members of the union.[37]

There are five prerequisites in order to have collective bargaining. First, in order to achieve collective bargaining it is a must to have freedom of association respected. This is because denial of the right to freedom of association is negating collective bargaining right. Second for the success of collective bargaining it is essential to have "*strong, independent, democratic and well organized trade union*". Third, management should give recognition to trade unions. Because recognizing trade union as a bargaining agent is the back bone of collective bargaining. Forth, willingness to give and take is so important for collective bargaining. Hence, parties are required to have mutual trust and appreciation of the views of one another. This is because the aim of

[35] Ibid
[36] Ibid
[37] Ibid

entering in to negotiation is to adjust differences by compromise and concession and to reach in to agreement. Fifth, there has to be statutory provisions that regulate unfair labour practice or victimization of trade unions. [38] In the absence of the above mentioned five prerequisites it is not possible to have sound collective bargaining that benefits both the employers and the trade unions.

Gorman mentioned that contract made between the employer and agents of workers is called labour contract and it resembles to the commercial contract with regard to its form. But the former is an agreement between two signatory parties and outline the rights and duties of employees which were third parties for the contract.[39] Collective bargaining was also described as a critical way for improving employment conditions, safe and healthy work environment for both women and men. This shows discrimination particularly with respect to employment and occupation and equal pay for works of equal value are trade union issues that have to be addressed through collective bargaining. Therefore, equality issues are the theme of collective bargaining. [40] Furthermore, other writers stipulate that most collective agreements clearly mention discrimination of any sort. The enforcement of which is executed through grievance handling procedures.[41] According to MacCann, collective bargaining agreements influence most policy reforms. Often times they verify crucial to initiate job evaluation studies and task forces.[42] Getman pointed out that although collective agreements have such a big impact and are so valuable they are majoritarian than individual.[43]

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

[38] Ibid 135-136
[39] Gorman R., Basic Text on Labour Law: Unionization and collective bargaining ,St .Paul, Minnesota, West Publishing Co. (1976) 540-541
[40] International Labour Office, Gender Promotion Programme, *Promoting Gender Equality through collective bargaining*, Switzerland, Author (2002) 9
[41] Covington R, Getman J., and Jones J., Labour Relations and social Problems: *Discrimination in Employment*, Washington D. C. (The Bureau of National Affairs, Inc., (1976) 5
[42] MacCann M., *Rights at work, pay equity reform and the politics of legal mobilization*, Chicago and London,The University of Chicago Press, (1994) 42
[43] Getman J and Pogrebin B., Labour Relations, the basic process,law and practice,Westbury,New York,The Foundation Press,Inc.(1988) 16

conference of States ILO conventions are adopted by International Labour Council (ILC), which composes workers' and employers' representatives in addition to government representatives.[44]

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 leaders themselves ask the support of human rights groups for the defense of their rights very rarely. [45] Virginia argues that 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.[46]

[44] Virginia A. " Form Follows Function*:* Formations of International Labour Standards-Treaties ,Codes, Soft Law, Trade Agreements," In Fanagan R. and Gould Iv W. (editors),*International Labour Standards, Globalization,Trade, and Public Policy* ,Stanford University Press, Stanford, California,(2003) 183

[45] Ibid

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

Chapter Three

The Status of Freedom of Association & Collective Bargaining in relation with International Instruments

3.1 ILO Constitution and Declarations

3.1.1 ILO Constitution

The oldest international document that should be discussed first is The Constitution of International Labour Organization (ILO). The Constitution was adopted in 1919 by the International Labor Conference (ILC) and in its preamble it provided that freedom of association should be recognized by every nation. The elements of collective bargaining such as, the regulation of the hours of work, the provision of an adequate living wage, and the protection of the worker against sickness, disease and injury arising out of his employment etc are mentioned on the same paragraph of the preamble.[47] More over article 19 (5) of the constitution made an obligation upon members to bring the convention to the concerned authority for ratification and communicate to the director general of ILO. [48] From this one can conclude that the wish of the international community to give due emphasis to the right of freedom of association and collective bargaining dated back as early as the year 1919.

[47] Constitution of ILO, Supra note 1
[48] Ibid

3.1.2 ILO Declarations

The General Conference of the International Labour Organization adopted "Declaration concerning the aims and purposes of the International Labour Organization", which is known as the declaration of Philadelphia, on 10th of May 1945. The theme of ILO Declaration of Philadelphia was to clearly indicate the aims and purposes of ILO. Article I of the declaration mentioned four fundamental principles and one of them was the essentiality of freedom of expression and association to sustained progress.[49] Article III (d) stated that policies that are designed to regulate wages and earnings, hours and other conditions of work should ensure a reasonable share of the fruits of the progress to all. In addition, sub article (e) of the same article mentioned that the effective recognition of collective bargaining should be achieved by ILO.[50]

Later on the International Labour Conference adopted "Declaration on Fundamental Principles and Rights at Work and its Follow-up" in 1998. The declaration made eight of the workers right to be fundamental. According to article 2 of the declaration, all members of ILO, whether they ratify the eight fundamental conventions or not, have an obligation to respect, promote and realize in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those conventions. The right to freedom of association and the effective recognition of the right to collective bargaining are placed first in the declaration.[51] Moreover, in order to give full realization of the declaration the conference decided the implementation of promotional follow – up which is meaningful and effective.[52]

Furthermore, the International Labour Conference adopted "ILO Declaration on Social Justice for Fair Globalization" on 10th of June 2008. The first article states about the scope and principles of the declaration. Under sub article (A) (iv) of the same article it is provided that, respecting, promoting and realizing the fundamental principles and rights at work is very much important. This is because these are both rights and enabling conditions for the realization of

[49] International Labour Office, ILO Declaration of Philadelphia, http://www.ilocarib.org.tt//cariblex/convention_23.shtml,accessed on June 9,2014
[50] Ibid
[51] Bureau for Workers' Activities ,*ILO Declaration on Principles: a new instrument to promote fundamental rights,* A workers' education guide ,2nd edition ,International Labour Office, Switzerland (2000)
[52] Article 3 (4) of ILO Declaration on Principles

objectives of ILO.[53] In addition it is noted that:

> *freedom of association and the effective recognition of the right to collective bargaining are particularly important to enable the attainment of the four strategic objectives; and the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes.*[54]

From the above mentioned declarations one can conclude that from time to time ILO made progressive emphasis on workers right and particularly due attention was given to freedom of association and collective bargaining. The emphasis goes to the extent that explains they are not only simply right rather they are enabling rights as well.

3.2 International Bill of Rights

The Universal Declaration of Human Rights (UDHR) provides under its article 23 (4) that everyone has the right to form and to join trade unions for the protection of his interests.[55] The International Covenant on Civil and Political Rights (ICCPR) on the other hand declared under its article 22 that everyone shall have the right to freedom of association with others that includes the right to form and join trade unions for the protection of his interests. No restrictions may be placed on the exercise of this right other than those which are either prescribed by law or in the interests of national security or public order or the protection of the rights and freedoms of others. [56] Moreover, article 26 of the covenant mentioned that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. The law of a State shall be designed in such a way that prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground.[57]

Article 7 of the International Covenant on Economic, Social and Cultural Rights(ICESCR) also

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[53] International Labour Office, ILO Declaration on Social Justice for Fair Globalization, adopted by the International Labour Conference at its Ninety-seventh Session, Geneva, 10th of June 2008, Switzerland (2008)
[54] Ibid
[55] *The Universal Declaration of Human Rights,* adopted by the UN General Assembly on 10th of December 1948
[56] *International Covenant on Civil and Political Rights* adopted by the UN General Assembly Resolution 2200 A (XXI) of 16 December 1966
[57] Ibid

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. In addition, article 8 of the covenant guarantees 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. Trade unions have also the right to function freely without any limitations other than those prescribed by law and or in the interest of national security or public order or for the protection of the rights and freedoms of others is stipulated.[58] The twin covenants appear with the same provisions like their 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 covenants in 1966. Furthermore, 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.

3.3 Freedom of Association and Protection of the Right to Organize, Convention No. 87, 1948

Article 2 of Convention 87 (Freedom of Association and Protection of the Right to Organize Convention) provides that, workers and employers shall have the right to establish and to join organizations of their own choosing without previous authorization. Making any sort of discrimination is not allowed. In addition article 3 of the convention prescribed 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. The public authorities are duty bound to refrain from any interference which would restrict this right or impede the lawful exercise thereof. [59]

[58] *International Covenant on Economic, Social and Cultural Rights,* adopted by the UN General Assembly Resolution 2200 A (XXI) of 16 December 1966

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

Article 4 of the convention states that workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority.[60] Article 5 mentions that workers' and employers' organizations shall have the right to establish and join federations and confederations and such organization shall have the right to affiliate with international organizations of workers and employers respectively.[61] Article 8 mentions the correlative duties on the organizations and state parties. On the one hand, in exercising the rights provided for in this convention workers and employers and their respective organizations are duty bound to respect the law of the land. On the other hand, the law of the land is restricted not to impair or applied as to impair the guarantees provided for in this convention.[62]

The only exception enshrined under article 9 of 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 the 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 to them.[63]

According to article 11 of the convention, 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.

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. Moreover, it serves as groundwork for the right of workers.

3.4 Right to Organize and Collective Bargaining Convention No. 98, 1949

[60] Ibid
[61] Ibid
[62] Ibid
[63] Ibid

Article 1 of Convention No.98 (Right to Organize and Collective Bargaining) provides that workers will be protected against acts of anti-union discrimination that includes 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.[64] 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.[65]

More importantly article 3 & 4 of the convention stated that, machinery appropriate to national conditions shall be established that has the purpose of ensuring respect for the right to organize. Moreover, measures appropriate to national conditions shall be taken that possibly encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations that enables them to sign a collective agreement that serves as a contract between them with regard to the regulation of terms and conditions of employment.[66] Article 5 of the convention uses the same words like its predecessor with regard to the extent of its application to the armed force and the police.[67]

This shows the right to collective bargaining comes to existence after the right to freedom of association and can be said that it is an extension of the latter. The two conventions are rights that are intertwined together and exercising them separately cannot be realistic. In other words, having the right of freedom of association without the right to bargain collectively is something of no value and the right of collective

[64] Right to Organize and Collective Bargaining Convention (No. 98) Adopted: 1st July 1949, Entered into force: 18 July 1951.

[65] Ibid
[66] Ibid
[67] Ibid

bargaining cannot be feasible without the right to freedom of association because it needs a union that bargain on behalf of its members.

Chapter Four

The Legal and practical conditions of Freedom of Association & Collective Bargaining in Ethiopia

The first part of this chapter tries to focus on the position of national legislations that are in force currently on freedom of association and collective bargaining. In doing so, the researcher will compare the stands of FDRE Constitution in comparison with the right to freedom of association and the right to collective bargaining conventions (C87 and C98). Then, the second part demonstrates practical situations that have been seen and indicate the real challenges on the two rights in Ethiopia.

4.1 The position of national legislation on freedom of association and collective bargaining

4.1.1 The Constitution of FDRE

According to the provision of article 31 of FDRE Constitution everyone is entitled to freedom of

association for any reason in a legally prescribed manner.[68] Moreover, article 42 of the Constitution allows workers including public servants below certain ranks to be unionized and bargain collectively which extends to their right to exercise strike.[69] This shows the emphasis given to labour right by mentioning it in a separate article. It is clear that according to the provision of article 9 (4) of FDRE Constitution all international agreements ratified by the country are integral part of the law of the land.[70] On top of this, the Constitution also emphasizes that the interpretation of chapter three of the Constitution should be made in conformity with international instruments adopted by Ethiopia in addition to other international human right instruments.[71] Dr Fasil Nahum also mentioned on his book that the right to freedom of association is listed under democratic rights because for one thing they are group oriented and/or for another thing they have political characteristics.[72] He added that, the rights mentioned under chapter three of the Constitution is far-sighted and preserving them requires the responsibility and obligation of all organs of state. Moreover, the interpretation of these rights and freedoms shall be in conformity with UDHR and the bill of rights.[73]

From the above mentioned provisions of the FDRE Constitution one can conclude that fundamental rights and freedoms are constitutionally entrenched rights. Moreover, civil servants are allowed to have the right of freedom of association and to enjoy the fruit of it one of which is the right to collective bargaining. This indicates the compatibility of the FDRE Constitution with international instruments mentioned in the previous chapter.

4.1.2 The Labour Proclamation No.377/2003

The preamble of the labour proclamation made it clear that both employers and workers have the guarantee of establishing their respective association and to be engaged in collective bargaining through their legal representatives. In addition, the preamble indicates that one of the objectives

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[68] 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.*
[69] Ibid
[70] Ibid
[71] Ibid
[72] Fasil Nahum, *Constitution for a nation of nations :The Ethiopian prospect*, Lawrenceville/Asmara, The Red Sea Press ,Inc. (1997) 57
[73] Ibid (58)

for revising the labour law is to make it compatible with international conventions to which Ethiopia is a party.[74]Article 113 of the proclamation recognizes the fact that both employers and workers shall have the right to establish their respective associations. Moreover, according to article 114 of the proclamation they are allowed to form federations and confederations and to join their respective international organizations.[75] Under the provisions of article 3 (2) of the proclamation that deals with the scope of application, express as well as conditional exclusion is made for policy reasons.[76] The definition given about collective bargaining under article 124 and that deals with the subject matter it contains provided under article 128 are similar to the above mentioned definitions.[77]

According to Convention 87 the right of freedom of association should be guaranteed without any sort of discrimination based on occupation among other things. Making limited list of occupations with a view to recognize the right to associate would be contrary to the principle that stated workers should have the right to establish and join organization of their own choosing without discrimination. Public servants shall also have the right to establish and join organizations of their own choosing for the promotion and protection of their occupational interests. And this should be done without distinction of any kind and without previous authorization from government. [78] The right to freedom of association has two meanings. On the one hand, it is the right of workers and employers to form freely their own organizations and on the other hand, it is the right of the organizations themselves to defend their respective occupational interest.[79]

Since the specific target of the research is investigating the real problems with regard to the protection of the right to freedom of association and the effective recognition of the right to collective bargaining, let us discusses some points that are directly related with these issues. Assistant Professor Mehari Redae mentioned that parliamentarians, ministers and judges are not

[74] Labour Proclamation No 377/2003, *Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia*, 10th year, No. 12, Addis Ababa Ethiopia, February 26, 2003,
[75] Ibid
[76] Ibid
[77] Ibid
[78] ILO, *Freedom of Association*: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition, International Labour Office, Geneva, (2006) 45-47.
[79] Ibid 103

employees because they are assigned either by election or by appointment not through employment and hence they are excluded from application of the labour law. Nevertheless, the experts and supporting staff are employees but they are not governed by the labour law rather by the Civil Servant' Proclamation.[80] Moreover, the right of workers to unionize themselves in their own choosing in full freedom cannot be said to exist unless such freedom is entirely recognized and respected in making law and in reality.[81] Ethiopia ratified the two conventions on the 4th of June 1963.[82]

The Labour Proclamation No 377/2003 is interesting, in particular concerning the scope of rights of employees and employers to form associations of their choice and engage in collective bargaining. The fact that the proclamation purports to attain the above mentioned objectives is something which could be considered as an encouraging move. Undoubtedly, these are essential matters in determining the nature of relation between the worker and employer in a given period. By looking at the above mentioned articles it can be concluded that the labour proclamation is in conformity with international instruments ratified by Ethiopia and made integral part of the law of the land as designed on its objective.

4.2 The practical circumstances of freedom of association and collective bargaining in Ethiopia

In this part of the research focus will be made on the practical situation of the two rights in issue. First the observation of MOLSA will be discussed and followed by the observation of social partners (observation of EEF and CETU**).** Evaluation and analysis of the researcher that focuses on experience gained from the regional workshop and his personal observation will be presented.

4.2.1 Observation of MOLSA

[80] Mehari Redae, *a simplified guide to the Ethiopian Labour Proclamation*, Addis Ababa ,Ethiopia, ILO (2008), 4
[81] Freedom of Association supra note 77 (65)
[82] https://www.ilo.org/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102950, accessed April 26,2014

The researcher conducted an interview with Ato Girma Sheleme [83] and Ato Worku Aleminew [84]. The questions forwarded to them were two fold. Whereas, the first question focuses on freedom of association and protection of the right to organize, the second is all about collective bargaining. The questions can be summarized as the practice of the two rights on the ground and the assessment of MOLSA towards the perspective of its social partners.

A. In relation with the right to freedom of association & protection of the right to organize

The first question was how do you evaluate the perception of the owner and/ or the employer towards the right to freedom of association and protection of the right to organize? The interviewed persons answered that with regard to freedom of association there are some employers that either do not know the right or understand it negatively. In addition, they may consider that if there is a trade union in their organization at least the following instances may happen: their productivity will be minimized; due to trade union activity there will be an impact on the work; and the organized workers may demand more fringe benefits.

With regard to the opinion of workers on the same question mentioned above they evaluate the attitude of workers as follows. There are preconditions to be fulfilled before organizing workers and they lack those preconditions. For example, in many instances employers were not told the advantage of organizing workers in trade unions. In some other instances organizing will be held secretly (without the knowledge of the owner and/or the employer). The following are the major problems perceived by the interviewed persons; lack of awareness about freedom of association and protection of the right to organize; fear of retaliation from the employer if they join trade union; immediately after the establishment of a trade union in a certain organization, workers directly went on to ask fringe benefits; trying to harass the employer; leaders of the union quarrel with their employer before searching whether a worker is punished with his own fault or not.

The interviewed persons mention that there are also problems those are attributable to the concerned government officials on the issue. This includes but not restricted to the following:

[83] Ato Girma Sheleme, Director of Public Relation Directorate at MOLSA, interview conducted on 30th April 2014 in his office.

[84] Ato Worku Aleminew, Industrial Relations Unit Leaderat MOLSA, interview conducted on 30th April 2014 in his office

lack of awareness about the labour law and the convention; lack of professionals; lack of skill; high turnover of workers; being biased on the issue and siding either workers or employers; be deficient to clearly tell the advantage of unionization for both parties; and unable to train about the labour law and the convention to both parties. The above mentioned problems are highly structured particularly in the local administrations.

B. In relation with the Right to Organize and Collective Bargaining

The second question was how do you evaluate the perception of the owner and/ or the employer towards the right to organize and collective bargaining? The interviewed persons mention that some of the problems that can be observed with regard to collective bargaining on the side of the owner and/or employer include the following: not being positive; not initiating bargaining; assuming that through collective bargaining workers will ask for profit share and they eradicate my decision making power by asking to participate in administrative matters.

They also indicate some of the major issues observed in the side of workers includes but not restricted to the following: asking for an enormous amount of fringe benefit that didn't take into account the capacity of the organization and the situation of the country; being rigid and not having alternatives for bargaining; unable to make their inquiry to revolve around centering the organization.

The problems that have been seen by interviewed persons in the concerned government offices include the following: incapability; lack of awareness; unable to create awareness to the social partners; and inaccessibility. Moreover, they mentioned that, the law doesn't give conciliators any power other than conciliation if the parties don't agree on the issues during bargaining.

4.2.2 Observation of EEF

The researcher conducted an interview with Ato Tadesse Eyassu[85] and Ato Negalign Mulata. [86]

[85] Tadesse Eyassu, Board member of EEF, interview conducted on 29th April, 2014, in his hotel.

The questions forwarded to them were to forward their perspective on freedom of association and protection of the right to organize and the right to collective bargaining.

A. In relation with the right to freedom of association & protection of the right to organize

In the opinion of the interviewed persons, with respect to the right to freedom of association there are some challenges in particular in private companies that emanate from the organizing practices that have been exercised in the country; some employers assume that if workers are allowed to unionization they might create chaos; some others fear that the earlier practices during the military regime might appear if workers are organized in their company; the creation of yellow union if faced with difficult challenges with the existing trade union leaders; and the practice of organizing workers by task force might lead the employer to challenge them by stating that since you don't belong to my company you can't do this. This means let the workers in a certain company organize themselves after the agitation is done by the task force.

According to the interviewed persons, among the problems that possibly created by workers includes the following: workers demand to establish trade union if and only if they encounter a challenge otherwise they did not visualize the need of unionization; they organize themselves without the knowledge of the employer targeting to solve their problem; they write letters to the employer as soon as they get registered that leads to confront with the latter and their leaders may be fired from their job due to this reason; and the creation of multiple unions due to the fact that trade union leaders might not be willing to lose their position after the lapse of tenure.

B. In relation with the Right to Organize and Collective Bargaining

With regard to the question of how do you evaluate the perception of the owner and/ or the employer towards the right to organize and collective bargaining, they mentioned that the problems that attribute to employer includes the following: unwillingness to seat for bargaining and to give audit report of the organization for trade union leaders; in some organizations absence of modern management system that particularly lack the idea of collective bargaining; and not giving due respect to workers' representatives by forgetting bargaining requires to seat

[86] Negalign Muleta, Director of EEF, interview conducted on 29th April, in his office.

in equal footing.

They have also an opinion that workers representatives that bargain with the employer created the following problems during process of bargaining: asking for benefits that are beyond the capacity of the employer; assuming that bargaining is adding some thing on the existing and unwilling to reduce any of the benefits that exist before that indicate lack of considering situations such as price fluctuation (those that had had Collective Agreement); being rigid and unable to bring alternatives; not ready to give and take principle; mentioning that if we face any problem we will go to the media, which is a pre judgment that guesses the possible occurrence of problem; unwillingness to have different working hours based on the type of work; unwillingness to begin bargaining in the absence of audit report of the organization; and not giving due respect for their employer that might lead for elongation of the bargaining process.

They are of the opinion that they didn't notice any problem with regard to the two rights in the government side.

4.2.3 Observation of CETU

A. SWOT Analysis made on the activities of the task force established by CETU

Article 6 of the revised constitution of CETU stated the objectives of the organization in a detailed manner. Among these objectives giving the necessary support for the unionization of workers in trade union and strengthening the organized ones are mentioned. The other objective of the organization is securing the protectection and respect of the interests and rights of Ethiopian workers and strives for the prevalence of social justice.[87] Cognizant of this fact executive member of CETU and its affiliate federation leaders agreed to work together the task of unionization. A task force was created to take this job and assisted by technical groups, which were mainly composed of experts in CETU and led by head of the department of Industrial Relations and Organizing. An implementation directive that serves as a guide line for the task

[87] The revised Constitution of the Confederation of Ethiopian Trade Unions, adopted by The General Council on October 22,2013

force was adopted by CETU executive members after deliberation was made in joint session with executive members of affiliate industrial federations.[88] Under article 2.1 of the directive it is stated that in order to make the right to organize practical it needs allied, organized and effective workers and stake holders movement.[89] The Regional States and cities selected for the campaign were: Regional State of Amhara (Dejen, Debre Markos, Bahir Dar, Gondar, Dangil, Dessie, Woldia, Lalibela and their surroundings); Harari Nationality Administration; Dire Dawa City Council; Tigray(Axum,Adigrat, Mekel and their surroundings); Oromiya (Adama, Special Zone of Oromiya around Addis, Jima and their surroundings); Sothern Nations, Nationalities and Peoples Regional State (Bonga, Mizan Aman, Masha, Hawassa and their surroundings).

The activities of the task force can be summarized as follows using the SWOT analysis. This can give readers a clear indication of the real problem with regard to the practical problems of freedom of association.

I. Strength

Attributes of CETU and its affiliate federations that were helpful to achieve the objectives set during the campaigning of unionization and that can be taken as strength includes the following:

- The availability of six branch offices of CETU in selected areas where there are congestion of workers;
- Task force was organized for the purpose of organizing workers that are not yet organized;
- The existence of one national center with strong leadership;
- The existence of the Constitution of CETU;
- Planned objective was available;
- There exists four year strategic plan of CETU that facilitates organizing; and
- The availability of guiding documents that highlight how to go about during organizing.[90]

II. Weaknesses

[88] The Confederation of Ethiopian Trade Unions, *"Implementation Directive for Organizing",* adopted by CETU Executive on March2012 (unpublished material)
[89] Ibid 2
[90] Data collected by task force established to organize workers.

On the other hand, the following were some of the internally created challenges that hinder the proper achievement of the objectives set and can be considered as weaknesses of the organizing campaign:

- Lack of awareness about the right to freedom of association;
- lack of enthusiasm to be elected as a union leader;
- lack of skill and/or competence;
- unwillingness to accept unionization because of membership contribution;
- fear of loosing jobs; and
- lack of money to be registered and get recognition thereof in the concerned government offices.[91]

III. Opportunities

There were also externally originated attributes that pave the way for the campaign and can be considered as good opportunities for the campaign. These include the following:

- The ratification of the eight ILO Core conventions by the country;
- The FDRE Constitution allows freedom of association;
- There exists a labour law that allows the same partially that excludes certain categories of workers; and
- The enormous cooperation given by concerned government bodies particularly in the regional states.[92]

IV. Threats

The external harmful practices that hinder the task force from attaining the objectives set by CETU and considered as threats includes the following:

- Employers and/or owners provoke workers not to be willing for unionization by using their family members or relatives as a spy;
- Understanding the organizing task negatively;
- Unwillingness to permit workers to attend meetings even during their rest time;

[91] Ibid
[92] Ibid

- Asking to attend workers' meetings during election;
- Making repeated appointments and hiding themselves during the date of appointment;
- Reasoning the absenteeism of the owner and not willing to arrange meetings in his absence;
- Organizing group of people that enable the employer and /or the owner to establish "*yellow union*" [93];
- Asking the reason why they have been chosen for (why my organization?);
- Considering the establishment of a trade union as a threat;
- Disallowing permission for workers to attend meetings by mentioning that it is high time for harvesting;
- Mentioning for the task force to ask the International or the National company whose main office is not in their region or local administration (particularly SOS Children's Village located in Hawasa);
- Fear of organized workers that might ask for more benefits that possibly lead to additional costs;
- Confusions were created by certain workers that were given an assignment by the employer to disorganize meetings and hindering workers from unionization; and

- Engaging workers in over time duties so that majority would not be maintained.[94]

B. Result obtained through interview with selected leaders of CETU and Industrial Federations

The researcher made an interview with Kassahun Follo[95], Tamene Mekonen[96] and Birhanu Diriba[97] (from CETU); Tolera Deresa[98], Ayalew Ahmed[99], Zegeye Haile Selassie[100], and

[93] A yellow union is the one that is formed by the employer and/or the owner himself and solely serves his interest by disregarding workers interest.
[94] Data collected (ft.nt.48)
[95] Kassahun Follo, President of CETU, interview conducted on April 08, 2014, in his office.
[96] Tamene Mekonen, Head Industrial Relations and Organizing Department, interview conducted on April 08, 2014, in his office.
[97] Birhanu Diriba, Head Planning, Research & Information Department, interview conducted on April 08, 2014, in his office.
[98] Tolera Deressa,President, Industrial Federation of Hotel, Tourism and General Service workers, interview conducted on April 08,2014, in his office.

Gebeyehu Adugna[101] (from Four Industrial Federations). As it has been mentioned earlier focal point of the first question was on the practice of freedom of association and protection of the right to organize and the second is all about collective bargaining. The same questions were raised to all of them due to their similarity and their answers were categorized as follows.

A. In relation with the right to freedom of association & protection of the right to organize

In the opinion of the interviewed national leaders, whose name is mentioned above, with respect to the right to freedom of association the problems are multi dimensional. That means there are problems in MOLSA and its social partners although difference can be visualized. Moreover, what has been practiced in particular in private companies (whether they are owned by foreigners or nationals) with regard to freedom of association is a much worsened one and we will see it here in under.

With respect to government officials although there is awareness with regard to freedom of association in particular in MOLSA and BOLSA's (Bureau of Labour and Social Affairs), workers in zones and woredas do not have enough knowledge about the right of freedom of association. In some ares although they have knowledge about the labour law they did not know about the ILO conventions and this is the result of absence of domesticating the ratified conventions in local languages. In addition, they started the work without acquiring the necessary skill needed and those who acquired the knowledge quit their job without giving enough service. They did not also give emphasis and are negligent towards freedom of association. There is lack of accountability in all the concerned government hierarchies. There is lack of accessibility of the labour proclamation and the ILO conventions particularly the two conventions at issue.

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[99] Ayelew Ahmed,Head Organizing department, Industrial Federation of Textile, Leather allied works, interview conducted on April 08,2014, in his office.

[100] Zegeye Haile Selassie, President, Industrial Federation of Construction, Metal, Cement & allied workers, interview conducted on April 08, 2014, in his office.

[101] Gebeyehu Adugna, President, Industrial Federation of Agriculture, Plantation, Fishery & Agro industry, interview conducted on April 08, 2014, in his office.

When they consider the practical situation of freedom of association in relation with workers they observed the following problems. Some workers don't know that they have the right of freedom of association and expected some other person to organize them; they want to organize only if they face some sort of problem; lack of willingness to unionize or to be elected as a leader; fear of retaliation from the employer if they have organized; being afraid of the challenges that have been faced by former trade union leaders because of organizing; absence of quick decision making process with regard to unlawful termination of workers can create fear upon workers and make them to hate trade union; some workers in some places are not able to differentiate organization of workers from other associations; some other workers are afraid of paying dues for the membership of trade union; threats created by relatives of employer and immediate supervisors hinder workers from joining trade union; fear of losing their job and assuming challenging the employer will be cumbersome to workers will also make them not to come to leadership of a trade union; assuming a trade union only for the purpose of asking benefits; pressure from family member of workers not to join trade union; and workers with professional carriers (such as super visors, lawyers etc) frighten other workers not to join a trade union.

They put the perception of the Employer and/or Owner towards freedom of association in the following manner: some employers are unwilling to co-operate in organizing a trade union in their organization, lack of willingness of employers to allow trade union and not allowing permission for attending meetings of trade union; if workers are unionized outside the company taking measures (such as ; suspension, demotion, transfer and dismissal) up on trade union leaders mentioning another reason for their dismissal; some others think that if a trade union is established in their organization there could be expropriation of their property; there is also an assumption that trade unions will create pressure upon their employer and the duties of the employer will be more with regard to occupational safety and health instruments; presupposing that if workers are organized they will share the profit of the company in the absence of which the owner is at liberty to enjoy all the net profit of his company; presuming that trade unions will interfere in my administrative activities and they make my decisions to lag and I can't decide whatever I like; some employers made secret agitation that hamper the organization of workers in trade union; making possible that the relatives and workers that have closer relationship with

the employer should be elected as trade union leaders; some employers may use family members and workers closer to them to announce publicly that workers don't want trade union; if this strategy failed establishing a yellow union or another union which can get every necessary support from the employer and try its level best to weaken workers struggle through the already established trade union.

B. In relation with the Right to Organize and Collective Bargaining

The opinion of the interviewed national leaders, whose name is mentioned above, with respect to the right to right to organize and collective bargaining, has also multiple features. Bargaining is much more difficult in Ethiopia and the leaders that are the real witnesses that exactly know the real challenges that have been faced by basic trade union leaders mentioned it as follows.

They assess the practice of employers with regard to collective bargaining and put it in the following words: some employers made the negotiation date only once in a month or every week only for one hour; some other employers may not bring alternative bargaining ideas that means taking a single stand and forcing the other party to come to their position; the employer assume that collective agreement should be the result of his generosity not the result of bargaining this is misunderstanding the basic concept of collective bargaining that is give and take; in some instances bargaining may take several years (for instance, the collective bargaining in the Ethiopian Airlines take more than four years and ended up by signing the agreement by the great support gained from CETU and MOLSA); considering that collective bargaining will minimize the profit and employers decision making capacity; some employers hide the annual profit of the company to trade union leaders; intimidating trade union leaders that participate in the bargaining process and that challenge the employer representatives and taking different disciplinary measures so that they can be repentant to the employer or; being hostile to the trade union representatives so that they can be surrender to the wish of the employer; firing negotiators by citing other reasons; not willing to sit for collective bargaining and after starting the bargaining making the process a lengthy one; not having good faith and as much as possible making the benefit asked very minimal; nominating as representatives those who are not in a position to make decisions and that are not well aware of bargaining procedures; and considering collective agreement that only relate to benefits.

They also evaluate the practice of workers with regard to collective bargaining and put it in the following expressions: trying to bargain more without taking into account the capacity of the company; some workers assume that it is the duty of the employer to give what a trade union asked for by forgetting it is the result of bargaining; limited capacity of workers representatives and coming to bargaining without option; forgetting the principle of give and take and expecting to win all the proposed bargaining issues; some workers representatives may assume that in the course of bargaining they may not satisfy the desire of their members and losing their job security because of bargaining; lack of confidence and not aware of the fact that they are on equal footing with representatives of employer; disseminating false information with regard to the bargaining process and creating a mob that possibly make an imposition upon the employer; some negotiators become rigid upon certain issues and some others are afraid of the employer representatives ; they are not able to convince representatives of employer and absence of legal back ground as the major ones.

They appraise the practice of the concerned government authorities with regard to collective bargaining and put it in the following terms: unclear provisions of the labour law led to disagreement during collective bargaining (for example the provision that defines managerial employee is not clear and becomes an issue for negotiators); when negotiators seek a conciliator to resolve the issues at stake the latter's are not capable enough to do so and the proclamation didn't gave them compulsory power; there is a tendency of some officials to resemble to the owner and /or employer because of rent seeking behaviour or misunderstanding the idea of giving priority for development; trying to influence their own belief or idea upon negotiators; lack of capacity of conciliators; since the government is propagating for the encouragement of investment some officials consider that supporting the investor is implementing the government's policy and in doing so they make imposition upon workers representatives;

4.2.4 Observation of the researcher

This part of the research has three sub sections. The first part discusses the facts that are obtained

from "Regional Organizing Workshop".[102] The second section deals about the analysis made by the researcher. The third part deals case analysis made by the researcher.

4.2.4.1 Knowledge obtained from the workshop

One of the unique advantages of organizing workers in a trade union is to secure workplace justice. This means, in order to attain social justice having a trade union is a must. Some of the problems that workers generally face on the job and that indicate the need to have a trade union includes but not restricted to the following: making discrimination between workers; lack of respect for workers; low wages; payment of little or no benefits; lack of seniority rights; bad treatment by supervisor; using small number of workers to decrease salary expenses; having no voice in decision-making process in the organization; and unsafe working conditions.[103]

In order to solve the above mentioned problems workers may go to their supervisor to see if it can be resolved or complain about it. In addition, in cases of discrimination they set out to a government agency to file a charge or to non-governmental organization or community organizations as an alternative. If they are not able to tolerate the problems they encounter they might quit their job. But the supervisor may not be ready to listen to the worker or the improvement made may be short lived one. In addition, it may take several years for a government agency to investigate the case brought to it by workers. Moreover, the quitting of a worker doesn't solve the problem at that workplace, and there is only a small likelihood that the worker will quickly find a significantly better job elsewhere. This shows an individual worker cannot be part of the solution. [104]

Real power of workers in their work place can be achieved through trade unions. This means organizing a union enables workers to stand together and act collectively to make changes in their workplace. Trade unions are different from other community organizations in many ways. For one thing they elect their leaders themselves. For another thing trade unions are funded by

[102] Regional Workshop on the Organizing program was organized by African Regional Organization of the International Trade Union Confederation (ITUC-Africa); Head quarters of ITUC-Africa, Lome (Togo) from April 14-19, 2014, and the researcher attended the workshop representing CETU.
[103] ITUC, *Lead Organisers' Course*, Author(A training manual prepared for lead organizers and given for participants in the regional workshop held at Togo, Lome from April 14-19,2014) 24
[104] Ibid

their members through their dues. Moreover, trade unions are not beholden to other interests. One can safely conclude that trade unions are the best vehicle for workers to claim a greater share of the fruits of their labour. When a trade union is established in an organization the workers will be able to negotiate a contract about working conditions and improvements in the work place with the employer.[105]

Although there are different obstacles in organizing workers the following are the major ones. Workers fear that the employer may retaliate if they establish trade union. There is lack of education about trade union and workers have also the feeling of hopelessness. They doubt that things can really change and they are often isolated from their co-workers that hinder them from apparently seeing their common interests. [106] In order to have real power trade unions need strong majority of the workers. Having more union density means more power for workers in that industry. This is because if trade unions don't attain majority the company will put downward pressure on the union's using non-union ability to raise standards for current members and throughout the entire industry. It will build union density in the industry where the union already represents workers. This indicates that trade unions can be powerful if and only if they can exercise influence at their organization otherwise the employer becomes powerful and unions will not do anything that enables them to change the situations.[107]

Organizing workers in a trade union highly demands preparation of strategic campaign plan. If workers participate during planning of the strategic campaign they bravely fought for the achievement of its implementation. Moreover, campaigns require real effort and resources on the part of the union and they must be committed to spend the energy and money required for it. In the contrary if they are not participated from the beginning and are not willing to give the necessary support the plan cannot be successful at all. [108]An organizer should use the most effective way to communicate with people that includes visiting workers in their homes, at their work-site or elsewhere and building a relationship with them. The lead organizer should facilitate for the establishment of a representative committee that is willing to take action around issues

[105] Ibid 25
[106] Ibid
[107] Ibid29
[108] Ibid 34

that are helpful in building and achieving majority support of workers. This means organizers should aim to put themselves out of the business except recruiting and training new worker leaders to take over their work and take ownership of the campaign by themselves.[109]

It is difficult to campaign and to organize workers without the help of others. It is clear that a campaign to organize needs both air and ground campaigns in the absence of which success will not be attainable.

A. Air Campaign

The help needed is of two types. The first one is leverage over the organization. In order to understand how you can gain leverage over a targeted company, you need first to understand how that company works. The primary issue is identifying the wants of the company. Once this is known keep the company from getting what it wants until it stops mistreating workers. But basic research on the targeted company should be done by trade union. In order to have leverage from others, trade unions should follow the money of the company. In doing so, sorting out the kind of relationship the company had significantly important. In addition, the way that the government agency regulates different aspects of the company's business and the new developments the company is planning should be sorted out. More importantly knowing the decision maker at the company is crucial.[110]

There are many different way of communications that are essential for a successful campaign. In order to be effective organizers can use some of the following tools. These are: messaging, branding/logos, branded resources like T-shirts, stickers, media, email, SMS (text messages) and websites, social media, fliers, posters and petitions, internal communications for members and staff, and activist toolkits.[111] For instance, we can use media to get our message out and to tell our story for others. It is also helpful to highlight and profile our campaign and to gain public support. The last but the most powerful part of using media is to put pressure on employers and other decision-makers.[112] Using the air campaign trade unions would attack the company's

[109] Ibid
[110] Ibid 48
[111] Ibid 50
[112] Ibid 55

standards of corporate governance; can be able to approach share holders; publicize the concerns of the workers; table a resolution on corporate governance; take the campaign globally; and finally global demonstration would be achieved.[113]

B. Ground Campaign

The campaign on the ground needs the fulfillment of the following situations. First, it needs careful identification of target. Then, the target should be analyzed thoroughly. Third, workers should be motivated to fight for their right. Fourth, a strong representation should be built before the task of organizing that is to say attaining majority is mandatory for the work of organizing. Fifth, identifying leaders among the workers is also necessary. Sixth, bringing together those leaders to form a community in the industry is also of crucial importance. Seventh, direct the overall strategy of the campaign. Building the strength of the leaders before starting the campaign and in due course will be the final stage of the ground campaign.[114]

4.2.4.2 Analysis of the Researcher

The researcher was able to identify the following problems as drawbacks of the campaign that might lead not to reach its target:

- A research should have been done before launching an organizing campaign but this was not done because of lack of expertise in CETU and limited resources to higher other professionals from outside the organization;
- Industrial areas that should be given priority were not identified beforehand that was relevant to make the work of the task force a focused one. They rather used to organize all workers in certain locality. If it was done in a certain identified companies it would have been more effective;

[113] Ibid
[114] Ibid 62-89

- The campaign to organize requires repeated action but the activity of the task force becomes a one time job and lack continuity;
- A campaign to organize requires a lot of patience but some members of the task force were impatient at times;
- A campaign to organize needs application of different techniques that varies from place to place but almost the same techniques were applied by the task force;
- The campaign requires to listen more and to talk less but the task force members do it inversely;
- The campaign also requires to be more attentive to hear the stories of workers but much attention was not given by the task force in this regard;
- A campaign requires situational analysis but the task force did not give more on this as well; and
- In many work places workers become more passive or less militant. Although freedom of association requires free will of its members it is difficult to go with such passive workers. This is because trade union highly demands militant groups that can bravely win their right by bargaining with their employer, which is capable of doing things with his money.

Except the last bulletin the rest indicated the drawbacks of the campaign and make a possible proposal for the future. With regard to the last bulletin repeated awareness creation program might change the situation and CETU in collaboration with other donors can make it feasible.

4.4.2.3 Case Analysis

Although the researcher tried its level best to get cases related with freedom of association he was not able to find any. Two of federal Labour relations board judges (Ato Tamene Mekonen and Ato Asnake Demisse [115]) told the research that employers do not directly prohibit the right of freedom of association rather they systematically avoid it and take different measures and when the case brought to the court the issue becomes different. Inother words, employers take different measures on individual worker or group of workers that do not directly indicate violation of

[115] Interview was conducted with the two board members in their office located at Ministry of Labour and Social Affairs, On Monday June 9, 2014.

freedom of association rather they related it with some other reason that is practically the same as systematic change of the issue. For instance, they may intimidate workers during election not to elect their preference or to elect those prepared by the employer. Or they may demote, transfer, suspend and dismiss union leaders on reasons that do not relay with freedom of association but with some disciplinary activities. Therefore, the issue becomes whether the measure taken by the employer is lawful or not rather than whether the right to freedom of association is infringed or not. Hence, the following three cases are those related with the right to collective bargaining.

Case I

File No…… 280/02/2005.

Plaintiff…….. International Heart & related diseases Hospital Basic Trade Union

Defendant ……International Heart & related diseases Hospital,

The plaintiff claims that after conducting the first meeting and laying down the procedures the representatives of the employer were not willing to continue the bargaining. Hence, plaintiff asked the board to order the continuation of the bargain by assigning a conciliator according to the provision of the labour proclamation. The defendant on his part mentioned that in accordance with our procedure a party can be said unwilling to negotiate if his delegates become absent for more than two meetings. But one of the representatives of the employer was absent only for two days and we will continue after he come from abroad and we don't violate the procedure laid down. The board looks in to the case and believes that bargaining is important to make peaceful industrial relation and the two parties should do it in good faith in short period. To do this the board believes that assigning a conciliator is essential.

Order of the board: by the conciliator to be assigned by the Nifas Silk Lafto Sub City Labour and Social Affairs Office the parties should continue their bargain, finished it and if possible come to the board by making registered their agreement. The board also adjourns the case for Meskerm 24, 2006 E.C. But on this date the parties come without any result. Hence, the board again ordered the parties to start the bargain in the presence of the conciliator and to bring their agreement to the board for the next adjournment.

In the opinion of the researcher the board should not order like that. This is because according to article 142 of the labour law the role of the conciliator should be to conciliate the parties and he is not allowed to attend bargaining meetings. Moreover, bargaining is a negotiation to be made between the two parties alone and the conciliator come to the picture if they finally disagree and he can do his task of conciliation in accordance with the law.

Case II,

File No…….51/01/2006.

Plaintiff……Manmade Disability Support Production Center Basic Trade Union

Defendant……Manmade Disability Support Production Center

The plaintiff claims that the change or transfer of ownership can't prohibit making of collective bargaining and the defendant shall be obliged by the board to bargain with the plaintiff. The defendant on his part expresses that since the organization will be made to be governed by the public servants law the basic trade union will be dissolved that ends the necessity of collective agreement. Hence, the defendant will not bargain with the plaintiff.

Order of the board: since the trade union is legally recognized entity and the organization administers its own budget the parties should bargain in the presence of conciliator to be assigned by Gulele Sub City Labour and Social Affairs Office and if possible come up with registered collective agreement for Meskerem 21, 2006 E.C. Later on the plaintiff becomes judgment creditor and the defendant becomes judgment debtor and the latter failed to implement in accordance with the decision and the board ordered Gulele Sub City Police Department to enforce the judgment forcefully.

According to the opinion of the researcher although deciding to make the defendant submit itself to bargain is something good he will not agree with the idea that the process should be made in the presence of a conciliator. Rather the board's decision should be towards bargaining to be made between the two parties. Moreover, the second order of the board is also absurd for the researcher. This is because how can a police make possible a bargaining to be made forcefully by

contradicting the requirement of good faith? What will be the fate of the basic trade union and its leaders after the forceful measures have been taken? It will be difficult to answer these questions and to predicate what will happen next and the organization will be in difficult situation if the industrial relation in the company will be disturbed due to this fact.

Case III

File No…….244/02/2005

Plaintiff……Nejashi Ethio Terkish International School Basic Trade Union

Defendant ……Kanica Education and Medical Service P.L.C (Nejashi Ethio Terkish International School)

The plaintiff asked the board that although it prepared draft collective bargaining document and request the defendant for bargaining, the latter is not willing to bargain. Hence, late the board forces it to bargain according to the mandate it has on the labour law. The defendant responds that the plaintiff was asked to present copies of memorandum of association and certificate of registration for the management but failed to do so. Let the plaintiff bring those documents and the defendant will decide to start bargaining.

Order of the court: on Megabit 20, 2005 the court ordered that the Nifas Silk Lafto Sub City Labour and Social Affairs Office enable the bargain; after a week the board again ordered the continuation of the bargain; the board finally ordered the Addis Ababa City Labour and Social Affairs Bureau to assign a conciliator and the point of differences were identified. After receiving the point of difference the board unanimously decided on each point and ordered the parties to finish their bargain and get registered.

In the opinion of the researcher, although bargaining should be the result of good faith negotiation and the parties are expected to reduce their differences through compromise for their mutual benefit the decision of the board becomes vital if these things are not maintained. But this collective agreement becomes a result of the decision of the board and not the result of negotiation that becomes susceptible to change after its lapse and open another forum of debate

for the next negotiation. Hence, this kind of decision would cause disagreement between the parties rather than creating conducive work environment.

In all the three cases mentioned above the board did not establish an issue rather it prefers to set out directly to give orders that it thinks appropriate. Even though it is not required to follow the civil procedure it would be better if the board clearly indicates the issues at stake first before giving orders.

Chapter five: Conclusion and Recommendation

5.1. Conclusion

The major actions of employer against unions are violence, lock out and dismissal. Trade unions were also took collective actions such as mass petition campaigns, national strikes, and related working class efforts but they failed to give trade unions decisive political power. The scope of freedom of association becomes an issue at stake until today. Workers in Ethiopia demanded for salary increment, reduction of working hours and betterment of working conditions openly before the establishment of trade unions in the country by organizing themselves by communal

associations locally called “Edir”. Finally they were able to have trade unions in their organization and at the national level after the enactment of Labour Relations Decree of 1962.

Collective bargaining is said to be in place when a group of employees negotiate as a unit with their employer over pay, benefits and working conditions in the undertaking. The theme of this principle is that, employees would have more strength or bargaining power if they collaborate together than negotiating with their employer individually. Because of this characteristics feature collective bargaining is inherently a democratic process since a majority of employees select the subjects they bargain over and vote on whether they agree to a contract. According to the definition given on the manual prepared by MOLSA, collective bargaining is a machinery that can synchronize the interest of employer and workers and is an agreement that determines working conditions of an undertaking. This can be considered as a clear indication of having the same kind of definition for collective bargaining like internationally accepted definition.

The right to freedom of association and collective bargaining are the two most fundamental workers rights that have been given recognition by the international community as earlier as the 1919 on the constitution of ILO adopted by ILC. Then the making of the declaration of Philadelphia in 1944 shows the continued effort and great concern given to these rights. Later on the provision of UDHR was an indication of considering them as human rights. In addition, the provisions of the two rights become part and parcel of the international human rights covenants that are mentioned in the research. The making of eight of ILO conventions to be fundamental or core conventions by the ILC in 1998 indicates the continuation of the emphasis given to them by the international community.

Furthermore, the ILO’s declaration on Social Justice for Fair Globalization of 2008 recognizes freedom of association and collective bargaining as enabling rights in the absence of which achieving the four objectives of Decent Work Agenda could not be possible. In other words, freedom of association and the effective recognition of the right to collective bargaining are particularly important to enable the attainment of the four strategic objectives of ILO.[116] This

[116] ILO, celebration of the 60th anniversary of convention No.98: the right to organize and collective bargaining in the 21st century, International Labour Office. Geneva: ILO (2009) 17

indicates the greater value given to the rights and how much important they are. Hence, in order to properly implement these rights in our country more has to be done by all the partners.

Respect and protection given to workers right particularly to freedom of association and collective bargaining is the pre-condition for the realization of democracy at the work place and in society. Moreover, the ability of trade unions to bargain collectively is a central tool to improve working conditions, to solve labour disputes, to achieve social justice, decent work, economic development and stability in society.[117] Hence, if the proper implementation and full realization of democracy at the work place highly demands the two rights and their role is so significant, awareness should be created more on all the social partners in harmonized way rather than scattered manner.

The respect and protection of the right to freedom of association and collective bargaining strongly demands s*trong, representative, independent and democratic trade unions as well as representative employers' organizations committed to collective bargaining; foster effective systems of industrial relations and enable effective tripartite structures and policies.*[118] In order to have proper implementation of these rights and for establishing harmonies industrial relations strong representatives are needed from both employers and workers.

When we compare the situation of legal legislations in Ethiopia, the country ratifies all the eight ILO fundamental/core conventions that include the two rights in issue. Moreover, both the FDRE Constitution and the Labopur Proclamation No. 377/2003 have verbatim copies of the two provisions. This shows both are in conformity with international instruments mentioned above.

When we evaluate the practical condition of the right to freedom of association and collective bargaining in Ethiopia there are multiple problems. Let us consider these problems in relation with each partner on social matter separately. First the practical situation of the right of freedom of association will be sum up and then the practice of the right to collective bargaining will be mentioned in a summarized way.

[117] Ibid 18
[118] Ibid

When we see the practical situation of freedom of association in the concerned government officials although there is awareness with regard to freedom of association in particular in MOLSA and BOLSA's (Bureau of Labour and Social Affairs), workers in zones and woredas do not have enough knowledge about the right of freedom of association. In some areas although they have knowledge about the labour law they did not know about the ILO conventions and this is the result of absence of domesticating the ratified conventions in local languages. In addition, they started the work without acquiring the necessary skill needed and those who acquired the knowledge quit their job without giving enough service. They did not also give emphasis and are negligent towards freedom of association. Hence, in a nut shell, there is lack of accessibility of the labour proclamation and the ILO conventions particularly in local governments in Ethiopia.

When we consider the practical situation of freedom of association in relation with workers some workers don't know that they have the right of freedom of association and expected some other person to organize them; they want to be organized only if they face some sort of problem; lack of willingness to unionize or to be elected as a leader; fear of retaliation from the employer if they have organized; being afraid of the challenges that have been faced by former trade union leaders because of organizing; some workers are afraid of paying dues for the membership of trade union; threats created by relatives of employer and immediate supervisors hinder workers from joining trade union; fear of losing their job and assuming challenging the employer will be cumbersome to workers will also make them not to come to leadership of a trade union; assuming a trade union only for the purpose of asking benefits; and pressure from family member of workers not to join trade union. All the problems of workers are related with the lack of awareness that shows a lot has to be done to change the situation.

The consideration of practical situation of freedom of association with regard to Employers can be sum up in the following manner. Some Employers and/or Owners in Ethiopia are unwilling to co-operate in organizing a trade union in their organization, there is lack of willingness of employers to allow trade union and not allowing permission for attending meetings of trade union; if workers are unionized outside the company taking measures (such as ; suspension, demotion, transfer and dismissal) up on trade union leaders mentioning another reason for their dismissal; some others think that if a trade union is established in their organization there could

be expropriation of their property; presupposing that if workers are organized they will share the profit of the company in the absence of which the owner is at liberty to enjoy all the net profit of his company; presuming that trade unions will interfere in the administrative activities of the company; establishing a yellow union which can get every necessary support from the employer and try its level best to weaken workers struggle through the already established trade union. All the problems mentioned above can be cited as discrimination and interference of employers and/or owners with trade union matters that is a clear violation of the right to freedom of association. In other words, the acts of the employer can be considered as a violation of international instruments ratified by Ethiopia and made part and parcel of the law of the land.

When we evaluate the practice of employers in Ethiopia with regard to collective bargaining, some employers may not bring alternative bargaining ideas that means taking a single stand and forcing the other party to come to their position; the employer assume that collective agreement should be the result of his generosity not the result of bargaining which is misunderstanding the basic concept of collective bargaining that is give and take; in some instances bargaining may take several years considering that collective bargaining will minimize the profit and employers decision making capacity; some employers hide the annual profit of the company to trade union leaders; intimidating trade union leaders that participate in the bargaining process and that challenge the employer representatives and taking different disciplinary measures so that they can be repentant to the employer or; being hostile to the trade union representatives so that they can be surrender to the wish of the employer; firing negotiators by citing other reasons; not willing to sit for collective bargaining and after starting the bargaining making the process a lengthy one; not having good faith and as much as possible making the benefit asked very minimal; nominating as representatives those who are not in a position to make decisions and that are not well aware of bargaining procedures; and considering collective agreement that only relate to benefits. The practical situations mentioned above are clearly in contradiction with collective bargaining convention and other international instruments mentioned on the research.

When we evaluate the practice of workers with regard to collective bargaining the following situations are existed. Some workers representatives are trying to bargain more without taking into account the capacity of the company; some workers assume that it is the duty of the

employer to give what a trade union asked for by forgetting it is the result of bargaining; limited capacity of workers representatives and coming to bargaining without option; forgetting the principle of give and take and expecting to win all the proposed bargaining issues; some workers representatives may assume that in the course of bargaining they may not satisfy the desire of their members and losing their job security because of bargaining; lack of confidence and not aware of the fact that they are on equal footing with representatives of employer; some negotiators do not bring alternatives and some others are afraid of the employer representatives and they are not able to convince representatives of employer. The problems with workers representatives are more or less lack of awareness about collective bargaining, lack of competence and unable to use different techniques of bargaining. It is not aimed at infringing the right to collective bargaining.

The practice of the concerned government authorities with regard to collective bargaining can be analyzed as follows. when negotiators seek a conciliator to resolve the issues at stake the latter's are not capable enough to do so and the proclamation didn't gave them compulsory power; there is a tendency of some officials to resemble to the owner and /or employer because of rent seeking behaviour or misunderstanding the idea of giving priority for investment; trying to influence their own belief or idea upon negotiators; lack of capacity of conciliators; since the government is propagating for the encouragement of investment some officials consider that supporting the investor is implementing the government's policy and in doing so they make imposition upon workers representatives. Even though the conventions and international instruments simply mentioned that government officials should give the necessary support and machineries appropriate for effective recognition of the right to bargain should be in place, it can safely be concluded that the support given in Ethiopia is not in enough to have effective collective bargaining in place.

5.2. Recommendations

It is evident that the full respect and implementation of workers' rights require effective labour inspections, labour courts and labour administration.[119] The country is aspiring to change her

[119] Ibid

economy from Agricultural Led Economy towards Industry Led Economy that would result the coming of lot of investors and opening of industries. This requires having lots of inspectors and effective labour administration mechanism. But in Ethiopia we do have some inspectors in MOLSA that are very few in number and Regional Bureau's are on the process of hiring them. This shows the country is lagging behind with regard to having more inspectors and effective labour administration mechanism in place. Hence, the number of inspectors should me increased to handle cases that can be expected to increase and they have to be capacitated. Moreover, we need to fill labour benches with judges that would have specialized by labour laws and the presiding judges should be given trainings about ILO conventions ratified by Ethiopia until the specialized judges take over the benches.

Real implementation of freedom of association requires ratification and implementation of the relevant ILO Conventions (Nos.94, 144, 135, 151 154, 158) in addition to them. The promotion of the accompanying Recommendations that strengthen workers' representation and collective bargaining should also be considered. It should be taken in to account that trade unions' access to economic and financial information is a key element of good faith collective bargaining. Moreover, equal rights and non-discrimination (Convention Nos. 100, 111, 97, 143) are important elements to achieve and uphold fair labour conditions for all and prevent the erosion of collective bargaining.[120] Out of the nine conventions that are helpful for proper implementation of the two rights Ethiopia ratifies only two of them (Nos. 144 & 158). Hence, the ratification of other conventions is recommended in order to make these rights put into practice. In addition, from the second category Ethiopia ratifies only two of the conventions (Nos. 100 & 111). But since the remaining two conventions are equally important the country should also ratify and implement them.

Most of the workers of Ethiopia that are members of CETU are elected by their members to protect their interest irrespective of whether they have the necessary skill or not. The researcher is Secretary General of the Confederation of Ethiopian Trade Unions and served there for the last four years. During giving training on labour law and international labour standards for trade union leaders he has got a response from participants that they did not know about the subject.

[120] Ibid

Hence, the researcher recommended that trade union leaders should have got well organized training and follow up on labour matters so that they can use their right to freedom of association and effective recognition of the right to collective bargaining.

As it has been discussed in the research trade unions should be financially strong enough to challenge the employer. But in Ethiopia, trade unions particularly those at the national levels are financially very weak. This attributes to the percentage contribution, the unwillingness of trade union members to pay what they have collected according to the constitution of CETU and with drawl of members from trade unions if their salaries are getting bigger. According to article 39 (2) of the revised constitution of CETU each individual member (worker) shall pay 1% of his salary for the basic trade union .The basic trade union is obliged to send 40 % of the 1% to the industrial federation to which it belongs by maintaining the rest. The industrial federation is also duty bound to pay 10 % of the 1% to CETU by retaining the 30%. But in reality this is not happening. Due to this fact in organizations where there are lots of workers basic trade union members are strengthening their financial position and in the contrary the industrial federations are becoming weak. Since some industrial federations are either hiding the actual number of their members or the amount of money they collected CETU is not financially strong enough. Hence, either by changing the percentage share or by teaching members to be genuine enough to pay their dues it is necessary to strength trade unions at all levels in the absence of which it is difficult to challenge the employer with a lot of money to influence even the government on making policies.

Although both FDRE Constitution and the Existing Labour law are in conformity with international instruments the practice hinder the implementation of the rights in issue, hence, more emphasis should also be given to the following recommendations:

- In order to change the practical situations that hinder the proper implementation of the right to freedom of association and the effective recognition of collective bargaining collaborated and continues awareness creation program should be in place for all social partners' ion labour matter;

- The regulative capacity of government should be strengthened so that it can have effective labour administration capacity and that can possibly handle the ever growing number of factories that can higher many workers;
- Since workers rights are rights that have to be fought for workers should be militant enough to struggle for their right; and
- Since unionization is important for increasing productivity and is a right given to both employers and workers the latter should be committed enough to respect the right to freedom of association and to engage themselves in collective bargaining in good faith.

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