

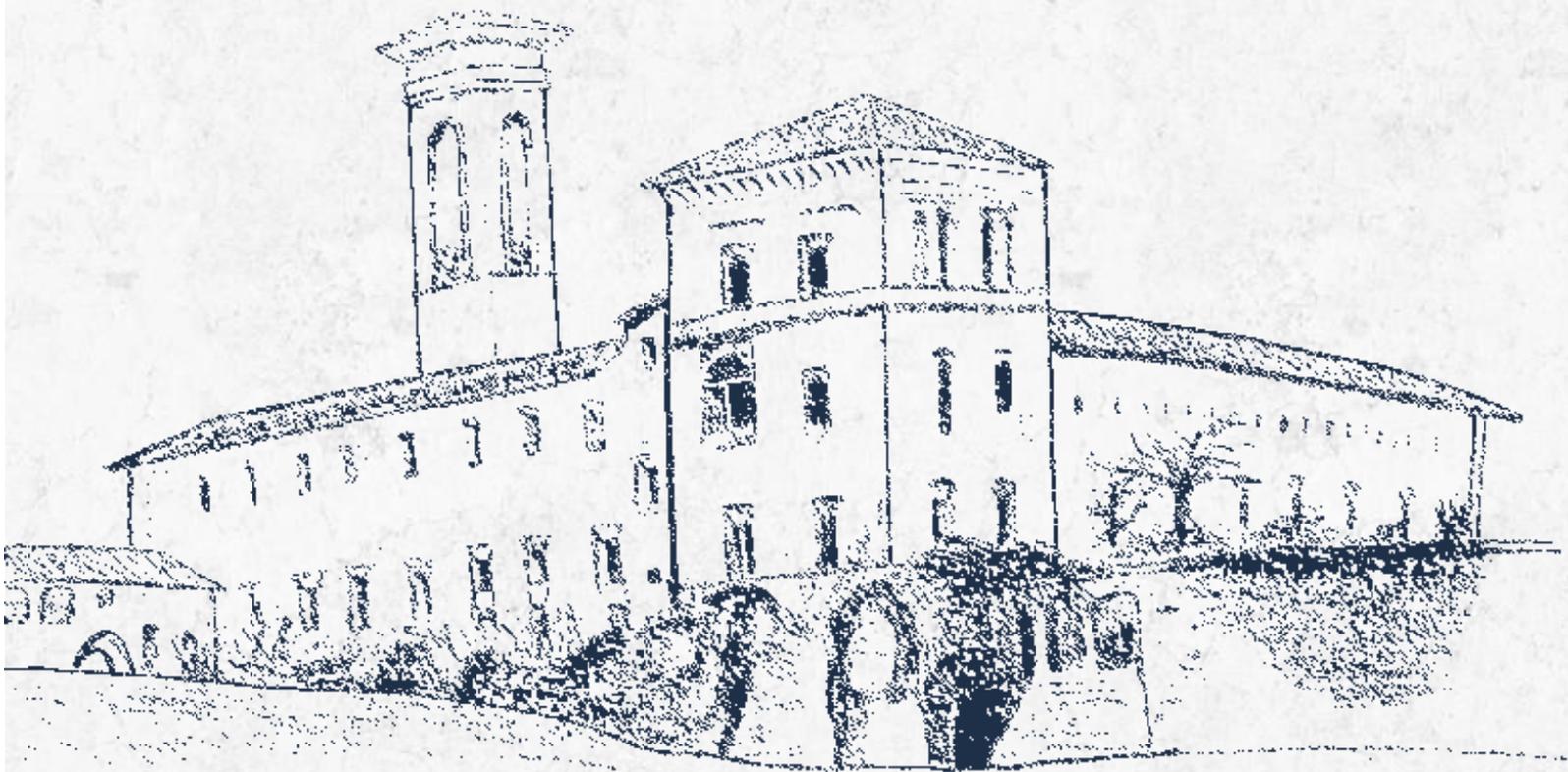
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# The Settlement of Individual and Collective Labour Disputes under Ethiopian Labour Law

Hiruy Wubie \*

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## 1. Introductory Remarks

The settlement of labour disputes is a precondition for a harmonious working environment. Clarity of laws governing labour relations, as well as their consistent and adequate implementation, contributes to the establishment of a dependable system of dispute settlement. Pursuant to Ethiopian labour law, labour disputes are classified as individual and collective, and a number of bodies are in charge of resolving these disputes. Yet confusion on the criteria used to draw a distinction between individual and collective labour disputes brings about major issues in terms of interpretation and implementation of relevant legal rules and judicial decisions.

In this sense, this paper is intended to clarify the criteria used to differentiate the individual from the collective nature of labour disputes in Ethiopian labour law, and to cast light on processes and powers assigned to the actors to seek a settlement. To this end, an analysis of the provisions laid down in the Labour Proclamation will be carried out, alongside an overview of legal opinion and the precedents set by the Cassation Division of the Federal Supreme Court. The aim here is to provide the readership – whether practitioners and the general public – with some useful insight into a neglected – yet crucial – topic of national labour law. The article opens with an examination of the constitutional

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and statutory basis to settle out labour disputes in Ethiopia. It then goes on to explain the main criteria adopted to distinguish between individual and collective labour disputes, particularly by explaining the rationale for such a distinction as illustrated by the Labour Proclamation. A Section devoted to the institutions and the procedures meant to settle the two types of disputes will follow, alongside some concluding remarks which summarize the main findings of the paper.

## **2. The Constitutional Mandate to Regulate Labour Relations in Ethiopia**

Ethiopia is a federal country divided into nine regional states<sup>1</sup>. The Federal Constitution represents the supreme law of the land<sup>2</sup>, as it determines the scope of action of the federal government and allocates certain powers to regional states<sup>3</sup>. More specifically, the federal government is entrusted with the authority to deal with national and international issues, whereas it is up to each regional state to handle the remaining questions. The Constitution provides that the legislative body of the federal government – the House of Peoples’ Representatives – shall enact the Labour Code<sup>4</sup>, and this power is among those which are exclusively designated as federal affairs. This aspect is often explained by referring to one of the main objectives of the Constitution that is establishing an economic community<sup>5</sup>. Pursuant to the Constitution, the House of Peoples’ Representatives adopted a certain number of proclamations in order to regulate labour matters, such as the Labour Proclamation No. 377/2003<sup>6</sup>, which was partly amended by Labour

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<sup>1</sup> The Constitution of the Federal Democratic Republic of Ethiopia, Proc. No. 1/1995, Federal Negarit Gazeta, Year 1, No. 1 (hereinafter referred to as the FDRE Constitution), Art. 1 and 47.

<sup>2</sup> *Ibid.* Art. 9.

<sup>3</sup> See. *Ibid.* Art. 51 and 52. See also Art. 55 that sets the legislative mandate and the jurisdiction of the federal government.

<sup>4</sup> *Ibid.* Art. 55(3).

<sup>5</sup> *Ibid.* Preamble of the FDRE Constitution, Paragraph 5. See also the FDRE Constitution Art. 55(6) which empowers the federal government “to enact civil laws which the House of the Federation deems necessary to establish and sustain one economic community”. See also, F. Nahum, *Constitution for a Nation of Nations: The Ethiopian Prospect*, The Red Sea Press, Inc., 1997, p. 69.

<sup>6</sup> Labour Proclamation, Proc. No. 377/2003, Federal Negarit Gazeta, 10<sup>th</sup> Year, No. 12, (hereinafter cited as the Labour Proclamation).

(Amendment) Proclamations No. 466/2005<sup>7</sup> and 494/2006<sup>8</sup>. Further, the rulings on labour cases of the Court of Cassation of the Federal Supreme Court (hereinafter simply referred to as the Cassation Division) also set some important precedents<sup>9</sup> in this respect.

Labour law provisions are applied at federal level, thus it is federal courts and its executive bodies which interpreted and implemented these provisions. As envisaged by the Constitution, the House of Peoples' Representatives can establish the federal high court or the court of first instance either at a national level or in some areas of the country only, if a two-thirds majority is achieved<sup>10</sup>. In its absence, the Constitution sets forth procedures to determine the jurisdiction of the federal high court, while the courts of first instance are delegated to the state courts<sup>11</sup>.

### 3. The Legal Regime of Labour Disputes in Ethiopia

Labour relationships can be managed efficiently only when justice is ensured both for employers and employees. Given the imbalance in

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<sup>7</sup> Labour (Amendment) Proclamation, Proc. No. 466/2005, Federal Negarit Gazeta, 11<sup>th</sup> Year No. 56.

<sup>8</sup> Labour (Amendment) Proclamation, Proc. No. 494/2006, Federal Negarit Gazeta, 12<sup>th</sup> Year No. 30.

<sup>9</sup> Federal Courts Re-amendment Proclamation No. 454/2005, Federal Negarit Gazeta, 11<sup>th</sup> Year No. 42., Art. 4. It provides that "Interpretation of a law by the Federal Supreme Court rendered by the Cassation Division with not less than five judges shall be binding on federal as well as regional council at all levels. The Cassation Division may however provide a different legal interpretation".

<sup>10</sup> The FDRE Constitution, *op. cit.* Art.78 (2).

<sup>11</sup> *Ibid.* Based on this delegation, it is only the State Supreme and High Courts that can legitimately settle labour cases coming from courts of law in regional territories. This makes the courts of first instance constitutionally illegitimate to settle labour cases based on federal law. The apparent constitutional illegitimacy of these courts has negative effects on the parties to the labour dispute, as State High and Supreme Courts are located in areas which are difficult to access for those living in regional states. Many Ethiopian lawyers are of the opinion that this aspect must have triggered the federal legislature to specifically mention such jurisdictional issues in the Labour Proclamation. It is stated that all individual labour cases shall be dealt with by regional courts of first instance. However, even implementing this provision, the issue of whether a clause laid down at a constitutional level can be set aside by a lower-level proclamation still remains unsolved.

bargaining powers clearly tilting towards employers<sup>12</sup>, there should be legally regulated protection to the powerless employees which would have otherwise been relegated if all the matters had been left for market forces to decide<sup>13</sup>. This is the reason why relevance is given to the necessity of meaningful involvement of three actors and their respective organizations – employers, workers and the state<sup>14</sup> – for a just industrial relations system.

The development of legally regulated labour relations in Ethiopia is only a few decades old, as the 1960 Civil Code of Ethiopia<sup>15</sup> regarded individual labour relations as a service contract. Labour legislation governing collective labour relations was established in 1963 with the passing of the Labour Relations Proclamation No. 210/1963<sup>16</sup>. This set of provisions was superseded by the Labour Proclamation No. 64 in 1975, when the socialist regime came to power and established the public ownership of means of production, denying de facto the autonomy of the trade unions<sup>17</sup>. Consequently after the change of government in 1991, Proclamation No. 42/1993 was adopted as a new set of labour laws which repealed socialist law<sup>18</sup>. Finally, Proclamation No. 42/1993 and its Amendment Proclamation No. 88/1994 were repealed by Labour Proclamation No. 377/2003<sup>19</sup>, which is currently in force.

Extant labour legislation in Ethiopia places emphasis on the importance of a well regulated system of industrial relations so as to create harmonious relations between workers and employers. This aspect is exhibited by one of the statements accompanying the document, which argues that “it is essential to ensure that the worker-employer relations are governed by the basic principles of rights and obligations with a view to enabling workers and employers to maintain industrial peace and work in

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<sup>12</sup> G. Davidov, B. Langille (eds.), *Boundaries and Frontiers of Labour Law: Goals and Means in the Regulation of Work*, International Institute for Labour Studies, Hart Publishing, 2006, p. 24.

<sup>13</sup> *Ibid.* It is contended that “If the problem is that we are not securing justice for employees through this contractual bargaining relationship, because of inequality of bargaining power on the part of employees, then we must simply adopt the procedural device of turning up the bargaining power on the side of the employee.”

<sup>14</sup> G. J. Bamber *et al.* (eds.), *International and Comparative Employment Relations: Globalization and the Developed Market Economies*, 4<sup>th</sup> ed, ALLEN & UNWIN, 2004. p. 9.

<sup>15</sup> The 1960 Civil Code of Ethiopia, Art. 2512-2697.

<sup>16</sup> ILO, *Ethiopia: Labour Law Profile*, accessed on 30 September 2012.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

the spirit of harmony and cooperation towards the all-round development of our country”<sup>20</sup>. It is with this objective in mind that the government has been involved in the settling of labour disputes, chiefly with regard to the setting of some minimum criteria in terms of bargaining between the parties.

The Labour Proclamation specifies the respective rights and obligations of the parties in a labour relationship<sup>21</sup>; exhaustively enumerates grounds and modalities to amend, suspend and terminate the employment contract<sup>22</sup>; provides safeguards for special categories of workers<sup>23</sup> and stipulates minimum working conditions<sup>24</sup>. Rules can only minimize the possible occurrence of labour disputes. A working environment where no dispute takes place is almost impossible. Hence the law needs to appoint bodies and set procedures in place in order to deal with the inevitable labour disputes in Ethiopia as elsewhere.

In this respect, the Labour Proclamation defines a labour dispute as “any controversy arising between a worker and an employer or between trade union and employers in respect to the application of law, collective agreement, work rules, employment contract or customary rules, and also any disagreement arising during collective bargaining or in connection with collective agreement”<sup>25</sup>. This definition is a loose one which does not dare to make a distinction between individual and collective labour disputes. Yet different bodies and procedures for the settlement these two types of disputes are set up. Individual labour disputes shall be handled by regular courts alone, whereas collective disputes require special conciliation and arbitration bodies before being dealt with by regular courts for a final decision, whereas necessary. However, the distinction between individual and collective labour disputes is among the most debated issues in terms of interpretation and application of national

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<sup>20</sup> Labour Proclamation, *op. cit.* Preamble, Par. 1.

<sup>21</sup> *Ibid.* Art. 12-14

<sup>22</sup> *Ibid.* Art. 15-45

<sup>23</sup> Among others: young workers, female workers, those with a disability, in the probationary period and apprentices. See, *Ibid.* Art. 11(Probationary workers), Art. 48-52 (Apprentices), Art. 87 and 88 (Female workers), Art. 89-91 (Young workers), See also, Right to employment of persons with disability Proclamation No. 568/2008, Federal Negarit Gazeta, 14<sup>th</sup> Year No. 20. (Employees with disability).

<sup>24</sup> These include: maximum and regular working hours (Art. 61-68), weekly rest and public holidays (Art. 69-75), and annual, special and sick leave (Art. 76-86). It has to be noted that the Labour Proclamation does not determine minimum wages for its own policy reasons.

<sup>25</sup> Labour Proclamation, *op. cit.* Art. 136(3).

labour law. As is evident from the foregoing definition of labour dispute, there are certain circumstances under which the interpretation of the causes of the labour dispute might be a source of disagreement among the parties involved. This takes place when such causes are examined considering the law in a wider sense, collective agreements, work rules, employment contracts, customary rules and practices – associated with the employment relations – and aspects related to collective bargaining and collective agreements<sup>26</sup>. Tsegaye contends that though these six grounds overlap with one another, the specific reference to each cause prevents unnecessary debate about the law in this regard. These grounds could be a source of both individual and collective labour disputes.

Of equal significance for the regulation of labour relations at a national level is the ratification of the ILO Conventions. One might note that, among others, the need to address the criticisms put forward by the ILO Committee of Experts on the Application of Standards and to comply with the obligations set forth in the ILO Conventions<sup>27</sup> pressured the government into passing the labour legislation currently in force. ILO Conventions No. 87<sup>28</sup> and No. 98<sup>29</sup> are worth mentioning in this respect.

#### **4. Standards in Differentiating Individual and Collective Labour Disputes in Ethiopian Labour Law**

The need to point out the differences between the individual and the collective nature of labour disputes in Ethiopia is by no means a mere theoretical one. Indeed, it might have far-reaching consequences at the time of determining the relevant authorities and procedures to settle labour disputes. A significant number of case law decisions have been reported concerning this issue<sup>30</sup>. Shortcomings in terms of clarity<sup>31</sup>

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<sup>26</sup> T. Workayehu, *Employment Law Training Manual for District Judges and Public Prosecutors, Part Two*, June 2008, Addis Ababa (Unpublished material. Original document in Amharic. Author's own translation), p. 40.

<sup>27</sup> ILO, *Ethiopia: Labour Law Profile*, *op. cit.* 16.

<sup>28</sup> ILO Convention No. 87, Freedom of Association and Protection of the Right to Organize Convention, 1948.

<sup>29</sup> ILO Convention No. 98, Right to Organize and Collective Bargaining Convention, 1949.

<sup>30</sup> If one considers, for instance, the rulings handed down by the Cassation Division at least six decisions included in the twelve-volume work issued by the Cassation Division concern this issue. See also the Interview with Ato Habtamu Erkyihun, Judge of the Supreme Court of the Amhara National Regional State, conducted on 28 July 2012. Ato

regarding the criteria to differentiate collective and individual labour disputes must have brought about confusion in the relevant rulings. Therefore, elucidating the nature of the disputes and providing a clear-cut explanation of the applicable labour law provisions is crucial for an efficient system of labour dispute settlement in Ethiopia.

By mandating different bodies<sup>32</sup> to settle the disputes based on their individual and collective nature, the Labour Proclamation does try to draw – albeit indirectly – a distinction between these disputes. The cases of individual and collective labour disputes listed in Articles 138<sup>33</sup> and 142<sup>34</sup>

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Habtamu reported that there are many similar cases which are dealt with by the Supreme Court of the Amhara Region.

<sup>31</sup> M. Redae, *Employment and Labour Law Teaching Material*, Funded by the Justice and Legal System Research Institute of Ethiopia, 2008, p. 118. Mehari argues that it is due to a lack of clarity with this approach – i.e. illustrating instances of individual and collective labour disputes in Art. 138 and 142 of the Labour Proclamation – that the Cassation Division was compelled to provide a binding interpretation in order to attain a uniform application of the law.

<sup>32</sup> See *infra* Section 7 of this article about discussions on jurisdictional issues for the respective mandates of various organs in settling individual and collective labour disputes.

<sup>33</sup> Art. 138. Labour division of the regional court of first instance.

1. The labour division of the regional court of first instance shall have jurisdiction to settle and determine individual labour disputes dealing with these and other issues:
  - a. disciplinary measures including dismissal;
  - b. claims on termination or cancellation of the employment contract;
  - c. questions related to working hours, remuneration, leave and rest day;
  - d. questions related to the issuance and release of the certificate of employment;
  - e. claims related to occupational injury;
  - f. unless otherwise provided for in this Proclamation, any criminal and petty offences under this Proclamation.
2. The regional court of first instance shall give decisions within 60 days from the date on which the claim is lodged.
3. The party who is not satisfied with the decision of the regional court of first instance may – within 30 days from the date on which the decision was delivered – appeal to the labour division of the regional court which hears appeals from the regional court of first instance.

<sup>34</sup> Art. 142. Duties and Responsibilities of the conciliation officer.

1. The conciliation officer appointed by the Ministry shall endeavor to seek settlement on collective labour disputes, among others those dealing with the following issues:
  - a. wage and other benefits;
  - b. establishment of new conditions of work;

provoked competing interpretation of relevant legislation. In Ethiopian labour law, there are three different criteria that are often used – legitimately or not – to set the foregoing differences, most notably: the number of workers involved, whether a labour dispute is listed in Article 138 or Article 142 and whether a given dispute affects the parties’ interests. Of relevance is the fact that only the third criteria is regarded as valid to differentiate the disputes, as the first and the second one can only be used as a reference over the differentiation process.

### 5. The Number of Workers Involved in a Dispute

A labour dispute may occur between the employer and one or more workers. For instance, an employer may wrongfully terminate the employment contract with one or more employees. Is this a collective labour dispute just because the contract of two or more employees is brought to an end by their principal? According to Ethiopian labour law, the number of persons involved in a case cannot be used as a valid criteria to consider a given dispute as individual or collective<sup>35</sup>. In its leading case on the issue at hand, the Cassation Division ruled that “our national legislation does not make the number of workers involved in a dispute a

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- c. the conclusion, amendment, duration and invalidation of collective agreements;
  - d. the interpretation of any provision of this Proclamation, collective agreements or work rules;
  - e. the procedures of employment and career advancement;
  - f. matters affecting the workers and the existence of the undertaking;
  - g. claims related to measures taken by the employer regarding promotion, transfer and training;
  - h. claims relating to redundancy.
2. The conciliation officer shall endeavor to reach a settlement by all reasonable means as may seem appropriate to that end.
  3. Whenever the conciliation officer fails to settle a labour dispute within 30 days, he/she shall detail this attempt reporting to the ministry and serving the copy of the statement to the parties involved. Any party involved other than those indicated under Sub-Article (1) (a) of this article may submit the matter to the Labour Relation Board. If the dispute as per Sub-Article 1 (a) of this article concerns those undertaking described under Art. 136(2) of the present Proclamation, one of the disputing party may submit the case to an ad hoc board.

<sup>35</sup> Nowhere does the law make mention of this criteria. See also, T. Workayehu, *op. cit.*, p. 44.

standard to differentiate individual and collective labour disputes”<sup>36</sup>. The decisions handed down by the Cassation Division on the interpretation of certain provisions have a mandatory character for all regional and federal courts<sup>37</sup>. This makes the above interpretation a binding one. Therefore, unless other criteria set by the law are met, the number of workers involved in a given dispute does not make it a collective one.

## **6. Whether a Dispute is listed under Article 138 or 142 of the Labour Proclamation**

A cursory reading of Articles 138 and 142 of the Labour Proclamation might induce one to think that the nature of the dispute is determined by its falling within those listed under Article 138 or 142 of the Labour Proclamation. Yet this does not seem to be the intention of the legislator, as the evaluation is to be carried out on a one-by-one basis. By way of examples, some individual labour disputes mentioned in Article 138 in some circumstances may qualify as collective labour disputes. By the same token, certain collective labour disputes referred to in Article 142 might be regarded as individual ones<sup>38</sup>. The Federal Supreme Court also suggested – albeit ambiguously – that these two articles do not enumerate all the types of disputes in an exhaustive fashion. It rules that “whether the dispute concerns wage, training, interpretation of law or other grounds that may be deemed as collective, it is only when the dispute somehow affects the rights and interests of workers operating in an undertaking that can be considered to be collective in the meaning conveyed by law”<sup>39</sup>. Therefore, the various instances of individual and collective disputes enumerated under Articles 138 and 142 of the Labour Proclamation might be subject to change.

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<sup>36</sup> *KK Textile Workers’ Association Vs KK Textile Industry*, Cassation Division, File Number 18180, Hamle (July) 29, 1997 E.C. Published in Decisions of the Cassation Division, Volume 1, Page 1. (Original document in Amharic. Author’s own translation).

<sup>37</sup> Federal Courts Proclamation Re-amendment Proclamation, *op. cit.*

<sup>38</sup> See *infra*, discussions and examples in sections five and six of this article regarding instances of individual labour disputes which might be regarded as collective ones and vice versa.

<sup>39</sup> *KK Textile Workers’ Association Vs KK Textile Industry*, *op. cit.*

## 7. Whether a Given Dispute Affects the Workers' Collective Interests

There are legal systems which treat labour disputes “on rights” and labour disputes “on interests” as two different cases<sup>40</sup>. Disputes “on rights” refer to the implementation, interpretation, or violation of laws governing industrial relations, whereas disputes “on interests” mostly concern the employment terms to be adopted at the time of negotiating new agreements<sup>41</sup>. In the first case, the parties to the dispute fail to agree on the existence or scope of application of a certain right granted by law or in the employment contract. In the second case a dispute “on interests” arises when an employer and a worker or trade unions do not reach an agreement on the need and the scope of application of a certain interest which is not detailed in the employment contract nor in relevant legislation. This classification is not recognized in the national legal framework, yet it can be implied from the rationale used to differentiate individual and collective labour disputes in Ethiopian labour law. As will be further discussed, individual labour disputes mainly concern whether workers' individual rights are acknowledged by statute or specified in an employment contract. On the contrary, collective labour disputes refer to disputes on rights and interests<sup>42</sup> while operating in the undertaking.

In differentiating individual from collective labour disputes, we have to give prime focus to the underlying causes of such a distinction. Indeed, the law empowers different bodies to deal with these two types of disputes. Saving discussions about the rationale for jurisdictional allocation in this regard for the following sections of this paper, it is the interest at stake that determines the individual or collective nature of a dispute. If a given dispute affects the interest of the workers and the organization at large, it shall be considered as a collective dispute. On the other hand, disputes which do not impact the interest of the entire workforce shall be regarded as individual disputes.

What matters most in determining the collective or individual nature of a labour dispute is whether the issue at hand affects only an individual or a

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<sup>40</sup> See generally, J. V. Spielmans, *Labour Disputes on Rights and Interests*, *The American Economic Review*, Vol. 29, No. 2 (Jun., 1939), p. 299-312.

<sup>41</sup> *Ibid.* p. 300.

<sup>42</sup> Among collective labour disputes enumerated under Art. 142 of the Labour Proclamation, the following might be classified as disputes on interests: disputes related to wage and other benefits, new working conditions, and those related to the conclusion and amendment of collective agreements. It has to be recalled that Ethiopian labour law does not provide minimum wage.

number of workers<sup>43</sup>. This stand is also supported by the decisions of the Cassation Division, for it is argued that “the fact that a certain dispute is submitted by one or more workers shall not ascertain the individual or collective nature of the dispute. If the effects of the dispute are limited to the disputing worker (or workers) it shall be considered as an individual dispute, whereas disputes whose effects transcend individual spheres and affect the joint interest of employees shall be collective labour disputes”<sup>44</sup>. Therefore, it is neither the number of parties to the dispute nor the mere reading of Articles 138 and 142 of the Labour Proclamation that determines the nature of the labour dispute. Rather, it should be considered on a case-by-case basis if it affects the employees’ common rights and interests. If it does, it is a collective labour dispute. Otherwise, it is an individual labour dispute. Though this condition seems less complex at a theoretical level, the solving of each case is far from easy. At this point, it might be of use to go through each instance of presumably individual and collective labour disputes enumerated in Articles 138 and 142 of the Labour Proclamation.

## 8. Instances of Individual Labour Disputes

The law provides that “the labour division of the Regional Court of First instance shall have the power to settle and determine the following and other similar individual labour disputes”<sup>45</sup>. The wording “the following and other similar [...]” suggests that the range of individual labour disputes which can be dealt with by these courts is far from exhaustive<sup>46</sup>. The set of individual labour disputes include six cases which are outlined for illustrative purposes only, so these and other similar instances are presumed to be individual, provided that they do not affect the workers’ rights and interests.

The first of the instances concerns “disciplinary measures including dismissal”<sup>47</sup>. Disputes regarding disciplinary measures and dismissal shall be regarded as individual. If an employer or a worker wrongfully

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<sup>43</sup> See for example, T. Workayehu, *op. cit.*, p. 44.

<sup>44</sup> *KK Textile Workers’ Association Vs KK Textile Industry*, *op. cit.*.

<sup>45</sup> The Labour Proclamation, *op. cit.*, Art. 138(1).

<sup>46</sup> See M. Redae, *op. cit.*, Mehari contends that “The Labour Proclamation has employed an illustrative listings of what constitutes individual labour dispute and what constitutes a collective one”.

<sup>47</sup> The Labour Proclamation, *op. cit.*, Art. 138(1)(a).

terminates a contract – or if the employer takes disciplinary action against a worker resulting in him/her being aggrieved – the law assumes that the it is the parties' interests at stake on an exclusive basis, hence regarding the dispute as individual. However, there may be situations which may warrant disputes related to disciplinary action and give rise to labour disputes to be considered as collective. By way of example, an employer with fifty employees who unilaterally dismisses one or more of them as a result of a disciplinary action, yet not complying with dismissal procedures. Though the dismissal concerns only few workers, the unilateral nature of the disciplinary procedure affects the entire workforce<sup>48</sup> and thus it is seen as a collective labour dispute, as other employees or trade unions are involved.

Claims related to the termination or cancellation of the employment contracts are the second category of presumably individual labour disputes enumerated by the Labour Proclamation<sup>49</sup>. An employment contract is of course a juridical act with a private character. Therefore, it is very unlikely for the effects of disputes related to its termination or cancellation to involve individuals other than the parties and become a collective affair. Accordingly, such a dispute shall be an individual one.

Among the instances regarded as individual labour disputes, those related to working time, remuneration, leave and rest day follow<sup>50</sup>. These are all aspects which are mainly regulated by law and the employment contract. Disputes arising between the employer and the employee regarding whether the latter is paid for the work performed, or whether he/she has taken leave and rest day is always an individual concern. This is only if there is no implication on some other workers' interests. In this sense, it might be the case that a decision made by the employer amounts to creating new working conditions which might be regarded as an instance of collective labour disputes.

Questions related to the issuance of the certificate of employment<sup>51</sup>, claims related to occupational injury<sup>52</sup> and disputes regarding criminal and petty offences under the Labour Proclamation<sup>53</sup> are the remaining instances presumed to give rise to disputes whose effects are limited to

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<sup>48</sup> This could be equated with disputes related to “establishment of new conditions of work” which is regarded as a “collective” labour dispute. See, *Ibid.* Art. 142 (1) (b).

<sup>49</sup> The Labour Proclamation, *Supra* note 7, Art. 138(1) (b).

<sup>50</sup> *Ibid.* Art. 138(1)(c).

<sup>51</sup> *Ibid.* Art. 138(1)(d).

<sup>52</sup> *Ibid.* Art. 138(1)(e).

<sup>53</sup> *Ibid.* Art. 138(1)(f).

the parties involved. The individual character of these disputes does not lie in the fact that they are filed by one individual, but in the impact which affects that particular individual.

## 9. Instances of Collective Labour Disputes

The manifest imbalance of bargaining powers between the workers and the employers pushes the former to act collectively in pursuance of their objectives<sup>54</sup>. This is the founding principle for collective bargaining, whether involving workers or trade unions. Recognition of workers' right to take collective action is often regarded as a prerequisite for ensuring sound industrial relations. In an awareness of such issue, the Ethiopian Constitution recognizes their right "to form associations to improve their conditions of employment and economic wellbeing, including the right to form trade unions and other associations to bargain collectively with employers or other organizations that affect their interests"<sup>55</sup>. In matters affecting their general interests, workers operating in a certain undertaking may bring their cases before judicial and quasi judicial bodies statutorily appointed. As previously discussed, the existence or otherwise of a labour dispute affecting the collective interest of employees makes it a collective one.

In this section, the various instances of collective labour disputes laid down in Article 142 of the Labour Proclamation will be investigated. In this sense, it is specified that "the conciliation officer appointed by the Ministry shall endeavor to reach a settlement on the following, and other similar matters of collective labour disputes"<sup>56</sup>. The wording 'the following and other similar matters' clearly indicates that the set of collective labour disputes supplied is illustrative. Hence, other matters of collective interest may still fall within the province of the conciliation officer. Moreover, the eight instances of collective labour disputes laid down in Article 142(1) are only presumed to involve matters of collective

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<sup>54</sup> See, G. Davidov, B. Langille, *op. cit.*, on inequality of bargaining power on the part of employees, then we must simply adopt the procedural device of turning up the bargaining power on the side of the employee".

<sup>55</sup> The FDRE Constitution, *op. cit.*, Art. 42 (1) (a). See also, the Labour Proclamation, *op. cit.*, Art. 113. The Labour Proclamation states that "workers and employers shall have the right to establish and form trade unions or employers' associations, respectively and actively participate therein".

<sup>56</sup> Labour Proclamation, *op. cit.*, Art. 142(1).

concern for the workers. The reverse might be true if any of the disputes which technically fall under Article 142 may not qualify as collective labour disputes in a strict sense – affecting the joint interests of the workers. That is why we need the rationale for each instance to be presumed as a collective dispute might be explained, alongside possible cases for a deviation.

The first instance of collective labour disputes as laid down in relevant legislation is about disputes related to wages and other benefits<sup>57</sup>. Ethiopian labour law opted for deregulation when it comes to determination of minimum hourly/monthly wages in an employment relationship. Though the rationale for deregulation is not stated in the law or other official documentation, it is sometimes contended that this may be because of the free market economic policy that the Ethiopian government aspires to adhere to<sup>58</sup>. Therefore, minimum wage and other benefits<sup>59</sup> are not statutorily determined. Indeed, while this aspect is left up to bargaining between the parties, remuneration has to be included – irrespective of its amount – at the time of concluding an employment contract in order for it to be valid<sup>60</sup>. Disputes in relation to wage and other benefits are deemed collective since, as likely as not, they will affect workers' common interests. Simply put, the issue should rather be a matter that affects individuals other than the parties, as in the case of determining wage and benefits. This is plain when one looks at the Amharic version of the document, which specifies that the concern is with “disputes related to *the determination of wage and other benefits*” (emphasis added).

Consequently, not all labour disputes about wage and other benefits are collective, as this is dependent upon whether workers' common interests

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<sup>57</sup> Labour Proclamation, *op. cit.*, Art. 142(1)(a).

<sup>58</sup> See for example, M. Redae, *op. cit.* who argues that “It is believed that in a free market economy, price of goods and services is to be fixed by taking into account the supply and the demand side of the item in a forum of bargain. This could be the main reason why the government opted for deregulation with regard to the private sector”. However, there are reasons to dissent from this position. In Ethiopia, there is a uniform application of the minimum wage for those employed in the Public Sector, and this aspect is regulated by the Civil Servant Proclamations. The main reason which led to deregulation through labour law may be the complexity resulting from the underdeveloped and predominantly informal national economy.

<sup>59</sup> In the context of this paper, the expression ‘other benefits’ refers to those which are related to pay and other economic perquisites, e.g. welfare funds. More general benefits arising from the establishment of minimum labour conditions is beyond the focus of this work.

<sup>60</sup> Labour Proclamation, *op. cit.*, Art. 4(1) and (3).

are jeopardized. Apart from what is provided by relevant labour legislation, one should also consider the precedents set by the Cassation Division on the matter. The dispute was between the Ethiopian Telecommunications Corporation and an employee named Teshome Jifar<sup>61</sup>. The worker claimed that he deserved a wage increase and took his case before the Labour Relations Board and then the federal high court. The case was finally settled by the Cassation Division, which ruled that “the dispute on wage increase initiated by the applicant does not fall within those affecting the workers’ common interests. It only concerns him and was brought to establish his rights alone. It could have been regarded as a collective dispute, had the applicant questioned the legal nature of the criteria used by his employer to increase pay. Therefore, the dispute is an individual one and falls within the jurisdiction of courts of law, not that of the Labour Relations Board”<sup>62</sup>. This precedent is further confirmation of the stance of lawmakers, who treat disputes arising from wage and other benefit as collective labour disputes only when workers’ collective interests are affected.

Labour disputes arising out of the establishment of new working conditions<sup>63</sup> and the conclusion, amendment, duration and invalidation of collective agreements<sup>64</sup> are the second and third instances presumed to be collective pursuant to Article 142. Newly established conditions of employment<sup>65</sup> and collective agreements<sup>66</sup> are applicable for all workers in an undertaking hence it is very unlikely for these dispute to be individual. Yet this is not always the case. There could be individual labour disputes involving such issues wherein the issue at stake is limited to the applicability or otherwise of such working conditions or collective agreement in favor of one or more workers.

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<sup>61</sup> *Ato Teshome Jifar Vs Ethiopian Telecommunications Corporation*, Cassation Division, File Number 15410, Tikimt (October) 1, 1998 E.C., Published in Decisions of the Federal Supreme Court Cassation Division, Vol.2, p. 24 (Original document in Amharic. Author’s own translation).

<sup>62</sup> *Ibid.*

<sup>63</sup> Labour Proclamation, *op. cit.*, Art. 142(1) (b).

<sup>64</sup> *Ibid.* Art. 142(1) (c).

<sup>65</sup> *Ibid.* Art. 2(6). “Conditions of work” means the entire field of relations between workers and employers and shall also include working hours, wage, leave, severance pay, workers’ health and safety, compensation to victims of occupational injuries, redundancy, grievance procedures and any other similar matters.

<sup>66</sup> *Ibid.* Art. 124(1). “Collective agreement” means an agreement concluded in writing between one or more representative of trade unions and one or more employers or agents or representatives of employers’ organizations.”

Disputes regarding ‘the interpretation of any provisions of the Labour Proclamation, collective agreements or work rules’<sup>67</sup> are the next instance of ‘collective’ labour disputes indicated by the law. It is undeniable that the purpose of labour law, collective agreements and work rules is to safeguard the rights and interests of all workers. The interpretation of labour legislation, collective agreements and work rules is a shared concern, thus making relevant disputes collective. Even in this case, the reverse might be also true. Disputes on interpretation by and between an employer and an employee would remain to be individual in so far as the effects are not extended to other workers.

Disputes concerning employment issues and the promotion of workers<sup>68</sup> as well as claims related to measures taken by the employer on transfer, career advancement and training<sup>69</sup> are also presumed to be collective. Like the previous instances, not all disputes involving promotion, career advancement and training are collective, as this depends on whether the effects of the dispute are limited to the parties or not. In support of this argument, disputes are regarded as individual if the criteria adopted by the employer relative to entitlements in terms of career advancement, training and transfer result in the worker being aggrieved. This line of interpretation is in line with the precedent set by the Cassation Division<sup>70</sup>.

Disputes regarding claims on redundancy<sup>71</sup> are also presumed to be collective ones. Redundancy<sup>72</sup> affects not less than ten percent of the workforce in an undertaking. Redundancy procedures also require comparison of individual productivity and the employer shall initiate it only in consultation with trade unions<sup>73</sup>. Therefore, disputes regarding this

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<sup>67</sup> *Ibid.* Art. 142 (1) (c).

<sup>68</sup> *Ibid.* Art. 142(1) (d).

<sup>69</sup> *Ibid.* Art. 142 (1) (e).

<sup>70</sup> *Ethiopian Telecommunications Corporation Vs Ato Genta Gem'a* Cassation Division, File Number 16273, Tikimt (October) 22, 1998 E.C. Published in Decisions of the Federal Supreme Court Cassation Division, Volume 2, page 30. (Original document in Amharic. Author’s own translation). The case is about an employee who claims to be denied a promotion. The Cassation Division rules that though the issue involves a promotion, it is an individual labour dispute since it impacts the individual filing the case and cannot be regarded as a collective labour dispute.

<sup>71</sup> Labour Proclamation, *op. cit.*, Art. 142(1) (h).

<sup>72</sup> *Ibid.* Art. 29(1). The law defines redundancy as “reduction of the workforce of an undertaking for any of the reasons provided for in Sub-article (2) of Art. 28 affecting a number of workers representing at least ten percent of the workforce or – in the case of an undertaking with twenty to fifty employees – a reduction of workers affecting at least five employees over a continuous period of not less than ten days”.

<sup>73</sup> *Ibid.* Art. 29(3).

issue are likely to have a bearing on the interests of a number of workers, thus they are rightly presumed to be collective. Of course there are a number of exceptions to the norm. If a worker claims that he has been made wrongfully redundant or that the amount of severance pay is less than expected, the dispute will certainly be an individual one. Conversely, if the dispute is whether the employer has legitimate grounds to make workers redundant or whether the dismissal procedures do not comply with relevant legislation, this might amount to a collective labour dispute<sup>74</sup>. The argument that Article 142(1) of the Labour Proclamation does not collect all the cases of collective labour disputes would be substantiated by one of the foregoing instances. It is argued that “matters affecting workers in general and the existence of the undertaking”<sup>75</sup> shall be deemed as collective labour disputes. Unlike other instances enumerated in Article 142(1), this one lacks specificity and does not directly refer to certain types of disputes. Rather, it is intended to help bodies to interpret law at the time of differentiating between several labour disputes.

### 10. Institutions and Procedures of Settling Individual and Collective Labour Disputes in Ethiopia

Dispute settlement may take different forms. In Ethiopia, there are three mechanisms of labour dispute settlement<sup>76</sup>. The first and most recommended one is out-of-court settlement – e.g. an agreement is reached among of the parties. The second one concerns the recourse to strikes<sup>77</sup> and lockouts<sup>78</sup>. Finally, the parties to the dispute may take their cases to certified entities and legal authorities, such as conciliation officers,

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<sup>74</sup> See *KK Textile Workers' Association Vs KK Textile Industry*, *op. cit.*, Cassation Division has a similar stand on this point.

<sup>75</sup> Labour Proclamation, *op. cit.*, Art. 142(1) (f).

<sup>76</sup> See, T. Workayehu, *op. cit.*. Tsegaye only names two, as he merges out-of-court settlement and alternative dispute resolution mechanisms.

<sup>77</sup> Labour Proclamation, *op. cit.*, Art. 136(5). “Strike” means the slow-down of work by any number of workers in reducing their normal output on their normal rate of work or the temporary cessation of work by any number of workers acting in concert in order to persuade their employer to accept certain labour conditions in connection with a labour dispute or to influence the outcome of the dispute.

<sup>78</sup> *Ibid.* Art. 136(4). “Lock-out” means an economic pressure applied by closing a premise in order to persuade workers to accept certain labour conditions in connection with a labour dispute or to influence the outcome of the dispute.”

courts of law and Labour Relations Boards. Whereas the first two mechanisms of labour dispute settlement are not dependent upon the individual or collective nature of the dispute, such a difference has a bearing on the third mechanism, and will be the focus of the pages that follow. The law appoints different bodies and envisioned different procedures to settle out individual and collective labour disputes. Regular courts are given priority over individual disputes, while they will deal with collective ones only in the second and third instances. Collective labour disputes are usually handled in the first instance by bodies empowered in accordance with the Labour Proclamation. An example in this connection is conciliation officers Labour Relations Boards<sup>79</sup>.

### *10.1. Institutions and Procedures to Settle out Individual Labour Disputes*

The labour divisions of regional and federal<sup>80</sup> courts of first instance are statutorily empowered to settle and determine either individual labour disputes enumerated by law and other disputes<sup>81</sup>. Though there are major shortcomings in this regard in practical terms, the law obliges these courts to issue a decision within 60 days from the date on which the claim is lodged<sup>82</sup>. It also sets forth that the party who is not satisfied with the decision may appeal to the labour division of the regional or federal court

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<sup>79</sup> See, T. Hagos Bahta, *Anomalies in the Labour Dispute Resolution Methods under the Ethiopian Labour Proclamation*, Jimma University Journal of Law, Vol. 1, No 1, October 2007, pp. 111-132. This article explains the various Alternative Dispute Resolution (ADR) methods and their legal effects as are stated in the Ethiopian Labour Proclamation.

<sup>80</sup> The Labour Proclamation only refers to the power of regional courts of first instance to adjudicate and settle individual labour disputes. It remains silent about similar mandates of labour divisions of the federal courts of first instance. This aspect appears to be an oversight. The fact that the Labour Proclamation provides regional courts of first instance with a constitutionally illegitimate mandate (see supra note 12 for details) may have been a cause of concern for the drafters of the Labour Proclamation, who focused on legitimizing the otherwise illegitimate mandate of these courts. Despite their not being expressly mentioned in the Labour Proclamation, there is no reason to doubt on the constitutional and statutory scope of mandating federal courts of first instance to settle individual labour disputes. This argument is supported by the Federal Courts Proclamation No. 25/1996, Federal Negarit Gazeta, 2<sup>nd</sup> Year No. 13, Art. 14(2) which vests judicial power on courts at federal level in the event of civil cases arising in Addis Ababa and Direedawa i.e. the federal territories.

<sup>81</sup> Labour Proclamation, *op. cit.*, Art. 138(1).

<sup>82</sup> *Ibid.* Art. 138(2).

which hears appeals from the regional or federal court of first instance<sup>83</sup> within 30 days from the date on which the decision was delivered.

The procedures to be followed by regular courts in the process of settling individual labour disputes are the same as ordinary civil proceedings and will be made in accordance with the Civil Procedure Code of Ethiopia. The courts will adjudicate the matter based on the employment contract of the disputing parties, collective agreements and work rules (if any) the provisions of the Labour Proclamation and procedural laws provided for in the Civil Procedure Code. In Redae's words, winner-looser determination would be the final outcome of this judicial process<sup>84</sup>. Once the winner is identified, execution of the judgment will naturally follow.

### *10.2. Institutions and Procedures of Settling Collective Labour Disputes*

Unlike individual labour disputes, only some collective labour disputes consider statutory rights of both the employer or employees. In other words, the subject matter of such disputes is often a forthcoming provision of collective agreements, work rules or new working conditions. If that is the case, judicial adjudication becomes inappropriate to exercise primary jurisdiction as the criteria for adjudication is yet in the process of formulation. Therefore, collective labour disputes are primarily dealt with by quasi-judicial bodies established by virtue of the Labour Proclamation, and courts are only in charge of appellate jurisdiction. In the following paragraphs, the mandates of each institution authorized to take part in the settlement of collective labour disputes will be explored, alongside the relevant procedures.

### *10.3 The Role and Shortcomings of Conciliation<sup>85</sup>*

Employment relationships are juridical acts characterized by a fiduciary duty. For this reason, enabling workers and employers to maintain industrial peace and operate in a spirit of harmony and cooperation is the

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<sup>83</sup> Ibid. Art. 138(3).

<sup>84</sup> M. Redae, *op. cit.*, 27 p. 119.

<sup>85</sup> See A. Ashagrie, *Conciliation of Labour Disputes in Ethiopia: A Critical Analysis*, Jimma University Law Journal, Vol. 1, No. 1, January, 2008, p. 114-166. This article provides an in-depth analysis of conciliation to settle collective labour disputes in Ethiopia.

prime objective of Ethiopian labour law<sup>86</sup>. This makes such relationships less compatible with adjudication which is resorted to when the parties are at odds with one another, often to the extent that social order is threatened<sup>87</sup>. Conciliation and other forms of alternative dispute resolution are recommended in situations involving fiduciary relations, as is the case of employment relationship.

Conciliation is legally defined as “an activity conducted by a private person or persons appointed by the Ministry<sup>88</sup> at the joint request of the parties for the purposes of bringing the parties together and seeking to arrange voluntary settlement of a labour dispute which their own efforts alone do not produce”<sup>89</sup>. The preferred mode of conciliation is the one wherein the parties choose the conciliation officer by agreement. The parties to a labour dispute are free to choose a conciliation officer or an arbitration body of their own and settle the case out-of-court<sup>90</sup>. In cases of failure to reach an agreement, either party may take the case to the Labour Relations Board or the relevant regular court<sup>91</sup>.

In the absence of an agreement by the parties to a collective labour dispute to voluntarily appoint an arbitration body or a conciliation officer of their own, it is up to the Ministry to assign a conciliation officer to seek settlement of the case<sup>92</sup>. Such a conciliation officer will perform the same functions as the court of first instance for the cases enumerated in Article 142 of the Labour Proclamation concerning collective labour disputes. Conciliation officers cannot guarantee to settle the dispute. They can only make any attempt to bring about a settlement by all reasonable means as may seem appropriate to that end<sup>93</sup>. They have thirty days in which to amicably settle the dispute. If they fail to do so, a detailed report should be delivered to the Ministry indicating the reasons for the failure, with a

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<sup>86</sup> Labour Proclamation, *op. cit.*, Preamble, Par. 1.

<sup>87</sup> See, L. L. Fuller, K. I. Winston, *The Forms and Limits of Adjudication*, Harvard Law Review, Vol. 92, No. 2, (December 1978), p. 357.

<sup>88</sup> The term “ministry” refers to the Ministry of Labour and Social Affairs of the Federal Democratic Republic of Ethiopia. In regional states, offices of labour and social affairs discharge duties entrusted to the Ministry at a federal level.

<sup>89</sup> Labour Proclamation, *op. cit.*, Art. 136(1).

<sup>90</sup> *Ibid.* Art. 143(1).

<sup>91</sup> *Ibid.* Art. 143(2).

<sup>92</sup> *Ibid.* Art. 141.

<sup>93</sup> *Ibid.* Art. 142 (2).

copy that should be served to the parties to the dispute<sup>94</sup>. Both parties may take the case before the Labour Relations Board as the case may be<sup>95</sup>.

#### *10.4. The Permanent Labour Relation Boards: Composition, Mandate and Procedures*

The Labour Proclamation has established a permanent Labour Relations Boards<sup>96</sup>. Unlike regular courts which exercise primary jurisdiction over individual disputes, this board represents the primary jurisdiction over collective disputes for which conciliation and arbitration are more appropriate than adjudication. These boards are not staffed with full-time judges but consist of representatives from various bodies who operate for free on a part time basis<sup>97</sup>. Boards are part of the judicial structure and operate under the supervision of the executive branch which is empowered<sup>98</sup> to ensure the implementation of labour laws.

The law provides that one or more Labour Relations Boards should be established in each regional state, yet not assessing whether this is actually done<sup>99</sup>. Since they can hand down decisions only with regard to disputes on wage and other benefits in essential public services and undertakings<sup>100</sup> and most of which are federal entities, one might assume<sup>101</sup> that these Board would only be established at a federal level. As a point of

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<sup>94</sup> *Ibid.* Art. 142(3).

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.* Art. 144.

<sup>97</sup> *Ibid.* Art. 145(4).

<sup>98</sup> *Ibid.* Art. 144(3). The law provides that “each permanent Board shall be under the local authority responsible for the implementation of labour laws.” The local authority referred by the law is the Ministry of Labour and Social Affairs and its branch offices in federal territories and Bureau of Regional Labour and Social Affairs and their respective branches in regional territories.

<sup>99</sup> *Ibid.* Art. 144(1) and (2).

<sup>100</sup> *Ibid.* Art. 136(2). “Essential public services undertakings” means those services rendered by undertakings to the general public and includes the following:

- a. air transport;
- b. undertakings supplying electric power;
- c. undertakings supplying water and carrying out cleaning and sanitation services;
- d. urban bus services;
- e. hospitals, clinics, dispensaries and pharmacies;
- f. fire brigade; and
- g. telecommunication;

<sup>101</sup> This allegation is in line with the practice as no such boards are established at a regional level.

comparison with regular courts, which can be found in each *woreda*<sup>102</sup>, there are usually only two Boards at a regional level. This is because cases entertained by Boards are collective and mainly involve policy matters, which are not routinely encountered and can be managed by one or two boards in a region. Yet difficulty to access such boards is a challenge on workers. As opposed to regular courts which necessarily require professional judges, the composition of Labour Relations Boards tries to balance the need for representation and professional expertise. In this sense “the Board shall consist of a chairman, two qualified members who have knowledge and skills on labour relations appointed by the Minister, four members of whom two represent the trade unions and two represent the employers’ associations, and two alternate members one from the workers’ side and the other from the employers’ side”<sup>103</sup>. Whereas the chairman and the two members appointed by the Ministry or Regional Bureau will have professional expertise on industrial relations, the four representatives of trade unions and employers’ association would be there to guard the respective interests of workers and employers.

Being independent in procedural terms, the Board shall not be bound by the rules of evidence and procedures applicable to courts of law<sup>104</sup> yet are still required to abide by the principles of substantive law followed by civil courts<sup>105</sup>. The Boards are not solely adjudicatory bodies and they shall endeavor to arrive at an amicable settlement of collective labour disputes. Towards this end, they may make use of any means of conciliation deemed appropriate, moving beyond the interests of the disputing parties for the sake of collective ones<sup>106</sup>. In view of speeding up collective labour dispute settlements, the law requires Boards to issue a final decision within thirty days from the date on which the claim is lodged<sup>107</sup>.

The Board is also empowered to settle out all collective labour disputes related to the determination of wage and other benefits. It shall conciliate the parties and hand out an order or a decision<sup>108</sup>. The Labour Relations

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<sup>102</sup> *Woreda* is a lower-level administrative structure in Ethiopia. Depending on their scope, regional states have different numbers of Zonal administrations which in turn would have *woreda* administrations under them. Taking the Amhara regional state as an example, it has ten Zonal administrations and three city administrations. Taking North Gondar Zone as an example, it is composed of twenty-four *woredas*.

<sup>103</sup> Labour Proclamation, *op. cit.*, Art. 136(1).

<sup>104</sup> *Ibid.* Art. 149(5).

<sup>105</sup> *Ibid.* Art. 150(3).

<sup>106</sup> *Ibid.* Art. 150 (1) and (2).

<sup>107</sup> *Ibid.* Art. 151(1).

<sup>108</sup> *Ibid.* Art. 144(2) and 147(2).

Board shall have primary jurisdiction over the remaining collective labour disputes enumerated under Article 142 of the Labour Proclamation and other similar disputes. Once an agreement between the parties is reached, it may give its own orders and decisions<sup>109</sup>. Though the Boards are not judicial bodies, such orders and decisions<sup>110</sup> are on an equal footing with those laid down by civil courts of law<sup>111</sup>. The decisions are automatically enforceable<sup>112</sup> unless they are reversed by appeals to relevant regular courts.

### 11. The Role of Regular Courts in the Settlement of Collective Labour Disputes

Given the nature of collective disputes, regular courts are less appropriate to exercise primary jurisdiction. The Boards have the final say in terms of fact-finding<sup>113</sup> and hence no appeal can be made against it. The composition of the Board enables one to appreciate the factual conditions in relation to the dispute. However, the Board is not necessarily equipped with legal expertise and its decisions on matters of law are appealable to the federal high court<sup>114</sup>. In regional states, an appeal from the decision of the Board shall be made to the respective regional supreme courts by way of delegation<sup>115</sup>. The courts shall retain the final authority over questions of law and may uphold, reverse or modify the decision of the Board<sup>116</sup>.

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<sup>109</sup> Labour Proclamation, *op. cit.*, Art.147(1).

<sup>110</sup> *Ibid.* Art. 146(4). “Decisions of the Board shall be taken by a majority vote of the members present. In case of tie, the chairman shall have a casting vote.”

<sup>111</sup> *Ibid.* Art. 147(4).

<sup>112</sup> *Ibid.* Art. 152(1) and (2). “Where a decision of the Board relates to working conditions, it shall be a term of the contract of employment between the employer and the worker, to whom it applies, and the terms and conditions of employment to be observed and the contract shall be adjusted in accordance with its provisions.”

<sup>113</sup> *Ibid.* Art. 153.

<sup>114</sup> *Ibid.* Art. 140.

<sup>115</sup> The FDRE Constitution, *op. cit.*, Art.78 (2).

<sup>116</sup> The Labour Proclamation, *op. cit.*, Art. 154(2).

## 12. Concluding Remarks

An effective and predictable scheme of settling labour disputes is an indispensable component of an efficient legal system which promotes industrial peace through harmonious employer-employee relations. Ethiopian labour law aims at creating such a system. The law classifies labour disputes into individual and collective. However, lacks clarity in supplying the criteria for such differentiation. This has practically caused unpredictability in the interpretation and application of the Labour Proclamation with regard to differentiating individual and collective labour disputes. The confusion emanating from vagueness in the Labour Proclamation is somehow rectified by the precedents set by the Federal Supreme Court. Yet perplexity still persists in court room discussions and academic circles.

What makes a labour dispute a collective one rests on whether the disputed issue affects the collective interests of workers and employers. All other cases shall always be individual disputes. The number of applicants in a given case cannot be a determinant in this respect. Nor can it be defined by a cursory look at instances of individual and collective labour disputes stated in Articles 138 and 142 of the Labour Proclamation. The disputes set as an example of individual labour disputes may qualify as collective disputes if the effects transcend beyond the applicant and be a common concern for others as well. In a similar vein, what are referred to as collective disputes may not be matters of collective concern. Accordingly, each case has to be evaluated on its own merit. The existing confusion regarding such distinction is time-consuming and a waste of resources. Therefore, judges of courts of law and members of Labour Relations Boards have to be well trained with respect to the distinction for a speedy settlement of labour disputes.

Individual labour disputes are more suitable to court room adjudication as they are based on the rights of the parties which are laid down in relevant legislation or in the employment contract. Federal and regional courts of first instance are mandated to settle out such disputes. On the other hand, collective labour disputes are combinations of claims on rights and disputes on the creation of new working conditions which are not yet legally or contractually binding on either party. This makes such disputes inappropriate for primary adjudication by regular courts. In this case, conciliation and arbitration are more effective mechanisms than adjudication. The Labour Proclamation requires such cases first to be amicably settled by a conciliation officer assigned by the parties to the dispute or the Ministry. When conciliation cannot be achieved, the case

will be referred to Labour Relations Boards as the case may be. The Boards are composed of representatives of employers and employees and experts appointed by the Ministry and shall have the final authority on matters of fact whereas questions of law are appealable to regular courts.



# Adapt International Network



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