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AN OVERVIEW OF THE RIGHT TO STRIKE IN ETHIOPIA

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... Conditions of labour exist involving such injustice, hardship and privations to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled .... the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries ...[1]

1. General

In any system of industrial relations where employers and workers are bound by contractual relationships with separate and, at times, conflicting interests, it is natural for the employer to exert his superior economic power and managerial skill to take as much of the gain as possible from the production and service rendering process. It is likewise natural for the workers to wage their own struggle by effective utilization of their organizational strength to obtain a better share of the profit, good working conditions and employment security. Stoppage of work as a collective measure to secure one or a variety of economic or social ends, commonly referred to as strike, is but one aspect of this struggle of workers. It is an act "... by a body of workers for the purpose of coercing their employer to accede to some demand they have made upon him, and which he has refused".[2]

Strike grew out of the wage system in modern capitalism that payed the way for trade unionism and the institution of collective bargaining. It is not a stoppage of work resulting in the termination of the contract of employment, and the workers continue to be attached to their place of work.

The majority of such economic strikes result from controversies over wages. Disputes over improvement of work conditions, occupational safety, decrease in working hours are also expressions of economic strike. Points of controversy between employers and workers over union recognition and discriminatory employment policy

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resulting in strikes are also included in this category although they sometimes embrace other social and political dimensions.

Political strikes, on the other hand, are not motivated by the immediate economic interests of workers and thus do not spring from contractual relationships with their employers. They are usually called by federations or confederations of trade unions or other pressure groups for political objectives.[3]

As a right, strike is recognized in many countries the world over although it is not uncommon to come across pieces of legislation that require a series of specified efforts towards dispute settlement before conducting the strike. There are, of course, totalitarian regimes which are exceptions to this general trend that view all forms of strike as subversive. But the widely accepted view places recognition of this basic right as an issue of the day.

Modern developments in public international law are also in favour of this trend. That ... everyone has the right to work, to free choice of employment, to just and favourable conditions of work ... to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity ... is enshrined under Article 23 of the United Nations Universal Declaration of Human Rights. Furthermore the right to strike is explicity recognized under Article 8 of the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations.

The International Labour Organization (ILO) too has adopted a number of conventions and recommendations dealing with freedom of association and the right of collective bargaining of workers which states-parties are required to give recognition and provide guarantees for their effective implementation in their respective jurisdictions.[4]

These conventions and recommendations recognize the right of workers to establish and join trade unions of their choice, the right of unions to draw up their constitutions, to elect their representatives and to freely organize their administration. Interferences impeding the exercise of the right to organize resulting in the dissolution or temporary suspension of trade unions, or anti-union discrimination in respect of employment or promotion and dismissal of workers for reasons of participation in union activities are strictly prohibited. Even the law of the land under the auspices of which the unions operate must not be applied to impair these guarantees.

As the main theme of this paper is to treat the controversial notion of the right to strike from the Ethiopian perspective, in the forthcoming discussion an attempt is made to make a brief survey of past and present legislations pertaining to the subject in light of these general considerations.

2. The Labour Relations Proclamation No. 210 of 1963

Ethiopian legislative history shows this Proclamation to be the first of its kind enacted in the area of industrial relations. As expressed in its preamble, its objective was the creation of conducive labour conditions and the settlement of labour disputes by means of collective bargaining. Labour dispute is defined as meaning any point of misunderstanding concerning the terms or tenure of labour conditions; or the eligibility or authority of a person claiming the right to represent either employers or workers in negotiating, arranging, fixing, maintaining or modifying the terms of labour conditions.[5]

A machinery for the settlement of trade disputes known as the Labour Relations Board was set up, with powers to consider, conciliate and arbitrate such disputes; to consider any complaint of unfair labour practice, to prohibit any such practice, to direct any persons, groups or organizations to abstain therefrom; to enforce its decisions and awards by appropriate means; and to recommend to the Minister of Community Development and Social Affairs the dissolution of organizations.[6] An appeal from a decision of the Board on questions of law, not on findings of fact, was allowed to be taken before the then Supreme Imperial Court. Its power was to examine such decision, and if there was any error of law to refer the case to the Board for final action, giving at the same time binding directives on questions of law.[7]

The Proclamation further recognized the rights of associations of employers and workers as well as the system of collective bargaining. As such workers were granted rights not only to form and join trade unions but also to have their unions affiliated to groups of unions confederated on a country-wide basis.[8] The term strike was given statutory definition as being:

> *... any temporary cessation of work by the concerted action of a group of employees taken in connection with and intended as a means of influencing an existing labour dispute.*[9]

Despite this definition, however, the Proclamation did not have any provision in which the right of workers to strike as a means of securing their demand was

recognized. It did not expressly deny it either. It prohibited unfair practices and it defined certain forms of strikes as elements of such unfair practices.[10] Difficult as the task of drawing any distinction between the forbidden practices and others may be, let us now examine the provision at some length.

The first proviso imposed on all forms of strikes was that they should not be initiated, organized and conducted by any other person or group except trade unions. Even workers of an undertaking with a serious trade dispute could not conceive of any idea of conducting a strike unless they had a union. Workers in undertakings with less than fifty workers were not allowed to form a union although it was possible for them to join general labour unions with workers of other undertakings. But this, at the time, was a rare occurrence.

It was also an unfair labour practice within the meaning of the Proclamation to incite or conduct a strike which was outside the scope of the lawful activities of trade unions. The scope of activities of trade unions was taken to be the regulation of labour conditions and activities permitted in the Proclamation, as well as the study, protection and development of the economic,social and moral interests of their members. It was in the scope of activities of trade unions to negotiate freely and voluntarily matters in the field of labour conditions and settle disputes arising therefrom by peaceful means whenever possible.[11]

Strikes initiated without willingness to negotiate in good faith or arbitrarily were likewise said to fall within the domain of unfair labour practices under the Proclamation. In this respect questions to be raised are: What is meant by initiation of arbitrary strikes? How is one to establish failure to show willingness to negotiate in good faith? What, after all, was meant by such terms as good faith and arbitrariness? Which body was empowered to determine the existence of these reasons? No explanation was given on these and related points of controversy and it seems the interpretation was left to the Minister of Community Development and Social Affairs, who had wide powers to implement the Proclamation and to issue subsidiary regulations for the better carrying out of its provisions.[12] Other bodies in whom the power to interpret the Proclamation was vested were the Labour Relations Board and the Supreme Imperial Court.

Similarly, conducting or initiating strikes prior to submission of the dispute to the Labour Relations Board and before the expiration of a period of sixty days following such submission as well as conducting strikes in violation of or against the final decision or award of the Board was also an element of unfair labour practice and therefore unlawful in the eyes of the Proclamation. First, the attention of the

employer must be drawn to the dispute that might lead to the intended strike. In the event of failure to reach an agreement acceptable to the parties, the law required it to be taken before the Board. The Board, after having exhausted all possible means of arriving at amicable settlement, had two options. It might reject the demands of the trade union and its petition for strike upon such terms as it may think appropriate, or it might grant the petition to strike so that the employer could be forced to submit to the demands of the union. It was also possible to initiate and conduct strikes sixty days after taking the dispute before the Board and if the latter failed to render any decision or award. Silence of the Board, for one reason or another, made the strike lawful once the prescribed time lapsed.

Still other situations of strike that constituted unfair labour practice were those that were accompanied by violence, threats of force or unlawful publicity. Incidents of violence and threats of force are not difficult to understand. But the meaning of the phrase "unlawful publicity" is controversial. What mode of publicity was lawful and what was not? Were unions banned from circulating documents and leaflets on the strike to their members and to the public? Were they expected to have information on the strike censored? Was a press release on the strike unlawful? Who was to decide its unlawful nature?

The last item included in the unfair labour practices list was more of categorization of the work by reason of its vital public nature, or the essential character of the services rendered. In the language of the Proclamation, strikes initiated and conducted by workers engaged, without limitation, in the provision of electricity, water and other public utility services, telephone and telegraphic communication, and transportation services were not lawful. With the exception of transportation services, other activities were as much of public businesses at the time of the enactment of the Proclamation as they are today.[13]

The enumeration was not exhaustive, however, as the very phrase "without limitation" implies. How then was the limit to be set up? Was it once again an issue left to the Minister of Community Development and Social Affairs? It was also a question that challenged the competence and independence of the Labour Relations Board and that of the Imperial Supreme Court. What was the guarantee available if employers or public authorities kept on saying the work threatened by a strike action was essential in character? A strike by its nature, is an undesirable phenomenon. Workers, in most cases resort to it when all amicable efforts of settling a dispute fail to produce a positive result. It is the last card with which they play to exert pressure over their employer. Without mechanisms devised to limit the broad

interpretation to which the phrase "without limits" is subjected, one could not conceive of any effective strike under this Proclamation.

3. The Labour Proclamation No. 64 of 1975

The Labor Relations Proclamation No.210/63 of Imperial Ethiopia was superseded by the Labour Proclamation No. 64/1975 upon the advent of the Provisional Military Administrative Council, widely known as the Dergue, to the country's political arena. Although there was no express provision which, in particular, repealed the former legislation, the reading of article 111 in the latter, in which laws, regulations or decisions inconsistent with the new law in respect of situations provided therein were to have had no effect, rendered it redundant on matters pertaining to industrial relations for all intents and purposes. No mention was made in it of employers' associations and the very term employer was replaced by the word undertaking, deliberately or otherwise. One may be tempted to attribute these omissions and replacements to the apparent or real affiliation of the then policy makers to communist ideology.

Comprehensive as the legislation may seem, with, of course, a number of its own merits and drawbacks, and controversial as interpretations of some of its provisions were, this writer will try to limit the discussion to the provisions pertaining to organizational independence of workers and their right to strike.

Needless to say, workers were granted the right to form and become members of trade unions; and similarly unions were given the right to form and become members of industrial trade unions, which in turn were allowed to establish one national association namely, the All-Ethiopian Trade Union (AETU).[14] The organizational structure of these unions was more of a paramilitary set up designed to serve the idea of the so called democratic centralism which was applied to many of the organizations of the time. Only one trade union was to be established in a single undertaking. Lower trade unions were to be subordinates to the higher ones and members were required to maintain strict discipline. Trade unions at the bottom of the ladder were obliged to accept and implement the decisions of superior ones.[15] All unions were also expected to respect the norms and comply with instructions of political organs, especially that of the party which legally assumed the patronage of providing political and ideological guidance to the Ethiopian society, trade unions being no expecetion.[16] It was also their duty to see to it that laws, regulations, agreements, work rules and procedures were strictly observed by their members.[17] Trade Unions organized before the coming into force of this Proclamation were

dissolved and their rights and obligations were transferred to the unions formed according to the new law. No different was the fate of the Confederation of Ethiopian Labour Unions (CELU) which was only a voluntary and free association of the numerous unions that flourished during the Imperial era. All its rights and obligations were transferred to the All Ethiopian Trade Union.[18] The national union was recognized, dejure at least, as the representative of all workers in the country with powers to "...guide and supervise the labour movement and issue directives to unions to ensure their functioning in line with socialist principles."[19]

The monolithic nature of the structure of these trade unions and the denial of choice of trade union membership was, obviously, criticized by many. One report by experts of the International Labour Organization clearly said that the legislation was at variance with the right of workers to establish and join trade unions of their choice contained under Article 2 of the Freedom of Association and Protection of the Right to Organize Convention No. 87 of the ILO which was ratified by Ethiopia long before the promulgation of this Proclamation.[20] The report noted the advantages of a strong trade union movement which is free from the shortcomings associated with undue multiplicity of small and competing organizations, but at the same time registered the objection of the experts over unification of trade unions by legislative means. In this respect it went on to say:

> *... there is a fundamental difference between a situation in which a trade union monopoly is instituted or maintained by legislation and the factual situations which are found to exist in certain countries in which the workers or their trade unions join together voluntarily in a single organization without this being the result of legislative provisions adopted to that effect.*[21]

As to strike, the Proclamation defined the term in much the same way as the previous legislation did. In addition, such actions as slow-down, disruption of work and preventing others from working were considered to constitute a strike.[22] But this one too failed to give express recognition of the right to strike. It rather described unlawful strikes as those:

1. initiated without there being a collective trade dispute to which the trade union is a party; even if there is a collective trade dispute the case has not been referred to the Labour Division of the High Court and even if it has been referred fifty days have not elapsed before any decision is given;

2. initiated in opposition to the decision of the Awraja Court or the Labour Division of the High Court.

3. initiated in violation of the constitution of the union.[23]

Obvious as the cumbersome nature of this provision is, let us briefly explore the message it was intended to convey.

As pointed out above, although the Proclamation did not provide a provision on the right, it is possible to argue a contrario from the meaning of the quoted provision to infer what a lawful strike is all about.

Strikes are mainly natural consequences of unresolved conflicts between workers and their employers. The Proclamation did not, however, take all forms of disputes for causes warranting a strike action. In the first pace, the nature of the dispute had to be collective as distinct from individual. Secondly, only the trade union in a given undertaking had to be the initiator of the strike. Questions may arise in this regard. What was meant by individual and collective trade disputes? How were the union and its members expected to demonstrate their solidarity with a worker against whom gross injustice was done even though his dispute with the employer was of an individual nature?

Definitions of both classes of trade disputes were, of course, provided in the Proclamation. But drawing distinctions between the two was not always as simple as its reading would seem to imply.[24] Nevertheless, once the dispute was classified as collective, only the union was allowed to initiate and conduct the strike. No other body or individual member could assume this task no matter how grave the cause may be to the workers. The cause must also be limited only to matters affecting workers in the undertaking to which the trade union was affiliated. Any other cause was ruled out perse. This made calling sympathetic and general strikes an outright impossibility.

Next comes the procedure to be followed for a pre-strike settlement of the dispute. Before any meaningful strike action was contemplated, the trade union was expected to draw the attention of the Labour Division of the High Court to the dispute. Even then, the union had to wait for the prescribed fifty days to lapse. If the court were to prohibit the petition, the whole thing would end up there and then. Insisting on the strike action thereafter was tantamount to a criminal offence entailing loss of liberty or fines.

It is also stated that strikes were deemed to be unlawful if conducted in violation of provisions contained in the constitution of trade unions. The constitution, among other things, must include the objectives of the union, rights and duties of members, duties and responsibilities of leaders, general and other meetings of unions and their functions.[25]

The law was silent regarding incorporating dispute settlement procedures in the constitution of trade unions. But as the enumeration was not exhaustive, it is safe to assume incorporation of these procedures in a constitution of a trade union as long as they do not contain elements contrary to the provisions of the Proclamation, whatever this may mean. If so, no strike must be conducted without faithfully following what was laid down in it.

These difficult restrictions imposed on the right to strike were also subjected to severe criticisms by experts of the International Labour Organization. They considered the effects of the provision as rendering impossible "... for all practical purposes, the right of workers to take strike action for the furtherance or defence of their interests." The experts in this connection pointed out that" ... the effective prohibition of strikes constitutes a considerable restriction of the opportunities open to trade unions." Even if the law of the land was respected by the Freedom of Associations Convention, it must not be applied to impair the guarantees provided in it" including the right of trade unions to organize their activities".[26]

4. The Labour Proclamation No. 42 of 1993

The demise of the Dergue was followed by the formation of the Transitional Government of today's Ethiopia, a few weeks after forces of the EPRDF took control of the country.[27] In one of the moves to transform the socio-political fabric of the nation in accordance with their political ideals, the new leaders have recently come out with another labour legislation.

The new law recognizes the right of both workers and employers to form their organizations and participate in them. It is also possible to form federations and confederations of trade unions and employers' associations.[28] Only a single trade union, however, may be established in an undertaking. To qualify for trade union formation the number of workers in the undertaking must not be less than twenty. Those in undertakings with less than twenty workers may form general trade unions with other workers in different undertakings provided they fulfill the required number of twenty.[29] This approach is transplanted into the new Proclamation from the provisions of its predecessor.

So far as the organizational structure is concerned, the new Proclamation has done away with some of the restrictions contained under Proclamation 64/1975. Although the practical application of the law is yet to be seen, no mention is made of creating a single national confederation of trade unions. It even suggests the possibility of creating more than one confederation by laying down the word in the plural. The principle of organizational centralism and the requirement of strict discipline is no where to be seen. Potential interference by public authorities and political groups with union activities appears to have been reduced to some extent.

The objectives of trade unions, their federations and confederations alike, are, indeed the furtherance of the interests of their members. In view of this fact, however, there is a provision in the Proclamation that casts doubt on the intentions of public officials, or those responsible for the drafting and implementation of the Proclamation at the very least, whether they want to leave the entire business of union activity to the full discretion of its rightful members. This is manifested in a provision which states that trade unions, their federations and confederations shall:

> *ensure that laws; regulations, directives and statements are known to, observed and implemented by members.*[30]

Questions may arise at this point. Why do we need to have this idea incorporated in the law? Is a union expected to assume the position of law enforcement agencies? How do union members implement laws, regulations, directives and even statements of the state? What measures would a union take against a member who fails to perform such a task?

Respect for the law of the land is a duty incumbent upon everyone. This is clearly stated under the Freedom of Associations and the Right to Organize Convention of the ILO as well. But it is not in the province of trade union activity to ensure observance and implementation of laws and regulations. The state has set up its own machinery to perform this task. One joins a trade union not because he intends to perform such functions but to guard and promote his interest together with that of his fellow workers. That everyone must give due respect to the law goes without saying. But that he must play the role of a law enforcement officer does not follow.

With this observation in mind, let us new see what the new Proclamation has in store for strikers. There is a chapter devoted to the meaning and procedures of conducting a strike action, the main article of which is quoted below.

1. *Workers have the right to strike to protect their interest in the manner prescribed in this Proclamation ...*

3. *The provisions of sub-article 1 shall not apply to workers (sic) of undertakings referred to in Article 136(2) of the Proclamation.*[31]

A closer scrutiny of this article sheds light on the class of workers the right is said to apply to, the procedural requirements for conducting a strike action and the subject matter of the strike under contemplation which we will separately deal with as follow:-

4.1 Class of Workers who Cannot Claim the Right

Not all kinds of workers have the right to seek, initiate and conduct a strike action. There are workers who are effectively excluded by the Proclamation from its scope of application. These include, amongst others, public servants, members of the armed forces and the police and persons holding managerial positions. The Council of Ministers is also given power to determine the applicability of this legislation to workers employed in foreign diplomatic missions and international organizations within the territory of Ethiopia as well as those employed in religious and charitable organizations.[32]

Members of the public service, armed forces and the police are naturally covered by special laws governing their activities. The status of public servants, for example, is determined by a regulation which is still in force. Workers in the public service are unequivocally prohibited by this regulation from going on strike or participating in any concerted action.[33]

In this respect, as many countries, ours being no exception, take strikes by public servants as serious and sensitive issues, Convention No. 151 and Recommendation No. 159 of the ILO need to be taken cognizance of. The Convention deals with the protection of the right to organize and procedures for determining the conditions of employment in the public service. It takes note of the considerable expansion of public service activities and the need for sound labour relations in the area. It applies to all bound by contracts of employment in the public service with the exception of those high level employees whose functions are normally considered as policy making or managerial and those whose duties are of a highly confidential nature.[34] The Convention requires members of the ILO to grant adequate protection against any and all acts of anti-union discrimination similar to those granted to other classes of workers under previous Conventions. The rights of

workers employed in the public service to organize and to bargain collectively is respected and all protection accorded to individual workers and trade unions were extended to individual public servants and their associations. With regard to dispute settlement procedure the Convention has this to say:

> *The settlement of disputes arising in connection with the determination of terms and conditions of employment shall be sought, as may be appropriate to national conditions, through negotiations between the parties or through independent and impartial machinery such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved.*[35]

Whether this country has ratified the Convention or not is not within the knowledge of this writer. But the fact that public servants are once again effectively precluded from the exercise of these rights by the ingenious method of elimination from the scope of application of the new Proclamation, he is certain.

The second class of workers who do not have the right to strike under the new law are those who are said to be engaged in essential services. The Proclamation defines these services as those rendered by undertakings to the general public. They include:

a. *air transport and railway services;*
b. *undertakings supplying electric power;*
c. *undertakings supplying water and carrying out city cleaning and sanitation services;*
d. *urban and inter-urban bus services and filling stations;*
e. *hospitals, clinics, dispensaries and pharmacies;*
f. *banks;*
g. *fire brigade services; and*
h. *postal and telecommunications services.*[36]

Numerically, the workers engaged in the province of what the law calls essential services do constitute a sizable ratio of the population of trade union membership in the country. It may also be expected that it is in these undertakings that the highly qualified and politically conscious labour force is to be found. Then how does the law attempt to compensate for the denial of this essential right to these workers? One's effort to look for an answer to this question in the new Proclamation will be to no avail.

The raison d'etre of denying workers the right to strike in these undertakings is contentious too. There are those who argue that the activities performed by these workers are so vital for the public at large and the effects of strike so devastating as to result in an irreparable damage that it is proper to prohibit such strikes. They say such strikes are prohibited not because their objects are unlawful but because it is believed that stoppage of work is so serious as to produce injury to the interest of the general public.

Those on the other side of the fence contend that the right to strike is not a luxury workers can afford to go without. First, they say, it is a violation of the principle of freedom of association enshrined in the various conventions and recommendations of the ILO, the UN Universal Declaration of Human Rights, the UN International Convenient on Economic, Social and Cultural Rights and a number of other international documents. To draw distinctions between workers simply by the nature of the work they perform, they further argue, is tantamount to the denial of the equal protection of the law.

The other points that must be considered are the difficulty of differentiating essential services from other kinds of services. Essential services are defined as those services rendered by undertakings to the general public. Apart from activities clearly stated in the provisions which we have seen above, this generalized expression may also suggest the possibility of including other activities in the definition of essential services. How, then, is it possible to delimit the wide interpretation to which the provision is open? What, after all, makes a certain form of service public and essential? We have seen, for example, that workers in undertakings that provide urban and inter-urban bus services are denied the right to strike. What if lorry drivers, say those working in the Ethiopian Freight Transport Corporation, decide to go on Strike? Is not the service they render to the public as essential as that of bus drivers? Some people might say it is. Others might not. Their argument depends on which end of the stick they may find themselves positioned or on their subjective assessment of the problem at hand. Preference of one argument to the other in the event of controversy will undoubtedly be a challenge to members of the new Labour Relations Board and those in the judiciary.

Be that as it may, one should not unnecessarily extend the list of activities to many fields with a subtle objective of legally blessing effective paralysis of strikes in all major fields of the economy. As the right to strike is so pivotal to the freedom of association of workers, any political order that boasts of promoting the causes of justice and democracy must stand pat in its policy by adhering to respect it.

4.2 Procedural Requirements and the Subject Matter of the Strike

The right to strike is exercised by those workers to whom it is granted only when it is initiated and conducted in accordance with the manners prescribed in the Proclamation. As such before resorting to any form of strike they are expected to give advance notice to the employer through their union indicating their reasons for so doing; they should make all efforts to solve and settle the dispute through conciliation; the strike action should be supported by a majority of workers concerned in which at least two-thirds of the members of the trade union were present; and they should ensure the observance of safety regulations and accident prevention procedures in the undertaking.[37]

It is not sufficient to give advance notice of at least ten days to the employer but it is also necessary to serve the same to the representative of the Ministry of Labour and Social Affairs in the area or the concerned government offices, whatever this may be. One may ask why unions have to notify the action to these bodies. The obvious reason is security. Others may be matters of policy because the Minister is the one responsible to oversee union activities. Can you guess what more?

Next comes the requirement of conciliation. Trade unions are expected to make all possible efforts to solve and settle their disputes through the institution of conciliation which in the definition of the Proclamation is:

> *... the activity conducted by a private person or persons appointed by the Minister at the joint request of the parties for the purpose of bringing the parties together and seeking to arrange between them voluntary settlement of a labour dispute which their own efforts alone do not produce.*[38]

Matter that come before the competence of a conciliator are disputes of a collective nature like wages, conditions of work, collective bargaining, etc., that affect the entirety of workers and the existence of the undertaking. To this end, the conciliator endeavours to bring about amicable settlement of the dispute within thirty days after the dispute is brought before him. If he fails to do so within the prescribed time limit he submits his report to the Minister and gets out of the picture.[39]

It might seem that lawful strike is possible once the dispute is taken before the conciliator and his effort to bring about any meaningful settlement fails, if the parties do not submit the dispute to the Labour Relations Board,[40] and further if the requirements of advance notice are observed. But the pre-strike journey of workers does not end up there and then. Anyone of the parties may submit the matter to the

Board and the strike action must wait for another period of thirty days within which the Board shall give its decision. The Proclamation does not provide the time limit for submitting the matter to the Board. But the exigencies of the problem demand an immediate action and what is meant by immediate action must be construed by the standards of a reasonable person.

Yet again anyone of the contending parties may appeal against the decision of the Board to the Central High Court within thirty days after the decision has been read to or served upon him which ever comes first. The appeal must be restricted to a question of law which the appellant thinks has materially affected the Board's decision.[41] What constitutes an error on a question of law and what does not seems to have been left to the subjective discretion of the justices of the Central High Court. Anyway, once the appeal is taken, the union is expected to observe still another period of thirty days within which the court may decide on the dispute.

On appeal the Central High Court has two options. The first one, which is an easy way out, is to affirm the decision of the Board in which event the union may or may not proceed with the strike action depending on the decision. But if the Court is of the opinion that the Board erred on a question of law that materially affects the outcome of the dispute at hand it:

> *... shall remand the matter to the Board for further action not inconsistent with the Court's determination, with or without detailed court directives, but the Court shall not itself reverse, modify or amend the Board's decision.*[42]

A person having a closer look at this provision may raise questions such as: How does such an error materially affect the outcome of the dispute? How does the Court arrive at a determination inconsistent with that of the Board if it "shall not reverse, modify or amend the Board's decision"? What else may actions of remand by the Court" with or without detailed ... directives" amount to apart from reversal, modification or amendment of the Board's decision? What will the outcome be if the Board still insists on the correctness of its first decision?

Posing these questions the answers of which are open to some degree of controversy, when one looks at the hurdles unions have to face before conducting a lawful strike, the dispute may go all the way from mutual negotiation of the concerned parties to the conciliator, to the Labour Relations Board and to the Central High Court before the contemplated action becomes viable. The minimum number of days to be observed comes to a hundred and thirty, i.e., ten days of advance notice to the

employer and the concerned government office, thirty days each before the conciliator, the Board and the Central High Court with an additional period of thirty more days granted to the party who intends to appeal against the decision of the Board to the Central High Court. And God knows what will surface in the meantime.

Coming to the remaining procedural requirements, that the decision to strike must be supported by the required number of workers is not hard to grasp. But that strikers are bound to ensure observance of safety regulations and accident prevention procedures sounds enigmatic. Why does a striker have to observe these regulations? Is not a strike an action taken by workers in unison to bring the employer to their terms? How are these regulations and procedures to be observed? Failure to do so does not have much to do with a strike action. It is a separate concept that deals with the individual guilt of a worker or an employer which by itself has civil and sometimes penal consequences.

As to the subject matter of strikes, any lawful action within the meaning of the new proclamation must have protection of workers' interests as its objective. But, the phrase "protection of interest" is open to different interpretations. The contextual reading of the various provisions suggest the assumption that for a labour dispute to be a cause and motive of strike it must have a collective character. But no where in the Proclamation are individual and collective trade disputes defined. Inspite of this seemingly deliberate omission to define the two classes of trade disputes, the Proclamation makers reference to both in some of its provisions; Article 138/1/ and Article 142/1/ to cite but two. This omission is likely to aggravate the already existing controversy in applying these concepts to practical problems for some time to come as Ethiopian courts do not follow the principle of stare decisis in adjudicating cases.

In an attempt to fuse the concept of both classes of disputes laid down under the previous Proclamation No. 64/1975, the law generally states the definition of a "Labour dispute" as:

> *... any controversy arising between a worker and an employer or trade union and employers in respect of the application of law, collective agreements, work rules, employment contract or customary rules and also any disagreement arising during collective bargaining or in connection with collective agreements.*[43]

The other related point that deserves our attention at this juncture is the possibility of conducting general, sympathetic or other forms of strike. The

Proclamation only speaks of economic strikes relating to the collective interests of the unionized workers in a single undertaking. They must show that they have a vested interest in the outcome of the dispute. We can, therefore, say that the new Proclamation too excludes expressions of solidarity workers may manifest to each other by way of general or sympathetic strikes. Although federations and confederations of trade unions are recognized, they cannot call such strikes, nor can they be parties to trade dispute proceedings before conciliators, the Labour Relations Board or before courts of law. One may wonder why the legislators felt the need for setting them up. Their functions are no more than political helter-skelter, to the observation of this writer at least.[44]

4.3 The employer

When dealing with labour disputes of this nature, the other crucial aspect to be considered is the position of the employer. Employment relationship is primarily a juridical act that results from a contract between the worker and his employer. As such it is an agreement whereby the worker undertakes to render to the employer:

> *... under the latter's direction, for a determined or undetermined times; services of physical and intellectual nature in consideration of wages which the employer undertakes to pay him.*[45]

With all due considerations to the peculiar characteristics of employment contracts, to the human element involved in it, to the economic strength and social superiority of the employer, etc... the meeting of minds of the parties is as much of a cardinal concept in employment contracts just as it is in all other kinds of contracts.

Cumbersome as they definitely are, let us assume that all the procedural requirements laid down in the Proclamation for conducting strike are met, and let us further assume that the workers do not fall in one or another category of exclusion from the exercise of the right to strike; what will be the out come if the employer insists on his position and refuses to bow to the pressure of the strikers? What if he goes one more step forward and aggravates the situation by exercising his right under the existing laws and collective agreements to terminate the contract of employment?

In a free enterprise economic system where property right is sacred, with legislative and even constitutional protection, the owner has the widest right over his property which may neither be divided nor restricted save as is expressly provided for by the law itself.[46] Do we have to expect an indefinite continuation of the strike until he finally comes to the terms of the strikers? Or what other avenues of action

are there to the workers? Such occurrences may seem improbable, but they are not far fetched. The law does not seem to have foreseen this possibility too.

4.4 Penalty Provisions

To initiate and conduct a strike after a dispute has been referred to the Labour Relations Board or to the Centra High Court and prior to the lapse of thirty days before any order or decision is given is unlawful in the eyes of the Proclamation. It is also unlawful to refuse to obey or to continue a strike in defiance of the final order or decision of the Board or unwarrantedly to delay obeying such an order or decision.[47] Violation of this procedure is an offence punishable with a fine not exceeding Birr 1,200 if committed by a union or Birr 300 if committed by an individual worker unless the provisions of the Penal Code prescribe more servere penalties in which case the punishment laid down in the alter becomes applicable.[48]

5. Concluding Remarks

To consider all strikes as homogeneous occurrences aimed at subversion stands in the way of democracy and enlightenment. As a social phenomenon of considerable degree of complexity, strike is a form of conflict that requires due recognition by the parties involved and by public authorities. It is an undesirable but, at times, an unavoidable incident. So long as discontent is the prime mover of change and development, any social order needs to appreciate this fact and work towards its just solution. There is quite a difference between social conflict, which is a fact of life, and confrontation which can be traversed by compromise, tolerance and by means of devising a wise and just policy. Suppression of differences is nothing but postponing the conflict for another time so that it may surface with a new and more serious bang.

More often than not, relations of workers to their employers and to the state in this country have been that of subservience at the best of times. In the forgoing discussion an attempt has been made to show the right of workers to freedom of association and that of strike in the Ethiopian perspective. With all due respect to their positive contributions, the three legislations we have gone through are far from being satisfactory by the standards of the various conventions and recommendations of the International Labour Organization and other international instruments.

Any meaningful recognition of individual and collective rights must not be accompanied by impediments of one form or another that may bring about its paralysis. The legislator should subject such rights to limitations only in so far as the action is compatible with the nature of the right and for the purpose of promoting the

general welfare of the society. A right is just as dead as the paper on which it is written unless it is properly exercised when the need for so doing arises. As embarking upon the road to democracy and free enterprise economic system is on the order of the day, we hope the architects of our society will view the issue with great perspicacity.

Notes

1. Preamble to the Constitution of the International Labour Organisation adopted at Philadelphia on 10 May, 1994.

2. Black's Law Dictionary, 5th ed., 1979, West Publishing Company.

3. The other form of categorizing strikes is by the mode of initiation. Some of these are general strikes, sympathy strikes, sit down strikesand wild cat strikes. General Strikes are usually called by federations or confederations of trade unions in a given sector of the economy, or generally at national or regional levels. They may also be called by political parties to which such federations or confederations are affiliated. They may have promotion of economic and/or political interests of their members as an objective. Sit down strike is a form of strike conducted by workers who stop their work but do not leave their work premises. Wild cat strikes are carried on by a group of workers in an undertaking without authorization of union officials and sometimes against actions of such officials. Sympathy strikes involve two unions or more. They are manifestations of union solidarity wherein one union strikes in sympathy with the objectives of another.

4. To this end the major legal instruments of the ILO are :(a) Convention No. 87 of 1948 cited as The Freedom of Association and Protection of the Right to Organize Convention, (b) Convention No. 98 of 1949 cited as The Right to Organize and Collective Bargaining Convention, (c) Concention No. 135 of 1971 cited as The Workers' Representatives Convention, and (d) Recommendation No. 143 of 1971 cited as The Workers' Representatives Recommendation.

5. Proc. No. 210/1963, Art. 2(1).

6. Ibid., Art. 12.

7. Ibid., Art. 19.

8. Prior to the coming into force of the Proclamation, the status of unions was equated with that of civil associations and was regulated by the Civil Code of the Empire of Ethiopia, Negarit Gazeta, Extraordinary Issue, 19th year No. 2. See Book One, Title 3, Chapter 2 in general and see Article 406 of the Code in particular.

9. Proc. No. 210/1963, Art. 2(q).

10. Ibid., Art. 2(s) cum. Art. 28.

11. Ibid., Art. 22.

12. Ibid., Art 3 cum Art. 37. The Minister subsequently issued the Minimum Labour Conditions Regulation No. 302/1964 pursuant to the authority vested in him in the Proclamation.

13. Here, by Public business is meant business ventures conducted only by the government for reasons of their vital importance or the public character of the activities undertaken.

14. Proc. No. 64/175 Art. 49.

15. Ibid., Art. 50(4) (5) (7).

16. See the Proclamation to establish the Commission for Organizing the Party of the Working People of Ethiopia No. 174 of 1979.

17. Proc. No. 64/1975, Art.52. (1) (g).

18. Ibid., Art. 114(2).

19. Ibid., Art. 52(3) (b).

20. Report of the Committee of Experts on the Application of Conventions and Recommendation; International Labour Office Publication, Geneva 1976, p. 120.

21. Ibid.

22. Proc. No. 64/1975, Art. 2(22).

23. Ibid., Art 106.

24. Ibid., Art. 2(5) and Art. 2(12) respectively defined collective and individual trade disputes. By the former was meant any claim arising out of the interpretation or the improvement of existing provisions contained in laws or

regulations or collective agreements or work rues or accepted practices and disputes involving questions of representation by the workers or the undertaking or arising in the course of collective negotations. By the later was meant a claim of an aggrieved worker arising out of the violation or alteration of provisions contained in laws, regulations, work rues or individual contracts of employment or the non-application of established practices by the undertaking.

25. Ibid., Art. 55.

26. Report cited at note 20 above, p. 121.

27. The EPRDF, Ethiopian Peoples Revolutionary Democratic Front, founded and nurtured in the highlands of Northern Ethiopia, effectively brought about an end to the era of the Dergue after an insurgency operation that lasted over a decade and a half. It is now said to be an umbrella organization embracing The Tigrian Peoples Liberation Front (TPLF), The Ethiopian Peoples Democratic Movement (EPDM), The Oromo Peoples Democratic Officers Revolutionary Movement (EDORM). It holds 32 of the 87 sits in the Council of representatives, the Supreme law making body in the country. The remaining 55 sits are shared betweenseveral other political groupings and liberation movements.

28. Proc. No. 42/1993, Art.113.

29. Ibid., Art. 114.

30. Ibid., Art. 115.

31. Ibid., Art.. 157.

32. Ibid., Art. 3.

33. Public Service Regulation No. 269/1962, Art. 83.

34. Labour Relations (Public Service) Convention No. 151 of 1978, International Labour Organization, Art. 1, Par. 2.

35. Ibid., Art. 8.

36. Proc. No. 42/1993, Art. 136(2).

37. Ibid., Art. 158.

38. Ibid., Art. 136 (1)

39. Ibid., Art. 142.

40. The Labour Relations Board of the Imperial era was done away with by Proc. No. 64/1975 but is now reinstated by the new Proclamation with powers to adjudicate collective trade disputes, to conciliate the parties and to give any orders and decisions as well as to hear cases on prohibited actions.

41. Proc. No. 42/1993, Art. 154.

42. Ibid.

43. Ibid., Art. 136(3).

44. Ibid., Art. 116. Functions of federations and confederations include strengthening the unity and spirit of cooperation of their members, participation in the determiniation of improvement of the conditions of work at the trade or industry level as well as to encourage members to strengthen their pareticipation in the construction of the national economy. The question to be asked here is: How do these organs strengthen the spirit of cooperation and unity of their members where they are not in a position tomake use of the most important weapon of solidarity expression?

45. Civil Code of Ethiopia, Art. 2512.

46. Ibid., Art. 1204.

47. Proc. No. 42/1993, Art. 160.

48. Ibid., Art. 185 cum Art. 183. See also Art. 413 of the Penal Code of Ethiopia, Negarit Gazeta, Extraordinary Issue, 16th year No. 1.