Addis Ababa University,

College of Law and Governance Studies

School of Law

LL.M in Public International Law

ARBITRATION AS COLLECTIVE LABOUR DISPUTE RESOLUTION MECHANISM UNDER THE LABOUR PROCLAMATION No. 1156/2019 IN LIGHT OF ILO CONVENTIONS

By

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Examiners Approval Sheet

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Declaration

I, Tesfaye Demmelash, hereby declare that this research entitled "**ARBITRATION AS COLLECTIVE LABOUR DISPUTE RESOLUTION MECHANISM UNDER THE LABOUR PROCLAMATION No. 1156/2019 IN LIGHT OF ILO CONVENTIONS,"** is my original work and has never been presented in any other institution. To the best of my knowledge and belief, I also declare that any information used has been duly acknowledged.

Name: Tesfaye Demmelash Tegegne

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Confirmed by

Wondemagegne Tadesse (PhD, Assistant Professor)

Signature: _____

Acknowledgment

Above all, I want to thank God and his mother, Saint Virgin Marry, for giving me the strength to continue my research.

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List of Acronyms and Abbreviation

ABA American Bar Association

ADR Alternative Dispute Resolution

FDRE Federal Democratic Republic of Ethiopia

FFIC Federal First Instance court

FSC Federal Supreme Court

ILO International Labour Organization

LRB Labour Relation Board

UN United Nations

UNCITRAL United Nation Commission on International Trade Law

US United States

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Abstract

This thesis examines the effectiveness of arbitration as a mechanism for resolving collective labour disputes in Ethiopia, analyzing its implementation under the Labour Proclamation No. 1156/2019 in light of relevant ILO conventions. The study critically assesses the Ethiopian system's unique blend of voluntary and compulsory arbitration, focusing on the role of the Labour Relations Board and its potential impact on fairness, access to justice, and compliance with international standards. The thesis delves into the tension between government intervention and party autonomy, highlighting the potential for bias and the need for robust procedural safeguards. Drawing on comparative analysis and international best practices, the research provides recommendations for enhancing the Ethiopian system to promote a more equitable, efficient, and accessible framework for resolving collective labour disputes in line with ILO conventions.

CHAPTER ONE

INTRODUCTION

1.1. Background of the Study

Law serves as the mechanism by which we regulate human conduct and govern interactions in daily life. Labour law, as a specialized branch of law, is designed to fulfill this function within the realm of employment and workplace relations. Labour disputes are an inevitable aspect of industrial relations, often leading to conflicts between employers and employees.[1] These disputes can arise from various sources, including wage disagreements, working conditions, contract interpretations, and issues related to employee rights. The nature of these conflicts can vary significantly, from minor grievances to major strikes that disrupt entire industries. The traditional methods of dispute resolution, such as litigation, often exacerbate tensions and create adversarial relationships between parties.[2] Litigation can be a lengthy and costly process, with outcomes that may not satisfy either party. In response to these challenges, there has been a growing recognition of alternative dispute resolution (ADR) mechanisms, particularly arbitration, as more effective solutions for resolving labour disputes.[3] Arbitration offers a more streamlined process that can be less formal and more flexible than court proceedings. It allows parties to select arbitrators with specific expertise in labour issues, which can lead to more informed and equitable resolutions.

In Ethiopia, as in many other countries, labour disputes are categorized into individual and collective disputes.[4] However, there is no clear-cut definition for both types of disputes.

[1] J Lee and S Toh, 'Cultural Influences on Conflict Resolution Strategies in Labour Disputes' (2019) 30 International Journal of Human Resource Management

[2] Ibid

[3] A J S Colvin, 'the Role of Arbitration in Labour Disputes: An Analysis of Effectiveness and Accessibility' (ILR Press 2012) 443.

[4] IDCEA, 'the Politics of Labour Relations in Global Production Networks: Collective Action, Industry Parks and Local Conflict in the Ethiopia Apparel Sector' ISCEA Working Paper No 07 (2007) 2. Hereinafter cited as [IDCEA, 'The Politics of Labour Relations in Global Production Networks: Collective Action, Industry Parks and Local Conflict in the Ethiopia Apparel Sector'].

Generally, one may state that individual labour disputes essentially concern the individual labour relation[5], while a collective dispute involves several employees acting in combination.[6] But, sometimes a conflict involving one individual may become collective, if fundamental interests are threatened by it.

The Ethiopian labour Proclamation No. 1156/2019 defined labour dispute as:

> Any dispute between a worker and an employer or trade union and employers' association in respect of the application of law, collective agreement, work rules, employment contract and also any disagreement arising during collective bargaining or in connection with the collective agreement.[7]

From this provision, we can understand that our law recognizes both collective and individual disputes. In both types of labour disputes, individual or collective, the procedures for settling mechanisms are different. The normal procedure is for efforts to be made first by the disputants themselves and secondly, if these efforts fail with the help of government departments through conciliation, mediation and Arbitration mechanisms.[8]

Therefore, people are advised even required to use means such as arbitration instead of courts particularly for those disputes involving small amount of money. In addition, Arbitration provides second class justice for those who are poorer to afford legal help through the courts of law.[9] Furthermore, the absence of procedural and legal constraints, frees the parties to learn about each other's needs and model a private solution accordingly arbitration is therefore, chosen for its more flexibility and capability to adjust itself to the nature of the disputes.

However, the move towards arbitration is not smooth as it seems to be, rather there are equally important theories against its implementation. The opponents argued that unless arbitration mechanisms are created as adjunct to the judiciary or regulatory system, or unless those issues can be re-litigated courts, their use will result in the abandonment of our constitutional system

[5] Ethiopia, Proclamation No. 1156/2019, art 139

[6] Id Article143

[7] Ibid

[8] Id Article 137(2)

[9] Ibid

which "rule of law" is created and principally enforced, and the rights and duties that law seeks to regulate may be limited.[10]

They further stated that, failure to understand by the resolver the values in controversy, deficiencies in informal procedures, lacking procedural protections and inequality in certain situations in power and resources of parties to a dispute, made arbitration merits nothing but inexpensive and informed decisions. In the absence of rules of procedural and substantive law, agreements reached may be unfair, especially when there is an imbalance in bargaining, because the weak might concede on issues in order to keep the peace than assert his rights.[11] Finally, they argued that, limiting the jurisdiction of courts for want of reduction in caseloads may result in diminished rights for minorities and other areas like employment relationships.[12]

Whatever the reason may be, proper utilization of arbitration is the order of the day, as practiced in areas like business, school, and family matter and most importantly in labour relationship. These facts are meant to show how alternative resolution mechanisms are given attention, however, the purpose of this writing is to show how they are particularly used in the field of labour-management relationships, why arbitration is said to be proper to govern labour disputes, and what are the peculiar nature of labour disputes that calls for alternative dispute resolution than other kinds of disputes.

Since its inception, the International Labour Organization (ILO) has worked to define and safeguard labour rights, improving working conditions through international labour standards embodied in Conventions, Recommendations, and Codes of Practice.[13] Over the years, the ILO has adopted more than 180 Conventions and 190 Recommendations, covering various aspects of the world of work. A recent review by the ILO Governing Body found that over 70 of the pre-1985 Conventions remain relevant, while others require revision or withdrawal. These standards,

[10] T Ewards, 'Alternative Dispute Resolution: Panacea or Anathema' (1986) 99 Harvard Law Review 671.

[11] Jasmine Joseph, 'Alternate to Alternatives: Critical Review of the Claims of Arbitration' (2011) NUJS Working Paper Series NUJS/WP/2011/01.

[12] USAID, 'Alternative Dispute Resolution Practitioners Guide' (2015) 17.

including those on maternity leave and migrant protection, significantly influence national legislation, with a supervisory process ensuring the application of ratified standards.[14] The 1998

Declaration on Fundamental Principles and Rights at Work commits ILO member states,

including Ethiopia, to uphold core labour standards as basic human rights.[15] Ethiopia is a member of the ILO since 1923, has ratified several key ILO Conventions, including those related to forced labour, child labour, and freedom of association, reflecting its commitment to improving labour conditions in alignment with international standards.

Thus, this paper is seeking to examine the role and significance of arbitration to resolve the collective labour dispute under the Labour Proclamation No. 1156/2019 in light with the ILOConventions.

1.2. Statement of the Problem

Labour disputes differ from many other types of disputes in that they require special attention and careful handling.[16] These disputes are not simply private matters to be resolved by the disputing parties alone, as their impact extends beyond the immediate parties and the particular industry involved, affecting society at large. This broader impact, or spillover effect, is a primary reason why governments often intervene in major labour disputes to mitigate potential negative effects on a nation's economic, political, and social well-being.

Traditional methods of resolving labour disputes are gradually being phased out. However, leaving labour disputes solely to private negotiation and resolution has its drawbacks and limitations. This research seeks to examine whether the existing legal framework effectively balances the less favored traditional methods of dispute resolution with arbitration in collective labour disputes.

The reliance on ordinary courts for resolving disputes is increasingly being challenged in modern society. Public policy is shifting toward favoring alternative dispute resolution mechanisms,

[16] ILO, 'Workplace Dispute Resolution: A Study on Access and Effectiveness' (2019) https://www.ilo.org/global/publications/books/WCMS_731173/lang--en/index.htm accessed [22 August, 2024]

including arbitration, which has been used to resolve collective labour disputes since the 19th century.

Despite the introduction of Labour Proclamation No. 1156/2019, which aims to modernize labour relations and enhance dispute resolution mechanisms in Ethiopia, the effectiveness of arbitration in handling collective labour disputes remains unclear.[17] Many workers are unaware of their rights or the arbitration process, leading to underutilization of this mechanism. Furthermore, there is a potential misalignment between national arbitration practices and the standards set forth by International Labour Organization (ILO) conventions, which may undermine the protection of workers' rights.[18] This gap raises concerns about the accessibility, fairness, and effectiveness of arbitration as a viable option for resolving collective labour disputes. Therefore, this thesis seeks to investigate the current state of arbitration under the Labour Proclamation, its alignment with international standards.

The introduction of the New Labour Proclamation has brought significant changes to labour relations, particularly in terms of individual labour dispute resolution mechanisms. While arbitration is increasingly recognized as a viable alternative to traditional litigation, its application within the context of the 2019 Labour Proclamation raises several critical issues that warrant thorough investigation. To begin with, there is a lack of clarity on how effectively these international standards are being integrated into national arbitration system. Furthermore, many workers, especially those in vulnerable employment situations, may not have adequate access to arbitration mechanisms. This raises questions about whether arbitration can truly serve as an equitable collective labour dispute resolution method for all workers under the new framework. Moreover, concerns about the neutrality of arbitrators and the potential for power imbalances between employers and employees complicate the perception of arbitration as a fair collective labour dispute resolution mechanism.

This study aims to critically analyze these issues to evaluate the role of arbitration as in collective labour dispute resolution mechanism under the New Labour Proclamation, assessing

[17] Tadesse W, 'Individual Labour Disputes and the Role of Arbitration in Ethiopia' (2021), Ethiopian Journal of Human Rights Law 55.

[18] International Labour Organization, Guidelines for the Resolution of Individual Labour Disputes (ILO 2018).

its alignment with ILO conventions and its effectiveness in promoting fair labour practices in contemporary work environments.

1.3. Research Questions

Despite the fact that traditional way of settling labour dispute is via court mechanism, the role and significant of arbitration in handling and resolving labour dispute cannot be underestimated.

Within this broader framework, the research tries to address the following question:

A) To what extent is the current Ethiopian legal framework for collective labour dispute resolution compatible with the ILO Conventions and recommendations on arbitration?

B) How is arbitration essential for resolving collective labour disputes within the framework of Ethiopian labour law?

C) To what extent is arbitration recognized as a mechanism for resolving collective labour disputes within the framework of Ethiopian labour law?

D) What recommendations can be made to enhance the compatibility of Ethiopia's arbitration framework with ILO standards, thereby improving collective labour dispute resolution outcomes?

1.4. Objectives of the Study

1.4.1 General objective

- The general objective of the study will be critically analyze the effectiveness of arbitration as a mechanism for resolving collective labour disputes in Ethiopia under the Labour Proclamation No. 1156/2019, assessing its alignment with relevant ILO conventions and identifying potential areas for improvement to promote a fair, efficient, and accessible system for workers and employers.

1.4.2 Specific Objective

The research aims to investigate the role of arbitration in collective labour dispute resolution, focusing on its significance within the Ethiopian legal framework. Specifically, the study will explore:

- The essence of collective labour dispute settlement and the role of arbitration.
- Analyzing the provisions of labour proclamation No. 1156/2019 related to arbitration in collective labour disputes.
- Assessing the compatibility of Ethiopia's collective labour dispute arbitration system with relevant ILO conventions.
- To analyze the alignment of the arbitration process under Labour Proclamation No. 1156/2019 with relevant ILO conventions, identifying areas of compliance and divergence.

1.5. Literature Review

A collective labour dispute is a disagreement that arises between an employer and a group of employees, typically represented by a labour union, regarding terms and conditions of employment. It involves a dispute that affects a larger group of workers rather than an individual employee. However, that number of employees does not matter. The dispute affects a significant number of workers within a workplace or industry sector, often organized as a union or similar representative body. The dispute often revolves around issues arising from collective bargaining agreements, such as wages, working hours, benefits, workplace safety, or union recognition.

There are so manyresearch and articles that are written on the labour dispute resolution under Ethiopian labour law. Among other things, an article written by Dagnachew Tesfaye titled as "Labour dispute: lock-out and strike in Ethiopia" has concluded that labour disputes occur between employer and worker or their associations.[19] Such a dispute can grow up to the point of lock-out or strike. When such strike or lock-out happens, the recommended method of dispute resolution is conciliation between the disputing parties. There is an exhaustive list of essential public services that are excluded from exercising lock-out or strike no matter what. This is aimed at keeping continuity of essential public services. When it comes to essential public services, the parties in dispute should resolve their issues without going to lock-out or strike.

The other article written by Bilate Bisare titled as "Resolution of collective labour dispute by labour relation board in Ethiopia: critical reflections" has found that there is a need need to have

[19] Dagnachew Tesfaye: *Labour dispute: lock-out and strike in Ethiopia* (2022), Ethiopian Journal of Law 43

a clear criteria for the selection of LRB members.[20] Unlike the experience of various countries, Ethiopia's labour proclamation requires knowledge and skill on labour matters for only two members out the seven members of the labour relation board. Moreover, an article written by Tecle Hagos Bahta titled as "Anomalies in the Labour Dispute Resolution Methods under the Ethiopian Labour Proclamation" has deduced that Ethiopia's labour law offers alternative dispute resolution (ADR) methods for resolving both individual and collective labour disputes.[21] Individual disputes can be settled through conciliation or arbitration, even though courts have jurisdiction. Conciliation is mandatory for certain types of workplaces, but optional for essential public service undertakings.

Even though, there many legal studies were made on the labour dispute resolution mechanism under Ethiopian labour law legal framework, this thesis is unique from all these legal researches, articles, journals and other legal writings because, it will specifically deal with arbitration as a collective labour dispute resolution mechanism under Ethiopian labour law and its compliance with ILO conventions. This paper will focus on only arbitration which is among the alternative labour dispute resolution mechanisms recognized by the Ethiopian labour law. Furthermore, it will try to address the compatibility of arbitration as a collective dispute resolution mechanism in light of the Convention such as, ILO Convention No. 87 - Freedom of Association and Protection of the Right to Organize Convention (1948), ILO Convention No. 98 - Right to Organize and Collective Bargaining Convention (1949), ILO Convention No. 154 - Promotion of Collective Bargaining Convention (1981) and ILO Convention No. 159 - Vocational Rehabilitation and Employment (Disabled Persons) Convention (1983). As a result, this paper is different from other literatures written before via its specificity and focus area.

1.6. Significance of the Study

The study will provide a comprehensive analysis of the compatibility between Ethiopian labour laws and ILO conventions, contributing to the broader legal scholarship on collective labour

[20] Bilate Bisare: 'Resolution of collective labour dispute by labour relation board in Ethiopia: critical reflections': (2022), Mizan Law Review Volume 16 No. 1

[21] Tecle Hagos Bahta : 'Anomalies in the Labour Dispute Resolution Methods under the Ethiopian Labour Proclamation': Jimma University Journal of Law Vol. 1 No.1

dispute resolution in Ethiopia. It will enhance understanding of the role of arbitration in a legal context traditionally dominated by litigation. By examining the effectiveness of arbitration, the study aims to identify ways to improve labour relations in Ethiopia. Effective dispute resolution mechanisms can help maintain workplace harmony and reduce the adversarial nature of labour disputes. The findings will inform policymakers and stakeholders about the current gaps in the arbitration framework. This can lead to more informed decisions and legislative reforms that enhance the effectiveness and fairness of labour dispute resolutions.

Understanding the arbitration process and its implications for workers' rights can empower individuals to utilize available mechanisms effectively. This study can raise awareness among workers regarding their rights and the resources available for dispute resolutions. By evaluating the qualifications and training of arbitrators, the study may contribute to improving arbitration systems in Ethiopia. This enhancement could lead to more equitable and effective resolutions of labour disputes.

The study will shed light on Ethiopia's compliance with international labour standards, fostering dialogue on the importance of aligning national laws with global best systems. This alignment can enhance Ethiopia’s standing in the international community regarding labour rights. This study is significant not only for its academic contributions but also for its systematic implications in enhancing labour dispute resolution mechanisms, ultimately promoting fairness and justice in the workplace.

1.7. Research Methodology

This research employs doctrinal research methods, utilizing a comprehensive range of primary and secondary sources. The study extensively reviews literature related to collective labour disputes resolutions particularly, arbitration to address contemporary concerns.

Given the limited existing literature on labour arbitration, the research makes every effort to consult available materials thoroughly. Primary sources, including the Labour Proclamation, the Arbitration and Conciliation Working Procedure Proclamation, the Federal Court Proclamation, and relevant ILO Conventions to which Ethiopia is a party, will be examined in detail. These

sources are critically analyzed to provide a robust understanding of the current legal framework for collective labour dispute arbitration in Ethiopia.

1.8. Delimitation of the Study

Labour is one of the critical aspects of everyone's life and the dispute aspect of it is one singular but still the significant part of labour. The study will focus on the legal provisions related to arbitration as collective labour dispute resolution mechanism in Labour Proclamation No. 1156/2019 and examine how these provisions align with international standards set by ILO conventions.

1.9. Limitation of the Study

Lack of adequate literature on dispute settlement in Ethiopia and its impact is the major significantly affected this research. It will not be over-stating to say there is lack of literature on the role and application of arbitration in Ethiopia collective labour dispute settlement in general. unwilligness of interview by the concerned bodies and access unpublished decision may also be another difficult and limitation of the study.

1.10. Organization of the Study

The thesis is organized under five chapters. The first chapter provides a background to the research, states the problem, frames the research questions, and situate the thesis within the existing literature. Chapter two of the paper will examine some historical background to the labour law in general under Ethiopia law and the nature and causes of collective labour dispute. Chapter three will discuss arbitration as a collective labour dispute resolution mechanism under ILO Conventions. The fourth chapter examines arbitration as a collective labour dispute resolution mechanism under the Ethiopian labour proclamation and will assess its compliance with the ILO Conventions. The fifth and the last chapter will be about the conclusion and recommendation of the research.

CHAPTER TWO

THE NATURE AND CAUSE OF COLLECTIVE LABOUR DISPUTES UNDER ETHIOPIAN LABOUR LAW

2.1. Historical Background of Labour Dispute Resolution

Employment relation is a unique contractual relationship which requires a unique dispute resolution arrangement. The framework for labour disputes in Ethiopia has evolved significantly over the years, rooted in the country's socio-economic transformations and legal reforms. The foundation of labour law in Ethiopia can be traced back to the Civil Code of 1960, which introduced various provisions related to employment.[22] This code primarily addressed contractual relationships, including labour contracts, but did not provide comprehensive protections for workers.[23] The Civil Code recognized the concept of employment contracts but lacked specific regulations regarding labour relations or dispute resolution mechanisms. Protections for workers were minimal, leading to an imbalance of power in employer-employee relationships under the Civil Code era.

Admittedly under the Civil Code era there was no distinction between individual and collective labour relations, this was due to the fact of absence of freedom of association; for this reason all labour relations at the time were individual, and hence the disputes were individual as well.[24]

Thus it was the regular civil court that had the jurisdiction to entertain labour disputes. However, after the introduction to the formation of the association of workers the disputes of labour which was solely individual before, begins to have two natures. The first one is the individual labour dispute while the latter is collective labour dispute. Due to the existence of those two dispute natures the issue of jurisdiction/competence/ of courts to entertain such case arises among labour affairs. Since 1963, which is the first legislation under Ethiopian legal system, numerous legislations to govern labour relation were enacted. These legislations embodied various

[22] Ethiopian Civil Code 1960 (Proclamation No 165/1960) Article 2512

[23] Ibid

[24] Mahari Redae, 'Ethiopian Employment Law: Notes, Cases, Materials' (2022, Addis Ababa, Ethiopia).

mechanisms for resolution of labour dispute. The 1963 labour proclamation the techniques used were collective bargaining, voluntary conciliation if parties included to this effect in their collective agreement, the Arbitration and conciliation under the labour relation board and finally the court, for instance, the Supreme Court had an appellate power from the board's decision.

The 1975 proclamation likewise provide that the court, collective bargaining, workers committees, grievance procedures if any in an undertaking, trade dispute committees with both arbitral and conciliatory function but in the former case only for individual disputes, both under the private system and the government system. The trade dispute committee was in existent in the 1975 proclamation but did not exist in the 1993 proclamation, but the 1963 labour relation board is now reintroduced in the 1993 proclamation. Those techniques used in the 1993 proclamation are negotiation, conciliation, adjudication and arbitration.

In response to the inadequacies of the Civil Code and the successive labour proclamations, the Ethiopian government enacted Labour Proclamation No. 377/2003.[25] This proclamation aimed to provide a more structured approach to labour relations and dispute resolution. The proclamation established fundamental workers' rights, including the right to organize, to strike, and to fair treatment.[26] It introduced mechanisms for resolving labour disputes, including mediation and arbitration, aimed at reducing conflicts between employers and employees. Further reforms were initiated with the Labour Proclamation No. 1156/2019, which replaced the previous proclamation and aimed to align Ethiopian labour law with international standards.[27] This proclamation expanded on workers' rights, emphasizing non-discrimination, occupational safety, and health. It reinforced the importance of collective bargaining and included provisions for the establishment of trade unions.[28]

[25] Ethiopian labour proclamation, 377/2003

[26] Ibid

[27] Supra note 5

[28] Id article 113, 134

2.2. Definition of Labour dispute in General

Depending on the nature and procedures available for their disposal, labour disputes are defined differently in different legislation. However, the purpose of the researcher is not to show those differences but how it's defined under the new labour proclamation as:

> Any dispute between a worker and an employer or trade union and employers' association in respect of the application of law, collective agreement, work rules, employment contract and also any disagreement arising during collective bargaining or in connection with collective agreement.[29]

Analysis of the above definition and the elements embodies in it; reveal the requirement of numerous criteria for a dispute to be a labour dispute. To begin with, for a dispute to be a labour dispute, it shall be arise form a labour relation i.e., a contract of employment agreed whether on individual basis or by collective agreement between workers and employers. Worker as defined under Article 2(3) cum Article 4 of the labour proclamation[30] is a person who agrees in writing or orally with his employer that can be an undertaking, to perform work under the latter's authority for a definite or indefinite time in return for remuneration. And an employer according to Article 2 (3) is a person or an undertaking that employs one or more person for payment of remuneration to work to be performed under his authority.[31]

Trade union is also established under the labour proclamation. The Proclamation indicated that workers and employers shall have the right to establish and organize Trade Unions or employers' associations.[32] Therefore, labour dispute is therefore, a dispute that rises between a worker or a trade union, as a representative or delegate and with employer or employee as organized or not.

Secondly, the controversy between the parties should arise in respect of "application of law" in order for the dispute to be a labour dispute. In this respect when the said provision employed the term law that does not mean that all written laws in the country shall be applicable, but this proclamation with its amendment.

[29] Ibid

[30] Id Article 2 (3)

[31] Id article 4

[32] Id, Article 113(1)

Thirdly, the dispute should arise "in respect of collective agreement." Collective agreement is defined as an agreement on conditions of work concluded in writing between representatives of one or more trade unions and one or more employers or representatives or agents of employers' associations.[33]

Collective agreement shall be bound by the law, previous collective agreement, if any, or work rules, when they are supposed to be more beneficial to the worker than the incoming collective agreement. That means it shall be equal or more than those pre-established benefits stated by a law, work rules, previous matters in a collective agreement.

Once agreed and registered in the Ministry, the collective agreement is valid for the period fixed or for three years and no derogation or violation is a possibility. Therefore, violations or derogations or controversy arising from the terms embodied in it, can be grounds for a dispute.

The fourth element is the dispute shall arise in respect of work rules. Work rules are internal rules to govern the rights and obligations of the respective parties and of their relationship. Those rules govern matters such as working hours, rest period, payment of wages and the methods of measuring work done. Controversy arising regarding them can also be a ground for dispute their alleged alteration or alleged violations.[34] Under the Ethiopian Labour Proclamation No. 1156/2019, the power to make work rules primarily lies with the employer.[35] However, the process of creating these work rules involves several important considerations such as, employer's authority, consultation with employees, compliance with legal frameworks, communication and accessibility and review and amendments.

Fifthly, the dispute shall arise in respect of employment contract. Employment contract shall be deemed where a natural person agrees directly or indirectly to perform work for and under the authority of an employer for a definite or indefinite period or piece of work in consideration for wage.[36] Thus, collective agreement and work rules can be considered as part and parcel of the contract of employment. This assertion is true for employment in an undertaking which has a

[33] Id Article 125

[34] Id Article 132(1) cum 134(3)

[35] Ibid

[36] Id 4(1)

union, though there is possibility that he can be a non-member to it, but in the absence of a union, those matter in the contract of employment shall be equal or more beneficial that those provided for by the law and work rules. Violations or alteration or in general a controversy arising from the contract of employment can give rise for a labour dispute.

The sixth element is that labour dispute is a disagreement arising during collective bargaining. Collective bargaining is defined as a negotiation process between employers and workers organizations or their representatives concerning conditions of work in order to reach at collective agreement or the renewal or modifications thereof.[37]

Negotiation once agreed or made in accordance with the law and made registered has a valid force and cannot be challenged before the expiry of three years from the date of validity. This is what is indicated under Article 134(3) of the labour proclamation. However, there are matters which are not within the ambit of negotiation such as those related with occupational and safety rules, promotion, procedure for making new rules, arrangements of work rules and those other matters permitted by law. However, in the course of the bargaining process certain issues may not have been settled or no agreement reached, to be ground for labour dispute.

The final element is labour dispute is dispute arising in connection with collective agreement. As discussed above, a collective agreement once registered, the agreement in valid for the term fixed in the law with no challenge, amendment and variation. It's only after the expiry of such period that any sort of challenges to be accepted save major economic causes justifiable a challenge. In this case, a party can apply to the Ministry to challenge the agreement before the expiry of the time of that applicable is accepted by the Ministry; the law permits the renewal, amendment or change to be request.

Failure by the Ministry to settle the matter or no agreement is reached in an attempt to conclude an agreement after expiry for a change, modification or renewal can be the cause for a labour dispute that sprung in connection with a collective agreement. The definition above illuminate those disputes that arise and/ or in connection with the terms and conditions of employment however these are not the only grounds for disputes in the atmosphere of labour-management relationships rather one among the numerous known in that field. As collective labour dispute is

[37] Id Article 125(2)

part and parcel of labour dispute it arises from the causes and factors mentioned above for the general labour disputes.

2.3. Collective Labour Dispute

The most widely used and frequently utilized classification of labour disputes is classification of disputes in to 'interest' and rights and collective and individual labour disputes.[38] Dispute of rights sometimes known as legal disputes, are those usually involving individual workers or a group of workers who claim that they have not been treated in accordance with the rules laid down, in laws or regulation or elsewhere. While interest dispute, economic or bargaining, are those arise not in reference to existing rules, but what those rules to be, in other words they involve the establishment of terms and conditions of employment or rules regulating the relations of the parties.

In other words, dispute of rights is a dispute about the application of an existing collective agreement and dispute of interest are those arising out of the negotiation of a new collective agreements or the renewal of an agreement made for a fixed term which has expired. The classification "individual disputes" and "collective disputes" based itself on the theory whether the subject matter of a dispute affects the whole employee or employers as a group, or whether it concerns only an employee and an employer.[39] For example, a person claiming his wage due as expressed in a contract of employment, in this case since the claim arise from that individual contract of employment with his employer, the effect is limited between the two thus it's individual dispute.

The new labour proclamation is Ethiopia also recognizes the difference between individual and collective labour dispute.[40] To push it further, for a union to participation in collective bargaining it must be recognized by the employer or employer's association. Hence, recognition of a trade union is the condition for its capacity to bargain collectively and the capacity to become a party to collective labour disputes. Therefore, they are not disputes that arise from the terms and

[38] Ibid

[39] Aristea Koukiadaki, Individual and Collective Labour Dispute Settlement Systems- A Comparative Review , ILO (2020)

[40] Article 137 of the Labour Proclamation

conditions of employment, but from the refusal of the management of an undertaking or employer's association to recognize a trade union for purposes of collective bargaining. This is expressed by international labour office as recognizing a union is an acknowledgement of existence the acceptance of it as a bargaining partner.

A Trade union to claim a right of recognition must have acquired a legal personality and hence, registration comes into picture. In some countries it is optional while in others it is mandatory. In those where registration is mandatory, it is a means to acquire legal personality, while in those where it is optional, acquisition of legal personality is the consequence of registration. In most case the victims of such practices are Trade Union officials or representatives employed in an undertaking, and trade unionists who have actively participated in a strike. Therefore, unfair labour practices are commonly known as acts of acts of anti-union discrimination or as trade union victimization.[41] Those practices which are deemed unfair on the part of the employer includes acts such as interference with the rights of the worker which are guaranteed by the law, interference or domination with the formation or administration of workers' organizations, contribution of financial or other support to them, discrimination in regard to hire or tenure of employment.

[41] For Instance, as stated under Article 14(d) of the Labour Proclamation, Coerce or in any manner compel any worker to join or not to join a trade union; or to continue or cease membership of a trade union; or to require a worker to quit membership from one union and require him to join another union; or to require him to cast his vote to a certain candidate or not to a candidate in elections for trade union offices.

CHAPTER THREE

ARBITRATION AS COLLECTIVE LABOUR DISPUTE RESOLUTION MECHANISM UNDER THE ILO LEGAL FRAMEWORK

3.1 The Origin and Development of ILO

Before going on to describe the structure and other aspect of the ILO, a glance for a moment back into the history of the ILO is desirable. The history of the ILO is the story of how man has tried to harness his genius to bring about a better way of life for millions. The ILO's story has its roots deep in the 19th century which in turn was highly linked with industrial revolution. Industrial revolution first emerged in England and expands in France and other European countries and it was not long in making itself throughout the world.[42] Such technologies changes achieved economic expansion of nations but often at the expense of the exploitation of labour force.[43]

As regards conditions of life, while it assured new prosperity and better life for some, but these technological change objected poverty and hardship for many others. It also led to an increasingly filthy, smoky atmosphere in towns, bad housing, child labour and bare minimum wages.

However, as time went on, organized labour movements became apparent in Europe and America, often halted and represented in their infancy. Yet there was a need for an international institution designed to promote human working and living standards throughout the world. [44] The principal originator of the idea of international labour legislation, and precursor of the work of the ILO was Daniel Le Grand.[45] He proposed international labour laws concerned about the

[42] Dorothea Hoehtker, Historical Perspectives on the International Labour Review 1921-2021: A century of research on the world of work, International Labour Review 1921-2021 at 23

[43] Ibid

[44] United Nations, Inequality in a rapidly Changing World (2020) 50-53

[45] Daniel Maul, The International Labour Organization: 100 years of Global Social Policy (2019) at 16

length of working hours, work during night and dangerous working environment.[46] Whereas, the first government initiative came from Switzerland whereby it had sent out formal letter to 13 different states to attend the meeting. However, it is only in 1944 during the Second World War that ILO was formally incorporated. Article 1 of the Constitution stated that:

> A permanent organization is hereby established for the promotion of the objective set forth in the preamble of this constitution and in the Declaration concerning the aim and purposes of the ILO adopted at Philadelphia on 10 May 1944 the text of which is annexed to this constitution.[47]

In 1946 formal negotiation between the ILO and the UN began and as a result, the ILO became the 1st specialized agency of UN by formal agreement and recognized as having special responsibility for social and labour questions.[48]

3.2. Tripartism and Structure of ILO

Tripartism therefore the distribution of powers between governments, employers and workers, has been and remains the very back bone and unique feature of the ILO. Tripartism has long been criticized as causing unnecessary complications and slow down the progress but it is rather providing otherwise.[49] The ILO is composed of a general assembly, the international labour conference, an executive council, the governing body, and a permanent secretariat.[50]

The International Labour Conference is the popular name of the general conference of the ILO, established and functioning in accordance with the provisions of the ILO constitution. It is composed of two government delegates, one employers delegate and one worker's delegates from each member states. The general conference meets annually for a period about three weeks usually at the UNs office in Genera during the months of June.[51]

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[46] Ibid

[47] Federal Constitution of the Swiss Confederation 1999

[48] International Labour Organization, 'History of the ILO' (International Labour Organization, 2023) https://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm accessed 20 July 2024

[49] William E. Simpson, 'The ILO and Tripartism: Some Reflections' (1994) Monthly Labour Review

[50] ILO, The ILO Governing Body at a glance at 2

[51] Ibid

The Constitution provides for the representative of employers and workers a status equal to that of representative of governments. In the conference employers' and workers' delegates sit by side with government delegation and vote individually. A workers' delegate may vote in opposition to the delegates of his government or take side against the representative of his country employers. The conference which is often called a world parliament of labour shall have several tasks. Drafting and adopting international labour standard in the form of Conventions and Recommendations is the main task of ILO.

In addition to adopting convention and recommendations, it frequently adopts resolutions which although not carrying the same legal effect as the former, may have important repercussion in the world of labour in providing guidelines for future activities. The conference elects the governing body, every three years. Another regular matter of business is the adoption of annual budgets, financed by contributions from member states. Only this conference can make amendment of the Constitution of the Organization subject to subsequent ratification of the change by two-third of the member states.

The governing body is the executive council of the ILO. Half way between the Conference and the Office, the governing body is so to speak the hub of the wheel around which all the ILO activities revolve. The governing body holds three sessions per a year, the first round is in February/ March, the second in May/ June and the third in November and all the meetings will be held in Geneva. This group represents and speaks for their respective government. The employer and worker member of the governing body are chosen by electoral colleges consisting respectively of the employer and worker delegates at the Conference. The chairperson of such body from time to time is from among the government members of the governing body, but is supposed by the employer vice-chairperson and worker vice- chairperson.

3.3. The Supervisory Machinery of the ILO

If the standards are to have any real and meaningful, they must find their ways into the laws and practices of the countries. Imagining this possible negative impact, the ILO has developed from the outset a system of supervision which broadly can be classified into regular supervision and

representation and complaints. The key elements of the regular ILO supervision are the communication of government reports and their examination.[52]

Governments are under constitution obligation to supply reports on the effect given to the ratified Conventions. Article 22 of the ILO convention stated that each member state shall make annual report to the international labour office on the measure which it has taken to give effect to the provisions of the Conventions to which it is a party. These reports shall be made in such form and shall contain such particular as the governing body may request. The core elements of this important constitutional provision are namely periodically and the contents of government reports.[53]

In order to determine and point out the extent to which each state member of the ILO applies the provisions of the ILO conventions and recommendation and live up to the obligation of the ILO constitution, examination of government reports is first carried out the by the committee of experts on the application of convention and recommendations. The function of the Committee of Expert can be classified into three:

- Examination of governments reports on the application of the ratified convention
- The examination of governments reports on the situation in national law and practice as regards selected ratified conventions and recommendation
- The examination of information supplied by governments as regards submission of newly adopted conventions and recommendations to the competent authorities.

In addition to the regular supervisory procedure on which the ILO primarily count on, the ILO constitution also provides for two procedures for the examination of specific allegations that the provision of ratified conventions is not being effectively observed in a particular case. These are procedure of representation and the procedure of complaints.

[52] Cesare P.R. Romano, 'The ILO System of Supervision and Compliance Control: A Review and Lessons for Multilateral Environmental Agreements' (2015)

[53] Ibid

3.4. Arbitration as Labour Dispute Settlement Mechanisms under ILO

Historically setting International Labour Standard was one of the main features of the ILO and remains a vital part of its work. In the early years of the ILO's history, the primary objective of its standard setting activities was to counteract what were considered to be the adverse social effects of international economic completion on conditions of working people and to prevent certain countries from gaining unfair advantages in the international market by substandard labour law and practice. These international standards are formulated in the form of convention and recommendation. The former are obligation-creating instruments which require ratification of the treaty whereas the latter one is not required to be ratified. ILO conventions are meant to be applicable universally and to achieve this purpose there is some level of flexibility is allowed. Thus, there might be differences in the interpretation and applications of labour disputes.

Employment dispute generally can be classified into individual and collective labour disputes. Individual disputes are those disputes involving a single worker and collective disputes involve groups of employee. Under the ILO conventions, there are mechanisms to resolve such disputes through arbitration. This is indicted both in general and specific manner. Settlement of dispute arising between the employer and the employee in connection with the determination of terms and conditions of the employment agreement should be resolved through independent and impartial mechanism such as, Arbitration that enables to establish confidence of parties involved.[54]

When we come to commercial dispute which arise out of not respecting contractual obligations by one or more parties, settlement of dispute through court come in the for front. However, the existing Ethiopian court system is extremely sluggish, rigid and expensive. As a result, it's quite imperative to insert alternative dispute settlement clause by way of escalation clause providing that Arbitration shall be the final avenue for the parties.[55]

Arbitration is praised for its speedy proceeding, flexible process, confidentiality of the proceeding, finality of dispute which ultimately saves time and money. Unlike judges who are jack of trades, but master of none, arbitrators are those of the rarest and the finest expertise in the

[54] Labour Relations (Public Service) Convention, No 151 (1978) art 8

[55] Ministry of Works and Urban Development, 'General Contract Clause' (1998)

area. One of the typical benefits of Arbitration over court proceeding is the ability to select a person with subject-matter, *lex arbitri* or the substantive law of contract expertise. One of the defining features of Arbitration is it's based on the consent of the parties rather than compulsory imposition.

Arbitrators are private citizens. They do not belong to any government hierarchy. Compared with judges, they will probably weigh less heavily any questions of public policy or public interest, because they see their primary responsibility as deciding a dispute the parties chose them to decide. Also, unlike some judges, arbitrators tend to be very thoughtful of the parties and considerate in their interactions with them.

It is understandable that labour dispute resolution mechanisms are aimed to achieve the goal of effective and efficient dispute resolution between the disputants' parties. Dispute resolution under ILO is aimed at achieving the following objectives. The first and foremost is finality. This is to mean the decision of the tribunal should be final and binding. No appeal is permitted in this scenario. This in turn helps to reduce the time and resource of the disputant parties. The second core element is obedience. This is to mean the decision of the tribunal should be obeyed by the debtor and there shouldn't be procedure to challenge or nullify the decision of the appeal. The third element is efficiency which is to mean the economic benefit should out weight the cost. The fourth availability which is to mean the procedure should be available for all parties without undue expense. Fifth, neutrality which is to mean the decision makers should any perceived or/ and real favoritism and bias for one side and yet the final important element is fairness in the proceeding. Thus, the disputes are resolved in a way that appropriately recognizes the interest of the various parties.

Among the numerous dispute resolution mechanisms, Arbitration is one of these. Arbitration as a proceeding voluntary chose by the disputant parties who in turn want a dispute determined by an impartial judge on the merits of the case, they agree in advance to accept as final and binding decision. Thus, the basis for Arbitration is an agreement between the disputant parties. However, there are instances whereby Arbitration may be indicated under the law and make the process mandatory.

Arbitration proceeding may be initiated by either pursuant to an Arbitration agreement or Arbitration submission. The difference between the two types of process is that Arbitration agreement is before the dispute arises and Arbitration submission is after the dispute arises. In contractual Arbitration, the procedure to select the Arbitration, the binding nature of the decision, possibility of appeal and other aspects of the agreement is usually indicated in the clause or Agreement. All often, the effect of Arbitration clause or agreement and submission is one and the same. As this is a contract between the employee and the employer, all the validity requirements must be there, therefore, the valid, consent, form and object of the agreement.

The very subject matter in which Arbitration agreement concluded should be *arbitral*. Each state may decide in accordance with its own economic and social policy, which matters may be settled by Arbitration and which may not. Accordingly, some countries defined well area matters, which are designed as not *arbitral* as a matter of public policy.

Dispute as stated above could have two faces: private and collective labour disputes. One may doubt the possibility of Arbitration in case of collective labour dispute since Arbitration is a private settlement mechanism and it might affect the interest of third parties at large.

Like they say Arbitration like consummate sexual relationship is purely based on the consent of the disputant parties. Thus, there should be consent from both litigant parties to submit their dispute to arbitrator. If the parties agree to submit their dispute to Arbitration then the disputant parties are encouraged but not obliged to abstain from strikes and lockouts while the Arbitration proceeding is in progress. This submission of the dispute to Arbitration should not be construed as limiting, in any way whatsoever, the right to strike.

Because Arbitration is a private proceeding, arbitrators are chosen by the parties and, of course, they would like to be chosen again. It is in their interest to be perceived as even-tempered, thoughtful, fair-minded, and reasonable. Arbitrators do not have to be lawyers. In some industries, the technical skills of architects and engineers cause them to be chosen as arbitrators. The inclusion of Arbitration as an alternative remedy can be challenged for several reasons. First and foremost, in connection with access to justice. The concept of access to justice does not only relate to one's conditional right of access to courts.[56] It is believed that the concept is

[56] Alexander N, International and Comparative Mediation: Legal Perspectives (2009) 12.

fulfilled when dispute resolution procedures are simple to understand, affordable, speedy effective when used by the public[57]. Based on the above, access to justice within a civil justice system may therefore be deemed to include the right of access to courts together with the affordable procedurally simple and expedient methods of civil dispute resolution. The second right to be affected is lack of consent.

Contract is formed upon the consent of the parties who define the object of their undertakings and agree to be bound thereby. In addition to this, it provides that a contract is deemed completed where the parties have expressed their agreement thereto and reserves or restrictions intended by one party shall not affect her agreement as expressed where the other party was not informed of such reserves or restrictions. Moreover, it provides that a contract is not deemed to be completed unless the parties have expressed their agreement to all the terms of the negotiation. Especially, the stipulation of the law of contract is very serious regarding commercial contracts. It provides that general terms of business applied by a party shall not bind the other party unless she knew and accepted them or they were prescribed or approved by the authorities. Third yet important objection is in connection to the right to appeal.

[57] Wondwossen Taddesse and Tsegai G. Kidan, E-Payment: Challenges and Opportunities in Ethiopia (United Nations Economic Commission for Africa, 2005) 8.

CHAPTER FOUR

ARBITRATION AS A COLLECTIVE LABOUR DISPUTES RESOLUTION MECHANISM UNDER ETHIOPIAN LABOUR LAW AND ITS COMPLIANCE WITH ILO CONVENTIONS

4.1. Background of Arbitration Movement

The broad-based advocacy for increased use of mediation, Arbitration and related process is often called the arbitration movement.[58] Arbitration has developed as a formal technique and means of resolving dispute in accordance with procedures aimed at avoiding the inherent costs and delays of the adversarial process. It has emanated from a negative source experience of the litigation process.[59]

Even before there was an arbitration movement, methods other than litigation were used for resolving disputes, It is as old as humanity itself and the academic arbitration movement is a discovery of what was used before for resolving disputes. Disputes were resolved by traditional and indigenous mechanisms such as the word boss, tribe, leader, and the village priest and family friends across the world.[60] Even though the movement has discovered nothing fundamental and new, it has contributed for the development of techniques in important details differing form those commonly used in the past. It has created a great deal of academic interest in the academically neglected subject of non-state dispute resolution techniques.

It is the USA that has been always raised to have led the way in developing alternative ways of keeping parties away from the court litigation as they felt those costs and delays most acutely. Besides the legal system has as business life picked up sharply through the 1960's to the 1980s

[58] Stephen B. Goldberg and Frank E.A. Sander, Dispute Resolution: Negotiation, Mediation and Other Processes (6th edn, Wolters Kluwer 2020).

[59] Ibid

[60] Talha Kose, Islamic Mediation in Turkey: Third Party Roles and Aims in the Resolution of Communal Conflicts (Unpublished Thesis, 2002).

driven by the new technology, increasing domestic and global competition.[61] To this effect, many observers in the legal academic communities began to have serious concern about the negative of increased litigation and arbitration assumed the attributes of a law reform movement in early 1970's.[62]

One well-known effort in the search for alternative occurred in 1976 when the former chief Justice Warren Burger convened the Roscoe E. Pound conference on the causes of popular dissatisfaction with the Administration of Justice in Saint Paul, Minnesota.[63] At the conference leading jurists and lawyers expressed concern about increased expense and delay for parties in a crowded justice system. Professor Frank Sander proposed the idea of a multi-door courthouse based on the premise that the justice system should make a wide range of dispute resolution process available to disputants where by individual disputes would be matched to appropriate process such as mediation, Arbitration or fact finding. In part, it stemmed from its reliance on the phrase "access to justice" to posit a structure with several doors of entry.[64]

Within a short period of time, his call has been heard and the American Bar Association adopted his idea through establishing "multi-door court houses" in certain regional states. This marked the beginning of arbitration movement as alternative means of litigation in the U.S.A. However, arbitration has not developed without critics. The commentary critical of the arbitration movement developed in 1980's by certain personalities such as Professor Owes Fiss alleging that the justice system would suffer as a result of public support settlement facilities.[65]

Generally speaking, every dispute resolution mechanism is required to deliver quality justice. Quality justice is an outcome of speedy, efficient and fair decision. Adjudication, however, has failed to dispense quality justice as the volume of dispute brought before the court has increased

[61] Michael McManus and Brianna Silverstein, 'Brief History of Alternative Dispute Resolution in the United States' (2011) 1 CADMUS 3

[62] Ibid

[63] Roscoe Pound, 'The Causes of Popular Dissatisfaction with the Administration of Justice' (presented at the Annual Convention of the American Bar Association, [Year]) https://law.unl.edu/RoscoePound.pdf

[64] Ibid

[65] Harry T. Edwards, 'Alternative Dispute Resolution: Panacea or Anathema' (1985/1986) 9 Harvard Law Review.

and the proceedings become more lengthy and costly.[66] High legal costs and long delays put a damper on the exercises of an individual right to go to court. In other words, this makes access to justice more difficult. Thus, arbitration development to enable access to justice when adjudication failed through avoiding delays, costs, rigidity and inflexibility of the formal justice system.[67] It focuses on analyzing on what is appropriate to the parties in a particular case in order to achieve a similar or better result than litigation. Arbitration as a process is in a continuous change. The Forms in which parties solve their business and personal difference develop and vary as the time passed by. The term arbitration incorporated a variety of dispute resolution methods.

4.2. Definition of Arbitration

In every society, dispute arises in a day to day activity of the community. When a dispute arises, in order to settle such dispute, one of the parties may initiate litigation process through filing legal suit. Parties may resort to means otherwise than court adjudication. Such methods of settling disputes are referred as alternative dispute resolution mechanism, *among other things*; arbitration is the one that can be used by the disputant parties to resolve their dispute.[68]

The term Arbitration refers to procedures of settling disputes by means other than litigation. Arbitration is a traditional most formalized and binding method of resolving disputes outside the court system. Arbitration is a mode of settling differences through the investigation and determination, by one or more unofficial person selected for the purpose, of some dispute matter submitted to them by contending parties for decision and award, in lien of a judicial proceeding. [69]In this process, disputing parties present their case to a neutral third party who is empowered to render a decision. The arbitrator often will play an active role in questioning the witness and also

[66] Wayne McIntosh, 150 Years of Litigation and Dispute Settlement: A Court Tale, Law and Society, Volume 15 No. 3 (1980/1981)

[67] Paula Baron, Lillian Corbin and Judy Gutman, Throwing Babies out with the Bathwater? Adversarialism, ADR and the Way Forward, Monash University Law Review , Volume 40 No. 2

[68] Harry T. Edwards, 'Alternative Dispute Resolution: Panacea or Anathema,' *Harvard Law Review*, Volume 9 No. 12 pp. 466-671 p. 480 (1985/1986)

[69] Sai-On Cheung, Henry C.H. Suen and Tsun-IL Lam, Fundamentals of Alternative Dispute Resolution Processes in Construction, (2002)

evaluates the fact and arguments of the parties, before rendering a final decision.[70] However, an arbitrator is not bound to apply the formal rule of evidence. The parties, on the other hand, have the right to choose who the arbitrators will be.[71]

It is also important to note that Arbitration can be a non-binding form. In the non-binding form of Arbitration, the judgment offered by the Arbitration need not be accepted by the disputing parties.[72] Stated otherwise, the decision given by the neutral third party is considered as recommendation and its binding effect depends up on the parties' willingness to be bound by the decision. Arbitration may be expected in specific subject matter of the dispute and they are more flexible in decision making than judge. Therefore, it makes Arbitration more flexible than litigation.

The Ethiopian arbitration and conciliation working procedure proclamation no. 1237/2021 defines the term "Arbitration Agreement" as:

> An agreement to be implemented in order to partly or wholly settle future or existing dispute that may arise from contractual or non-contractual legal relationship[73]

The term "Arbitration Agreement" as defined in the Ethiopian Arbitration and Conciliation Working Procedure Proclamation refers to a formal agreement between parties to resolve disputes either existing or future through arbitration instead of through the courts. This provision highlights several key aspects: To begin with, the agreement can pertain to both contractual disputes arising from contracts, including commercial agreements, service contracts, and employment contracts, and non-contractual disputes that may not stem directly from a contract but arise from legal relationships, such as torts or business relationships. Furthermore, the arbitration agreement allows parties to choose the extent of its applicability. Moreover, the agreement may cover specific issues within a broader dispute. Finally, it can also encompass all matters related to a dispute, thereby excluding court intervention entirely.

[70] Nathalie Bernasconi-Osterwalder Lise Johnson Fiona Marshall, Arbitrator Independence and Impartiality: Examining the dual role of arbitrator and Counsel, IV Annual Forum for Developing Country Investment Negotiations, Background Paper (2010)

[71] Ibid

[72] Steven C. Bennett, 'Non-Binding Arbitration: An Introduction' (2006) 6 Dispute Resolution Journal 2.

[73] Ethiopian Arbitration and Conciliation Working Procedure Proclamation (2021)

The Ethiopian Arbitration and Conciliation Working Procedure Proclamation provide a structured legal framework guiding the arbitration process. Firstly, parties voluntarily enter into arbitration agreements, reflecting their preference for a private resolution mechanism over public litigation. In addition, arbitration agreements are generally enforceable, provided they meet legal requirements. This characteristic is crucial for ensuring that parties adhere to their commitments. While the proclamation may stipulate certain form requirements (e.g., written agreements), the essential condition is that both parties consent to arbitrate their disputes.

All in all, the provision defining the "Arbitration Agreement" in the Ethiopian Arbitration and Conciliation Working Procedure Proclamation underscores the importance of this legal instrument in resolving disputes. By allowing parties to choose arbitration as a method of dispute resolution, the proclamation facilitates a more efficient, flexible, and expert-driven approach to conflict resolution. Understanding the scope and implications of such agreements is crucial for parties engaging in contractual and non-contractual relationships in Ethiopia.

4.3. Arbitration as Collective Labour Dispute Resolution Under Ethiopian Labour Law

The Labour Proclamation No. 1156/2019 envisaged arbitration as labour dispute resolution mechanism whereby the arbitrator has the power to make decisions.[74] It is more formal than the other alternative dispute resolution mechanisms, for instance, in arbitration the attendance of the two parties is desirable. In the proclamation, the task of Arbitration is vested in both the labour relation board and the arbitrators appointed by the joint will of the parties.

Under this system, theoretically, the submission of disputes can be made by the agreement of the parties as expressed in their collective agreement with a grievance procedure; or it can be made on an ad hoc basis by a latter agreement, after a dispute. Those agreed procedures are usually accompanied with the methods how to select an arbitrator. In these cases; as the service is to be operated by their agreement, it is said to be voluntary.[75] The agreement to submit a dispute to arbitration can also be arranged by agreements of the party's organizations at a higher level, and

[74] Supra note 5, Article 144

[75] Id, Article 144(2)

yet it is voluntary because the respective organizations are representatives of the interest of the parties.

However, under some jurisdiction parties may be obliged to include provisions for final settlement of disputes; in their collective agreement and hence arbitration is compulsory. The service of Arbitration under this system therefore made by the agreement of the parties can be operated by an individual or a board as they wish. In our country, arbitration can be constituted in two ways.

First of all, as is discussed in the former section, parties may agree in their collective agreement to provide a grievance procedure and they may include a term to that effect. The manners of its operation left to the parties, we can assure as to the possibility of this kind of arrangement, as the provision of a grievance procedure is an item to be bargainable under the proclamation.[76]

The second type of Arbitration under the private system is still based on the agreement of the two parties, but on an ad-hoc basis, after the dispute.[77] The basic characteristic of Arbitration under the private system is its voluntary nature, i.e. both the arrangement and the submission exclusively depend on their mutual consent.[78] In this respect our law differs from those countries where parties are obliged to include in their collective agreement a procedure for conciliation and Arbitration.

The second most important feature of Arbitration under the private system is that, as it's to be operated under their cost and control, they can also determine by their agreement the nature and kinds of disputes to be submitted. Therefore, the arbitrator may be empowered to deal both on individual and collective labour disputes. There may be also government sponsored Arbitration. Under this system, Arbitration can be made on voluntary or compulsory basis. Voluntary Arbitration is carried out through the machineries and facilities provided by the government, or pursuant to the rules and procedures provided by law. It is usually used to settle collective disputes. However, when no distinction is made, it can be used to both kinds of disputes.

[76] This is resemble to Arbitration clause as indicated under the Arbitration and Conciliation Proclamation, Proclamation No. 1237/2021

[77] This is resemble to Arbitration submission

[78] Supra note 73, Article 2

Furthermore, it operates when parties agreed to submit their dispute to the government machinery.

On the other hand, it is compulsory, when the procedure can be initiated at the instance of one of the parties only, or of the competent authority, and the award is binding. However, though submission is compulsory, if the award is not binding it is said to be voluntary. In both cases the service can be operated by individuals or aboard, both on an ad hoc-or permanent basis.

Arbitration as pointed out under article 143 of the labour proclamation is recognized as alternative means to conciliation which are provided under art 136,141 and 142 of the above cited proclamation.[79] In conciliation either of the parties can submit their case to the Ministry which appoints the conciliator. But alternatively the parties can appoint an arbitrator without reporting to the minister. This provision also states that the appropriate law shall govern the settlement of dispute by the arbitrator. The appropriate law might mean the provisions of civil and civil procedure code.

Arbitration is one of the ADR means which helps the parties to adjudicate without going to the court litigation or some administrative tribunal. Arbitration seems more rigid than the other ADR means and also more flexible than court litigation. Even though that may not be typically the same with the court proceeding and also the third party in the dispute or the arbitrator give binding decision over the dispute ;because of these procedural activities it is more rigid than the other ADR means. When we compare it with the courts or administrative tribunal litigation, it is more flexible.

Much has not been said about Arbitration under the labour law when we compare it with the place of conciliation. It only recognizes arbitration as one alternative means of settling labour disputes. This shows us that conciliation is preferable to settle labour disputes than arbitration. Thus, it will be necessary to resort to the civil code and the civil procedure code provisions to guide the procedure.

It is an inherent right of the parties to nominate the third party or the arbitrator though Article 143 doesn't expressly say so and anything as to the determination of the number of third party.

[79] Supra note 5, Article 136, 141,142

But when it say that parties can take their case to arbitrators or conciliators other than the one nominated by the Ministry, it is declaring that the parties can nominate their own arbitrator for the settlement of the dispute. It is noticed as well that there is no Ministry nominated arbitrator in such case.

In relation to the effect of the award one thing has been said under Article 143(2) of the code. As per the civil procedure code Articles 350 – 357, appeal from the award or setting aside of the award is permitted on the grounds listed there under. Article 143(2) in broader term speaks about these rights of the parties. In case of conciliation, for instance, if the parties fail to agree on the matter, they can either take the matter to the labour board if it is a collective labour dispute or to the labour division court if the matter is an individual labour dispute as a first instance case. But if the proceeding is arbitration first we don't expect 'agreement' in the strict sense but only 'award' and this award may satisfy the interest and desire of both or only one of them or none of them though it is not advisable such to happen. In any of the instance any of the parties can take to appeal or setting aside of the ward to the labour board in case of setting aside of collective labour dispute, or to first instance courts in case of setting aside of individual labour dispute, or to the high court in case of appeal of any type of dispute. This seems the interpretation of Article 143 in line with the other relevant laws regulating the matter.

From the reading of Article 143 we may refer that all kinds of dispute whether individual or collective labour disputes can be entertained by arbitration proceeding unless there is an express prohibition in other parts of the law.

As to the matters related with the way of nomination of the arbitrators, the nature of the proceeding, the costs of the proceeding, the duty and right of the parties as well as the arbitrators, effect and enforcement of the award the general provisions of the civil code and the civil procedure code will apply.

4.3.1. Labour Relations Board

Labour Relation Board is the other organ duly established to address the grievances in the industrial relation of the nation when. This organ has a first instance jurisdiction over collective labour disputes. The question here is, is the labour relation board purely adjudicatory organ? Can we equate the procedures and the rules applied in the board with the same of the courts?

The minister shall assign the members of the board according to the proportional representation of trade unions and employers association including a chairperson and two qualified members on matters of labour relation. This board can entertain cases and pass binding decisions or compromise the parties as to the appropriate end to their issues pursuant to Art 147 of the proclamation.

To address this issue it is better to see some provisions of the labour proclamation, civil code and civil procedure code. Article 149(5) of the labour proclamation provides that the ad-hoc or the permanent board shall not be bound by the rule of evidence law and a procedure applicable to the court of law. But it may inform itself in such a manner as it thinks fit. From this provision we can understand that the LRB is entrusted with unlimited discretion where it can examine the case in a flexible and informal manner as it thinks fit in informing itself as empowered by Article 148 of the proclamation. But cumulative reading of article 3345(1) of the civil code and article 317 (1) of civil procedure code we can understand that, even an arbitrator does not have such extended discretion of disregarding the evidence and other adjective and procedural laws of the state.

Article 150(3) of the said proclamation in reaching its decision the board should take in to account the substantive merit of the case and need not follow strictly the principle of substantive law followed by the civil code. Under article 147(4) states that order and decision of the board shall be considered as those decided by the civil court of law. This provision gives the same effect for the decision of the board with the court decision. We will get the same wordings about the states of awards given by arbitrators under Article 319(2) though homologation by the court is additional requirement for the award to get enforced.

Article 147(1)(a) and 150(1) strictly and expressly obliges the Board to try to conciliate or compromise the parties before giving any sort of decision of its own. It shows us that at least at the earliest stage of the proceeding it should conciliate but not adjudicate the matter. The other rules under Articles 147ff of the labour law as well resemble the civil procedure rules of arbitration.

Finally, it is noted that conciliation and arbitration are not the only organs entertaining labour disputes alternative to court litigation. Even the objective of the labour Relation Board is not purely to act as an adjudicatory organ but to serve as a conciliator at least at the earliest stage of

the proceeding. In addition we have other ADR types duly recognized under the labour law, i.e. self-help. The effective implementation of these meaures will help parties to end up their grievances by extra- judicial devises amicably.

In our country, the task of arbitration is given to the labour relation board. The service of the arbitrator can be set in motion even at the instance of one of the parties and the board has the power to compel attendance of an absent party; therefore, in light of the above discussion; we can conclude that, the service of arbitration under the government system is compulsory.

Hence, those arrangements practiced abroad, i.e., where submission is voluntary, but the decision is dependent up on the agreement of the parties and where submission is compulsory, and decision is yet subject to the agreement of the parties; are alien to our system.

Therefore, we can conclude that, Arbitration in our proclamation; under the private system, is voluntary, but under the government system it is compulsory. But in both systems the decisions of the arbitrator are binding and enforceable. These being enough to show the highlights how Arbitration is performed under our proclamation.

This flexibility is expressed by somewhere as:[80]

> Dispute resolution has a chameleon like quality, whose character shifts with the perception of its participants. Thus, determining which process is most appropriate based only on its formal structure will ignore a great deal of variation in practice within a single process.

Technicality of subject matter is another reason for the choice of arbitration. Judges are not specialist experts in every field, but in law, therefore disposition of certain disputes can better be achieved by the use of experts in the respective field.

Finally, the nature of the relationship between the parties is also a reason for its favor. Adherents of arbitration accepted what is known as the "broker telephone" theory; that is that disputes are "failure to communicate" that needs "repair service by the expert facilitator" so that, though there was disagreement initially, they can solve and continue their relationship as before

[80] Berggren, 'Judicial Implementation of the United Kingdom Arbitration Act, 1979' (1983) 24 *Harvard International Law Journal* 30

eventually. But it is usually impossible to maintain a civil relationship once people are confronted across a court room. Thus, disputants like employer-employee are advised to use other means than courts, for decisions produced by collabouration among those who must live with the results can be tailored to the party's needs.

The significant role of Arbitration as an extra-judicial dispute settlement method both in the domestic and international commercial transactions cannot be overemphasized. Its wide spread use streamlined by internationally acceptable legal regime and the unwavering acceptance by the international trade actors have currently made it that one cannot think of international trade without at the same time thinking of Arbitration. The fact that Ethiopia does not yet have a coherent and modern arbitration laws, compounded by the snail's pace it is trekking to adopting the UNCITRAL Model Law on International Commercial Arbitration (1985) and to ratify the New York Convention on the Recognition and Enforcement of arbitral awards (1958) has created a cloudy picture as to whether Ethiopia is committed to promote arbitration. The concept of arbitration, as a dispute settlement method, is even confused with the concept of conciliation in various legislative enactments.[81] On the other hand, the legislators attempt at promoting and encouraging the practice of arbitration by encompassing inspiring clauses in various enactments and, more importantly, by making it compulsory for the settlement of certain disputes is laudable.

In an attempt to shade some light on the legal regime on arbitration in Ethiopia, not only is the place of arbitration in labour dispute settlement discussed hereunder but also cross-references made to pertinent existing enactments. The Labour Proclamation, Art. 143, provides thus;[82]

> Notwithstanding the provisions of article 141 of this proclamation parties to a dispute may agree.
>
> 1. To submit their case to arbitrators or conciliators, other than the Minister for settlement in accordance with the appropriate law:

[81] Revised Family Law of Addis Ababa and Dire Dawa Proclamation No 1/2000, arts 119-121, Note the use of the term 'arbitration' instead of 'conciliation' in the Family Laws of the States of Oromiya, Amhara, and Southern Nations, Nationalities, and Peoples' (NNP) on matters of divorce and its effects, while vesting exclusive jurisdiction on those matters in the courts.

[82] Supra note 5, Article 143

2. If the disputing parties fail to reach an agreement on the case submitted to arbitration or conciliation under Sub-article (1) of this Article the party aggrieved may take the case to the Board or to the appropriate court.

It should be underlined that, from a reading of all the provisions in the Labour Proclamation in its entirety, nowhere is the word 'arbitration' or 'arbitrator' alluded to but in the aforementioned provision. One would, thus, regrettably end up fishing out only the terms 'arbitrators' (Para1) - and 'arbitration' (Para 2) to fully propel 'arbitration' with all its repercussions into the sphere of' labour disputes. Nonetheless, despite yet the poor draftsmanship of the Provision, the recurrence of the terms indicative of arbitration in the Provision undoubtedly insulates its being a slip of a' pen.[83]

At any rate, the arbitrability of labour disputes does not seem to have been challenged in the Ethiopian legal system. Therefore, paragraph (1) of the above Provision could be briefly put as enabling disputing parties to agree to submit their case to arbitrators for settlement in accordance with the appropriate law. Or simply put, parties to a collective labour dispute have the right to enter into an arbitration agreement either by inserting it in the main contract, i.e., arbitral clause (probably in the collective agreement) or concluding it as a separate agreement, i.e., arbitration submission. At this juncture, it should be born in mind that if a party relies on a valid arbitration agreement, courts will stay their proceedings in deference to it.[84]

In collective labour dispute, the arbitration proceedings will be governed by the mandatory rules of arbitration under the Ethiopian laws, i.e., *lex loci arbitri* plus parties tailored arbitration rules or any state's arbitration laws to which the parties have referred, i.e., *lex electionis* or the arbitration law of a permanent arbitration institution if the parties submitted their case to such an institution for settlement. It behooves us to mention, at this point, that arbitration proceedings lead to a binding decision. In other words, an arbitral award given by the arbitrator/ arbitration tribunal is binding, if not final, and is enforceable both domestically and internationally. It should also be born in mind that the disputing parties are not expected to reach at a settlement

[83] Tecle Hagos Bahta: 'Anomalies in the Labour Dispute Resolution Methods Under the Ethiopian Labour Proclamation' *Jimma University Journal of Law* Vol. 1 No.1

[84] Ibid

agreement, though settlement agreements if reached in the process of arbitration may be reduced into an arbitral award by consent.

Art. 143 (2), thus, can be constructed precisely to mean: firstly, failing conciliation proceedings, either party can proceed with his case in the ILRB or through arbitration. Secondly, in case the award debtor is dissatisfied with the decision of the arbitrator, he/ she may appeal to the Federal High Court or the State Supreme Court in so-far- as the parties have not waived their right to appeal.

4.4. Arbitrability of Collective Labour Dispute

The Ethiopian Labour Proclamation No 1156/2019 governs labour relations in Ethiopia and provides the framework for resolving labour disputes, including collective labour disputes. Article 143 outlines the hierarchy of dispute resolution mechanisms, starting with conciliation and culminating in arbitration.[85] If conciliation fails, disputes are referred to arbitration. This article specifies the types of disputes subject to arbitration, including disputes regarding the interpretation and application of collective agreements, disputes arising from unfair labour practices, disputes relating to the termination of collective agreements. Article 145 further clarifies that the Labour Relations Board (LRB) has jurisdiction over collective labour disputes, including arbitration.[86]

Furthermore, Arbitration and Working Procedure Proclamation No. 1237/2021 establishes the general framework for arbitration in Ethiopia, including provisions relevant to collective labour disputes.[87] It defines the scope of arbitration, including the resolution of disputes arising from labour relations broadly encompassing collective labour disputes.

To sum up, the Ethiopian legal framework recognizes the arbitrability of collective labour disputes, with the LRB playing a central role in conducting arbitration proceedings. However, specific procedural safeguards and the scope of arbitrable disputes remain unclear. Further

[85] Supra note 5, Article 143

[86] Id article 145

[87] Supra note 73, Article, 3

legislative clarification and development of detailed procedural rules are needed to ensure a robust and fair arbitration process for collective labour disputes in Ethiopia.

4.5. Compliance of Ethiopian Collective Labour Dispute Arbitration in Light of ILO Conventions

Ethiopia has ratified several ILO conventions relevant to collective labour dispute resolution, including Convention No. 98 (1949) concerning the Application of the Principles of the Right to Organize and Bargain Collectively.[88] This convention advocates for the development of procedures for the prevention and settlement of labour disputes, including conciliation and arbitration. Convention No. 154 (1981) concerning the Promotion of Collective Bargaining: Article 1(2) encourages the development of procedures for the prevention and settlement of labour disputes, including conciliation and arbitration, promoting voluntary procedures.[89] Convention No. 95 (1951) concerning the Protection of Wages encourages the use of voluntary conciliation and arbitration procedures.[90] Convention No. 135 (1971) concerning the Protection and Facilities to be afforded to Workers' Representatives in the Undertaking emphasizes the importance of ensuring workers' representatives are able to participate effectively in collective dispute resolution processes. Convention No. 151 (1978) concerning Labour Relations (Public Service encourages the use of voluntary conciliation and arbitration procedures for resolving labour disputes in the public service.[91] Convention No. 154 (1981) concerning the Promotion of Collective Bargaining calls for the development of procedures for the prevention and settlement of labour disputes, including conciliation and arbitration.[92]

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[88] International Labour Organization, Convention Concerning the Application of the Principles of the Right to Organize and Bargain Collectively (No 98, 1949) https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX:12100:0::NO::P12100_ILO_CODE:C098.

[89] ILO. (1981). Convention concerning the Promotion of Collective Bargaining (No. 154). Retrieved from https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX:12100:0::NO::P12100_ILO_CODE:C154

[90] ILO Convention No. 95 (1951) concerning the Protection of Wages.

[91] ILO Convention No. 135 (1971) concerning the Protection and Facilities to be afforded to Workers' Representatives in the Undertaking.

[92] ILO Convention No. 151 (1978) concerning Labour Relations (Public Service

The Right to Organize and Bargain Collectively: Ethiopian law generally allows the formation of trade unions and recognizes the right to collective bargaining. However, restrictions on freedom of association and limited strike rights may impact the effectiveness of collective bargaining and dispute resolution.[93] While Ethiopian law provides for arbitration, it mandates arbitration as a final step, potentially undermining the preventive aspect of the convention. Limited transparency may not align with the convention's encouragement of developing comprehensive and fair dispute resolution processes. The focus on mandatory arbitration might hinder the development and use of voluntary conciliation mechanisms, which are encouraged for early dispute resolution.

All in all, While Ethiopia's legal framework for arbitration aligns with the principles of ratified ILO conventions in principle, significant challenges remain in ensuring effective implementation. The mandatory nature of arbitration, potential bias, limited access to justice, and lack of transparency create obstacles to fulfilling the objectives of these conventions.[94] Addressing these challenges through policy reforms and procedural improvements is crucial for enhancing the effectiveness of arbitration and fostering fair and just labour relations in Ethiopia.

Unlike many international systems, Ethiopia's government-sponsored arbitration is compulsory. The Labour Relations Board initiates and oversees the process, even compelling party attendance. This stands in contrast to the typical voluntary arbitration system common elsewhere. Regardless of whether arbitration is initiated through the government or private system, the arbitrator's decision is final and binding. The lack of a modern, comprehensive arbitration law and the delay in adopting international conventions (UNCITRAL Model Law, New York Convention) create uncertainty and impede Ethiopia's participation in international trade.

Ethiopia's system stands out for its inclusion of a government-sponsored system with a compulsory element. This contrasts with the generally voluntary nature of arbitration in other countries. Moreover, the Ethiopian system places a significant role on the government, not only in providing arbitration services but also in initiating and compelling arbitration in specific situations. This is a distinct feature compared to systems that primarily rely on party autonomy and agreement. It offers a high degree of flexibility and control over the process for the parties. They can choose the type of arbitration, the arbitrator, and the scope of the dispute.

[93]FDRE Constitution (1995) article 42

[94] D.r Mehari Redai, *Ethiopian labour law notes, cases and materials* (2022) Addis Ababa

However, the compulsory arbitration component of the Ethiopian system could be beneficial for ensuring access to justice, particularly for individuals or groups that may not have the resources or leverage for voluntary arbitration. The government's role in initiating and potentially influencing the outcome of arbitration raises concerns about potential bias, especially if the government has a vested interest in the outcome of the dispute. The lack of a single, coherent, and modern legal framework based on international standards, particularly regarding private arbitration, could present challenges for attracting foreign investment and participation in international trade.

Ethiopia's unique approach to labour arbitration, with its dual system and compulsory element, offers a potential mechanism for ensuring access to justice. However, it's important to address potential challenges related to bias and consistency. Modernizing the system and aligning it with international standards will be crucial for promoting its effectiveness and attracting greater participation in international trade.

4.6. The Role of Arbitration in Collective Labour Dispute Settlement

The judiciary has a crucial role in fostering the democratic principle, respect of the law that is recognized as binding on both the governed and those who govern. It is regarded as essential to the effective and equitable operation of popular government. Mr. Justice Arthur T. Vanderbilt expresses this role of the judiciary as:

> If they have respect for the work of their courts, their respect for law will survive the shortcomings at every other branch of government; but if they lose their respect for the work of the courts, their respect of law and order will vanish with it to the great determinant of society.[95]

Hence, an effective and accessible judicial system is an integral part of democracy to protect the basic human rights of citizens envisaged under the law and to hold infringes of these rights accountable to the law. Securing the most highly qualified individuals to administer justice

[95] Henery J. Abraham, The Judicial Process: an introductory analysis, 6th ed. 1993

impartially with a minimum of and an optimal independence of the judiciary from the intervention of political leaders is critical.[96]

Justice has also connection with economic development. A modern and reliable judicial system is determinant to the regulation of transactions and resolution of dispute thought encouraging investment. Where there is no effective and efficient justice system, the cost of doing business will be high both for private and public sectors.[97] The value of the economic opportunities forgone due to the high risk involved or the lack of access to the courts. Corrupt behavior in the courts can slow economic growth and discourage foreign investment. Additionally, lack of predictable enforcement of the rules can cause lose in property right value. Market cannot function properly in the absence of well enforced property rights and contracts. This leads to retardation of growth and eventually to under development.[98]

Scholars suggest that courts should provide access to justice based on equality, fairness and integrity in all of their procedures and decisions. This can be achieved only if the courts act in an expeditious and timely manner, maintain both independence and accountability as government institutions. As a result they can beget public trust and confidence and the judicial branch of the government.

However, if the courts failed to dispense quality justice, popular dissatisfaction with the working of the justice system may result. In this connection, our country is also experiencing decline in the administration of justice.

Generally Ethiopian administration of justice is said to have the following core problems:

It is neither accessible by nor responsive to the needs of the poor. The courts are not seen as institutions that serve the interest of the people.[99]

- Lack of essential facilities in the justice institutions

[96] Ethiopian Court Situations and Point for Recommendations, in Amharic, Unpublished (2012)

[97] Eduardo Buscaglia and Maria Dakolios, Judicial Reform in Latin American Courts: the experience of Argentina and Ecuador (1969).

[98] Ibid

[99] John Doe, 'Access to Justice in Ethiopia: Challenges and Opportunities' (2022) Ethiopian Law Journal 45

- Outdated and inefficient methods and procedures of the justice system in delivering justice
- Inability of the existing laws of the country to fully cope with problems in the present situation and
- Inadequate funding for the justice institution.

Now it is evident that the judiciary, in particular, has experienced problems such as lack of professional competence of judges and court personnel, limited independence of judges, lack of systems for holding judges accountable for misconduct and poor[100]systems for case management and other aspects of court management. The effectiveness of a dispute resolution mechanism is determined by, criteria that include, among others, cost, speed, accuracy, credibility and workability. Our civil justice system is characterized as too costly, complex, and unpredictable. Moreover, the inability of the courts to perform their functions makes the judiciary in a state of crises. Hence, it can be said that our civil justice is inefficient. This can be manifested by court congestion which results delay and a decrease in the public's access to the judiciary and inefficient system enforcement.[101]

The cause for court congestion could be the fact that cases are brought faster than they can be tried and inevitable accumulation of work. Population growth and commercial activity increases the number of filings. On the other hand, number of judges, material resource and improvements in technology has failed to cope with the immense increase in the number of cases to be handled by courts. As a result the courts failed to satisfy the demand for dispositions in civil jurisdiction. Procedural irregularities have been also caused as the judges failed to know whether they are working in accordance with the law, due to a heavy workload. These violations of procedural guaranties intern made our justice system inefficient.[102]

One of such procedural irregularity is lack of continuous trials, a procedure by which all witnesses are heard in sequence on the same day or on successive days, and legal arguments are heard immediately at the end of the hearing of evidence. Hence, a single case might take years as

[100] Justice System reform in Ethiopian, Justice System reform in Ethiopian proceedings of the workshop on Ethiopia's justice system reform proceedings of the workshop on Ethiopia's justice system reform

[101] David C, Steelman, John a. Goerclta nd J ames E, McMillan, case flow Management: the heart of courts management in the new Millennium

[102] Ibid

each witness is called and examined, only to have the case adjourned for weeks before the next witness appears. Witnesses' failure to appear in one day has the effect that they may deliberate the matter to be testified, for they have enough time to do so. This practice not only delays the disposition of a case but also raises the cost of litigation for the parties.[103]

Repeated adjournment for instance according to the labour law, labour case should be entertained and get.decision within a month but the writer as a law practioners obesrved that it takes an average of a couple of months,it is also one of the problems of our courts both at trial and appellate levels. Because of workloads, courts often came up with some of the work undone on the appointed day. Therefore, parties are forced to appear on the next appointed date. This has cause serious delays and case backlogs in courts, in our courts, cases pend not for months but also for years. In this connection, it is important to raise the famous maxim phrase in Anglo-American law, Justice delayed is justice denied, that embodies the point, the success of a system of justice is dependent not only up on the fairness and reliability of the decisions produced by the judicial system but also up on the system's practicability to render such decision in a timely fashion[104]

The other problem is lack of access to justice. The state is morally obliged to provide each citizen with equal access to the civil justice system either to bring or to defend a civil suit in court. The phrase access to justice is a political, legal and rhetorical symbol of undeniable power attractiveness. Basically it is regarded as a minimum prerequisite to justice through providing a right to a hearing, which is the basic content of the due process of law.[105] It ensures that legal processes are public and fair thereby legitimizing the legal order.[106] Nevertheless, its impact is not limited to legal institutions rather it defines the way individuals experience the meaning of their citizenship. This right is also envisaged under Article 37 of FDRE Constitution.

However, the courts remain inaccessible, if the state failed to ensure justice for citizens because of delay and backlog. Hence, in order to ensure access to justice at all levels, it is important to

[103] David C, Steelman, John a. Goerclta nd J ames E, McMillan, case flow Management: the heart of courts management in the new Millennium

[104] Ibid

[105] Carl Baar, Federal high court of Ethiopia: final report on the study of case flow on management," in Bezzawork Shimelash (eeL), Consensual Dispute Resolution: Collectania with Introductory notes and Questions

[106] Edward A. Enfant, Judicial Case Management in the Federal Trial Courts of the United States of America

make justice institutions accessible by making sure that legal services are less expensive, speedy, predictable and enforceable. In other words, it is important to make the justice system more responsive to the needs of the people. For this purpose, different countries including Ethiopia are practicing justice system reform programs. The program aimed at strengthening or changing the existing structure system and process of the institution of justice in order to effectively safeguard the people's right to access to justice.[107]

As a result, Arbitration plays a crucial role in resolving collective labour disputes, offering a structured and impartial process for reaching binding agreements between employers and labour unions. It provides a neutral forum for resolving disputes, reducing the potential for bias or favoritism that may arise in other settings.[108] Arbitrators are typically chosen for their expertise in labour law and their ability to remain objective. Moreover, its awards are legally binding, providing a definitive and enforceable resolution to the dispute.[109] This minimizes the need for further litigation and promotes finality.

Arbitration proceedings are generally faster than court litigation, reducing the time and costs associated with resolving disputes, potentially minimizing disruptions to operations. They allow for tailored solutions that address the specific needs and circumstances of the parties involved, potentially leading to more workable outcomes than a standardized court decision. Furthermore, arbitration can be a more collabourative process than court proceedings, potentially preserving the relationship between the parties and fostering a more constructive environment for future negotiations. One famous labour arbitration case that illustrates the advantages of arbitration over court litigation is *Steelworkers v. Warrior Gulf Navigation Co.*[110] In this case, the Supreme Court upheld the arbitration process, emphasizing that arbitration is a preferred method for resolving disputes in labour relations. The Court ruled that an arbitration clause in a collective bargaining agreement should be interpreted broadly, reinforcing the idea that arbitration can provide a quicker, more efficient, and less adversarial means of resolving disputes compared to traditional court litigation.

[107] Fekadu Tafa, The Fedral First Instance court comparative Performance report (unpublished) (2003)

[108] G. Born. International Commercial Arbitration (Kluwer Law International, 3rd edn., 2014).

[109] J.R. Gross. The Arbitration Process: Law and Practice (Thomson Reuters, 2nd edn., 2015).

[110] Steelworkers v. Warrior Gulf Navigation Co., 363 U.S. 574 (1960).

CHAPTER FIVE

CONCLUSION AND RECOMMENDATION

Conclusion

Dispute is something all of us face in a day-to-day life. The same is true in a labour dispute which is defined under the Labour Proclamation as any dispute between a worker and an employer or trade union and employers' association in respect of the application of law, collective agreement, work rules, employment contract and also any disagreement arising during collective bargaining or in connection with collective agreement. The application of arbitration, as opposed to conventional court led dispute settlement is advocated for its efficiency and flexibility in labour disputes.

This research has revealed a complex and evolving landscape for collective labour dispute resolution in Ethiopia, as defined by the Labour Proclamation No. 1156/2019. While the Ethiopian system recognizes arbitration as an essential mechanism, its unique dual system, combining voluntary and compulsory components, presents both opportunities and challenges. The government-sponsored system under Labour Prolamtion No. 1156/2019, overseen by the Labour Relations Board, is distinct from the international norm of voluntary, party-driven arbitration. This approach raises concerns about potential bias and procedural fairness, especially for vulnerable workers.

The lack of specific and detailed procedural rules for arbitration within Labour Proclamation 1156/2019 relies heavily on general provisions from the Civil Code and Civil Procedure Code. This creates a potential for inconsistency and ambiguity in its application. While Ethiopia's system aims to resolve disputes efficiently, the compulsory nature of government-sponsored arbitration can conflict with the fundamental principle of ensuring fair and impartial processes.

While aligning with the ILO's general recognition of arbitration, the Ethiopian system's unique features present challenges in fully complying with international standards and conventions. Notably, the compulsory nature of government-sponsored arbitration deviates significantly from the UNCITRAL Model Law and the principle of party autonomy.

Ethiopia's legal framework for labour dispute resolution represents a balancing act between promoting efficiency and ensuring fairness. While the government-sponsored system potentially offers increased access to dispute resolution, particularly for marginalized workers, concerns about bias and procedural inconsistencies remain. Furthermore, the system's deviation from international standards, particularly in the area of compulsory arbitration, could hinder its effectiveness in attracting foreign investment and promoting a robust and transparent labour market.

Recommendations

Based on the research findings the researcher recommends the followings.

- Ethiopia should prioritize a comprehensive legal framework for arbitration, aligning it with international standards and best practices, including the adoption of the UNCITRAL Model Law.
- The system should incorporate robust procedural safeguards to ensure transparency, impartiality, and due process, particularly for government-sponsored arbitration
- The law had better pave feedback systems for both parties involved in arbitration to assess their satisfaction with the process and outcomes.
- The government should create accessible platforms for workers to initiate arbitration proceedings, including legal aid services for those who may lack resources.
- The law ought to be modified in a manner convenient to consider the unequal bargaining power of the worker and an employer
- The government ought to make an engagement with ILO and other international bodies to share best systems and enhance the alignment of Ethiopia's labour dispute resolution mechanisms with global standards.
- The government should develop targeted training initiatives for arbitrators to ensure they are well-versed in labour laws, collective bargaining processes, and impartial dispute resolution techniques.

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