COMMENT

# Resolution of Collective Labour Disputes by Labour Relations Board in Ethiopia: Critical Reflections

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## Abstract

This comment examines the Legal framework of Collective Labour Disputes (CLD) resolution by the Labour Relation Board (LRB) in Ethiopia. Only two members of the LRB out of seven members (and two alternate members) are from the legal profession. Moreover, there is no provision (under the Labour Proclamation) regarding the selection criteria of other members of the Board. The decision of the Board is taken by majority vote and appeal is permitted only on error relating to legal issues. The establishment of LRB that is empowered to decide on CLDs is indeed an extremely important initiative as the nature of collective labour cases demands collective bargaining and labour law experts. However, legal criteria are not set out under the Proclamation for the selection of members of the LRB; and the majority of LRB members are not legal professionals. There should thus be clear criteria for the selection of members and there is the need to include more legal professionals in the LRB.

## Key terms

Labour Relation · Collective Disputes · Labour Board · Disputes Resolution

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**Frequently used acronyms:**

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| ALRB | Ad hoc Labour Relations Board |
| CLDs | Collective Labour Disputes |
| LRB | Labour Relation Board |
| LP | Labour Proclamation |
| PLRB | Permanent Labour Relations Board |

## Contents



## 1. Introduction

Labour relation as a contractual relationship between an employee and his /her employer, and it exists when a person performs work or services under certain conditions in return for remuneration. In labour relations, the existence of labour disputes is inevitable due to two different interests. The two apparent interests in labour relation are the interests of employees to get fair wage (and other benefits) and the interests of employers to enhance profit out of their business.

For example, Korea's Trade Union and Labour Relations Adjustment Act, defines 'labour disputes' as "any controversy or difference arising from a disagreement between the trade union and employer or employers' association concerning the determination of terms and conditions of labour relations such as wages, working hours, welfare, dismissal, etc".[1] According to the Labour

[1] Korea Trade Union and Labour Relations Adjustment Act (1997), Section 5. *See* also an Article (2) of Ethiopia's Labour Proclamation No. No. 1156/2019, which defined conditions of work or terms and conditions of work as the entire field of labour relations between workers and employers including hours of work, wage, leave, payments due to

Proclamation No. 1156/2019 labour dispute is defined as "any dispute between a worker and an employer or trade union and employer's association in respect of the application of a law, collective agreement, work rules, employment contract and also any disagreement arising during collective bargaining or in connection with the collective agreement."[2]

As indicated in the International Training Centre of the International Labour Organization, "the causes of labour disputes range from a simple complaint by an individual employee over pay entitlements, to a complaint by a group of employees concerning to a work stoppage by all employees within a workplace claiming they are being prevented from forming a union to further their interests."[3] Labour related disputes (both individual and collective) affect labour relations between workers and employers. Rowley and Harry noted that "although there are many causes of labour disputes, non-payment or delayed payment, job loss and industrial accidents are the three major causes."[4] Resolving labour disputes which affect the labour relationship between an employer and his/her workers efficiently and effectively is for the benefit of all the parties involved in labour relations.

Generally labour disputes are divided into two categories: individual and collective labour disputes. As the term implies, i*ndividual labour disputes* are the "disagreements between a single worker and his or her employer over existing rights, and also includes situations in which several workers disagree with their employer over the same issue, but where each worker acts as an individual."[5] *Collective labour disputes* involve dispute between groups of workers represented by a trade union or sometimes between groups of workers represented by trade unions:

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dismissal, workers health and safety, compensation to victims of employment injury, dismissal because of redundancy, grievance procedure and any other similar matters.

[2] Labour Proclamation No. 1156/2019 (hereinafter Labour Proclamation) 25th Year No. 89, Addis Ababa 5th September 2019, Article 137(3). Although collective labour disputes often result in the interpretation and application of collective agreements, they are also occasionally created at the time of negotiation (collective bargaining) of future entitlements. *See* also Article 125 (2 and 1) of the Proclamation which defines collective bargaining and collective agreements. Moreover, the Collective Bargaining Convention (No. 154), adopted in 1981, defines this concept under Article 2.

[3] International Training Centre of the International Labour Organization, Labour Dispute Systems, Guidelines for improved performance (2013), p.25.

[4] Chris Rowley and Wes Harry, (2011), 'Employee Relations in China', *Managing People Globally*, p.4.

[5] Id, p. 26. The commonality of the causes of disputes or the fact that many workers may disagree with an employer on the same issues does not make the dispute collective labour dispute.

> [C]ollective disputes are related to the process of collective bargaining (interest disputes) or in the application/interpretation of collective agreements (rights disputes) and which arise between employers and groups of workers represented by trade unions.[6]

Therefore, it is obvious that collective labour disputes involve a group of workers or their representatives and one or more employers. For a labour dispute –involving a group of workers– to be a real collective labour dispute involving a group, it must have the same grievance or claim.[7]

The next section of this comment deals with to the nature of CLD. The third section discusses the jurisdiction of LRB in Ethiopia relating to collective disputes, and the justifications for conferring this adjudicative power on the LRB rather than ordinary courts. It also discusses the powers and responsibilities listed under the Labour Proclamation and Labour Relation Board Re-establishment Directive in Ethiopia. The fourth section presents the organization and membership requirements of LRB. Under this section, issues of the composition and operations of LRB under the Labour Law are discussed. The fifth section deals with appeal from the decision of LRB and the power of the labour appellate court followed by conclusion.

## 2. The Nature of Collective Labour Disputes (CLDs)

Ethiopia's labour law provides minimum working conditions, and the conditions of work are determined through collective bargaining between an employer and workers association or their representatives. According to the Labour Proclamation No. 1156/2019, collective bargaining is defined as "the negotiation process between an employer and his/her workers' association or their representatives to reach the collective agreement or renewal of already exiting collective agreements."[8] The issues involved in collective bargaining include minimum wage, limiting daily/weekly working hours, maintenance of safe and healthy working conditions or compensation for employment

[6] International Labour Office, Collective Dispute Resolution through Conciliation, Mediation and Arbitration: European and ILO Perspectives, High–Level Tripartite Seminar on the Settlement of Labour Disputes through Mediation, Conciliation, Arbitration and Labour Courts in Nicosia, Cyprus from October 18th – 19th, 2007, p.2.

[7] Robert Heron and Caroline Vandenabeel (1999), 'Labour Dispute Resolution: An Introductory Guide,' ILO, p.6. Having the same grievance of claim refers to the issues affecting workers in general like setting new terms of working conditions or amending collective agreements.

[8] Labour Proclamation, *supra* note 2, Article 125(2).

injuries.[9] In terms of minimum working conditions, for instance, an employer, employee, or trade union representative may negotiate and agree upon the terms of their labour relations, provided that the terms of the agreement cannot be lower than the legally required minimum standards.

In the bargaining process, agreement on all issues may not be expected. There might be disagreement on certain matters, and this is the first aspect of collective labour disputes known as *interest-based collective labour disputes.* After the bargaining, the agreement reached is called collective agreement which encompasses issues such as conditions of work, work rules and grievance procedures.[10] Once the collective agreement is concluded between the parties, rights of parties are created and the next step is interpretation and the implementation of the agreed terms. However, disputes may arise in the course of interpretation, and this scenario indicates the second aspect of CLD known as *rights-based disputes*. The CLD classification as interest-based and rights-based refers to its basic features

### 2.1 CLDs that emanate in the negotiation process of new entitlements

While trying to create new entitlements or rights through negotiation, labour disputes may occur between an employer and workers associations or their representatives. New entitlements or rights refer to new privileges that parties may have during their labour relations. According to the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), "disputes which arise in the course of collective bargaining over terms and conditions of employment are disputes over interests."[11]

Interest-based collective labour disputes are the disagreements between the negotiating parties over the determination of terms and conditions of work to be included in their collective agreement. As Foley & Cronin noted, "In essence, the interest-based labour disputes are negotiable and often compromisable or at least subject to design and customisation by the parties

[9] Id., Article 53, 61, 92 and 101 respectively.

[10] Id., Article 130 (4). The other sub-articles deal with subject matters of the collective agreement including conditions for maintenance of occupational safety and health and the manner of improving social services, workers' participation, particularly, in matters about promotion, wages, transfer, reduction and discipline, apportionment of working hours and interval break times, parties covered by the collective agreement and its duration of validity, and the establishment and working system of bipartite social dialogue.

[11] Committee of Experts on the Application of Conventions and Recommendations (CEACR), Collective bargaining in the public service: A way forward – General Survey concerning labour relations and collective bargaining in the public service (ILO, Geneva, 2013).

to the disagreement."[12] Interest-based CLDs may include the party's disagreement over the future payment rates or disagreement on the newly proposed working arrangements.

### 2.2 CLDs that arise during the interpretation and application of Collective Agreements

As indicated earlier, collective labour disputes over rights may arise in the process of interpretation and application of existing collective agreements if one of the parties invokes the violation of rights or non-performance by the other party. This necessitates decision by an independent court or tribunal. According to Foley and Cronin, "rights-based CLDs include non-payment of wages, unilateral modification of working hours, non-observance of agreed rates of pay or holidays, anti-union practices or any of the broad range of existing rights and obligations set out in applicable collective agreements which have the force of law."[13]

### 2.3 CLD under the Ethiopia's labour law

Labour Proclamation No. 1156/2019 does not expressly categorize the collective labour disputes into interest and rights-based. However, the contextual reading of the list of collective labour disputes under Article 143 may help one to observe that both collective labour disputes –over *interest* and *rights*– are recognized. For instance, according to the Proclamation "disputes related to the issues of wages and other benefits which are not determined by work rules or collective agreements are classified as CLDs."[14] As discussed above, disputes related to the creation of new entitlements or on issues that are not regulated by a collective agreement are *interest-based* CLD. Moreover, the Proclamation states that the dispute concerning the establishment of new conditions of work is considered as CLD.[15] The phrase 'establishment of new conditions of work' clearly implies the case of *interest-based* CLD.

With regard to rights-based collective labour disputes, Article 143(1)(c) and 143(1)(d) of the Proclamation provide that "disputes arising from the conclusion, amendment, invalidation of collective agreements and the interpretation of any provisions of this Proclamation, or work rules are CLDs." Moreover, disputes connected with "procedure of employment and

[12] Kevin Foley and Maedhbh Cronin (2015), 'Professional Conciliation in Collective Labour Disputes, a Practical Guide,' International Labour Organization, p. 12.
[13] Ibid.
[14] Labour Proclamation, *supra* note 2, Article 143 (1) (a).
[15] Id., Article 143 (1) (b).

promotion of workers, issues affecting workers in general and the very existence of the undertaking, suits related to procedures issued by the employer regarding promotion, transfer and training and issues on reduction of workers are CLDs."[16] This demonstrates that the scope of the Proclamation is broad and includes issues that may not be even designated into interest and rights-based classification of CLDs.

## 3. The Jurisdiction of Labour Relation Board in Ethiopia

The Labour Proclamation No. 1156/2019 classifies labour disputes into individual and collective labour disputes, and it entrusts different organs with the jurisdiction of dispute settlement. The labour division of a Federal and Regional First Instance Court shall have jurisdiction to settle and determine individual labour disputes[17] whereas the Labour Relation Board (LRB) has the jurisdiction to hear and decide on collective labour disputes.[18] The LRB that is established to hear and decide on CLD may be Permanent or Ad hoc[19] with different jurisdictions. The Permanent Labour Relation Board (PLRB) is empowered to see and entertain issues related to:

> the establishment of new conditions of work, the conclusion, amendment, duration and invalidation of collective agreements, the interpretation of any provisions of this Proclamation, collective agreements or work rules, the procedure of employment and promotion of workers; issues affecting workers in general and the very existence of the Undertaking, suits related to procedures issued by the employer regarding promotion, transfer and training and issues on reduction of workers.[20]

The Ad hoc Labour Relation Board (ALRB) is given the power to hear collective labour cases related to issues of wages and other benefits which are

[16] Id., Article 143 (1) (e-h).

[17] Id., Article 139(1). Individual labour disputes include issues related to disciplinary measures including dismissal, claims related to the termination of employment contracts or hours of work, remuneration, leaves and rest day, issuance of a certificate of service and clearance and claims about employment injury, transfer, promotion, training and other similar issues. Besides the listing of individual labour disputes, the provision identifies the courts having first instance as well as appellate jurisdiction over the individual labour cases. Accordingly, individual labour cases can be brought to the regional or federal first instance court and appeal can be lodged in the appellate jurisdictions of each court.

[18] Id, Article 143(3) (a-h).

[19] Id., Article 145 (1) and (2).

[20] Id., Article 143 (3) (b-h).

not determined by work rules or collective agreements[21] and connected to essential public service undertakings such as electric power, air transport, water supply, sanitation services, telecommunication services etc.[22]

### 3.1 Rationale of LRB to decide on CLD

The experience of other countries like Finland and Belgium shows entrusting separate labour courts with the jurisdiction over labour disputes[23] while Ethiopia has a labour division system within the ordinary court structure to entertain individual labour disputes.[24] The reasons for the establishment of a separate labour court in other jurisdictions include the slow process of ordinary courts of law in deciding cases and the need for expertise to settle disputes arising out of collective agreements.[25]

Although there is no separate labour court system designed to entertain labour disputes in Ethiopia, collective labour disputes are adjudicated by a separate organ: the Labour Relations Board (LRB). Similar practices can also be observed from the experience of other countries. For instance, in a judgement of the Supreme Court of Japan it is stated that it is difficult to define appropriate remedies in advance for unfair labour practices, which can take different forms in each case.[26] The Court also indicated that the Labour Relation Commissions (LRCs) are the most capable bodies to provide the appropriate remedy since its members have expertise regarding collective labour relations.[27]

Yet, the parties of CLDs are advised to exhaust amicable dispute resolution mechanisms, particularly through conciliation and arbitration. A close reading of Article 142 of the Labour Proclamation indicates that, when CLD comes to the attention of the Ministry or another appropriate organ, *it shall assign a conciliator* to negotiate the settlement of disputes. It is however to be noted that according to Article 144 of the Labour Proclamation, going through arbitration mechanisms is optional (and not mandatory) as it can be observed

[21] Id., Article 143 (1) (a).
[22] Id., Article 137(2) *cum* Article 143 (3)
[23] Bert Essenberg (Ed) (1986), Labour Courts in Europe in Proceedings of a Meeting Organised by the International Institute for Labour Studies, International Institute for Labour Studies), p.7.
[24] Labour Proclamation *supra* note 2, Article 139(1).
[25] Ibid.
[26] Daini Hato Taxi case (Sup. Ct., Grand Bench, Feb. 23, 1977), 31 Saiko Saibansho Minji [Collected judgments in civil cases by the Supreme Court] 93, 96, as cited in (Ryuichi Yamakawa, The Law of the Labour Relations Commission: Some Aspects of Japan's Unfair Labor Practice Law, (Japan Labor Review, Vol. 12, No. 4, Autumn 2015), p.2.
[27] Ibid.

from the phrase which reads: 'parties to a dispute may agree to submit their case to arbitrators or conciliators, of their own choice for settlement by the appropriate law.'

### 3.2 The powers and responsibilities of LRB

The powers of LRB to see and decide on CLD cases are stipulated in the Labour Relation Board Re-establishment Directive, which is issued by the Ministry of Labour and Social Affairs. According to this Directive, amending or modifying the existing labour relation laws, regulations and directives as well as enacting new ones are among the powers and responsibilities of the LRB.[28] Only two among the LRB members are from the legal profession. And this may negatively affect the functions of amending, modifying and enacting new labour relations directives. Apart from listing the power of LRB in general, the LRB Re-establishment Directive does not embody provisions relating to permanent and ad-hoc divisions.

Unlike the LRB Re-establishment Directive, the Proclamation separately regulates the powers of the Permanent Labour Relations Board (PLRB) and the Ad hoc Labour Relations Board (ALRB). The power of PLRB is broader than that of ALRB because as per Article 143(1)(a) of the Proclamation, ALRB has the power only to entertain labour disputes over wages and other benefits not addressed by the collective agreements or work rules. The PLRB has the powers to entertain collective labour disputes listed in Sub-article (1) (b-h) of Article 143. According to Sub-article 3 of Article 143, in case parties at dispute fail to reach an agreement through conciliation, one of the parties can submit the case to LRB and the Board has the power to entertain and decide such cases.

In principle, workers shall have the legal right to strike to protect their interests; and employers shall have the right to lockout following necessary legal requirements.[29] However, a strike or lock-out shall be unlawful and prohibited if it is initiated after a dispute has been referred to a Board and if 30 days have not yet elapsed before any order or decision is given by the Board.[30] Once the case is submitted to the PLRB, the Board has the power to:

> [r]equire any person or organization to submit information and documents required by it for the carrying out of its duties, to

[28] Federal Democratic Republic of Ethiopia (FDRE) Labour Relation Board Re-establishment Directive No. 180/2013 EC, Article 5(a), issued on Tikimt 17, 1997 EC (October 27, 2004) and registered at the Ministry of Justice (Legal Drafting, Study and Consolidation Directorate General/ LDSCDG) in 2013 EC.

[29] Labour Proclamation, *supra* note 2, Article 158(1) and (2).

[30] Id., article 161(1).

> require parties and witnesses to appear at its hearings, to administer oaths or take affirmations of persons appearing before it and examine any such persons after such an oath or affirmation, to enter the premises of any working place or undertaking during working hours to obtain relevant information, hear witnesses or to require the submission of documents or other articles for inspection from any person in the premises.[31]

The other power of a Permanent or an Ad hoc Labour Relation Board is the power to adopt their own rules of evidence and procedure. The Proclamation has allowed the LRBs to deviate from rules of evidence and procedure. Permanent and Adhoc Labour Relation Boards may devise their own rules of evidence and procedure; and where they do not have their own rules of evidence and procedure, the provisions of the Civil Procedure Code shall apply.[32] In this regard, Article 150 provides that a Permanent or an Adhoc Board shall not be bound by the rules of evidence and procedure applicable to Courts of law and it may apply any method as it thinks fit.[33] This is meant to provide a broader procedural spectrum to the Board so that it can resolve labour disputes.

## 4. Organization and Membership Requirements of LRB

### 4.1 Organization of LRB

As mentioned above, PLRB and ALRB were established at the federal and regional levels to handle CLDs within their respective jurisdictions.[34] However, the Proclamation does not clearly indicate the working relationship between the two levels of Boards and the level of authority in the relationship between them. It also lacks clarity whether each board at the federal and regional level is independent.

Where the assigned conciliator fails to settle disputes amicably within 30 days or if a party is aggrieved by the decision of the arbitration, the case may be brought to the Board or the appropriate court, as the case may be.[35] It is to be noted that the right to appeal can be exercised only after the decisions of PLRB or ALRB.[36]

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[31] Id., Article 148(1) (d-g)
[32] Id., Article 149.
[33] Id., Article 150(5).
[34] Id., Articles 145(1) and (2).
[35] Id., Article 144(2).
[36] Id., Article 140(1) (g).

### 4.2 The composition of LRB under the Ethiopia labour law

With regard to the composition of the LRB, the Labour Proclamation provides:

> Permanent or Ad hoc Labour Relation Board appointed by the Ministry or appropriate authority shall comprise of a chairperson, two members who have the knowledge and skill on labour matters, four members out of which two represent trade unions and two represent employers' associations, and two alternate members one from each association.[37]

Accordingly, two members who have knowledge and skill on labour matters are the members of the LRB, and it can be inferred that these two members have expertise on labour law. This provision does not require the remaining members to be legal professionals. It is again clear that two members are from trade unions and two members are representatives of employers' associations. There are also two alternative members of the LRB (i.e., one from trade unions and one from employers' association).

The involvement of representatives of trade unions and employers associations is indeed appropriate because it allows stakeholders to participate in the dispute resolution process. The issue that can be raised is whether the selection of the two alternative members in LRB is based on knowledge, skills and their experience in collective disputes settlement. In particular, the fact that only two professionals are selected based on their knowledge and skills on labour matters out of seven members plus two alternate members of the LRB, evokes the question whether mere majority votes under such settings can be conducive to fair, reasoned and law-based decision on collective labour disputes.

It is to be noted that the criteria for the selection of the chairperson, the general professional or experience profile of the four representatives from trade unions and employers' association and the two alternative members of the LRB are not expressly stated in the Proclamation. It merely provides that members and alternative members serve on a part-time basis without remuneration and are appointed for the term of three years.[38]

[37] Id., Article 146 sub-article 1.
[38] Id., Article 146 (4) and (5).

### 4.3 LRB membership requirements and independence in other jurisdictions

In Alberta (a province located in western Canada). "LRB members are recruited through the competency-based process as the Chair and Vice-Chairs are required to have a law degree or related degree, combined with an extensive labour relations background."[39] With regard to other members of the LRB, they must be experienced labour relation professionals who are active in the labour relations community and have knowledge about Alberta's labour legislation.[40] In the United State of America, almost all members of the National Labour Relations Board are legal professionals such as Judges of Administrative Law, Attorneys and other Legal Assistants.[41] Contrary to such clarity, Ethiopia's Labour Proclamation is silent regarding the criteria for selection or with regard to the required competence of LRB members.

The other issue that needs attention relates to whether there could have been membership in the LRB in addition to the stakeholders that are represented (i.e. trade unions and employers' association). For example, according to the Labour Union Act of Japan, "Labour Relations Commission shall be composed of equal numbers of persons representing employers, persons representing workers and persons representing the public interest."[42] However, according to Yamakawa "only members representing public interests can participate in deciding unfair labour practice cases and members representing labour and management can only participate in hearings and submit their opinions."[43]

Selecting four members (i.e., two from trade unions and two from employers' associations) is aimed at representing the interest of parties in labour relations. In Ethiopia, though trade union representatives or employers' associations can protect the interest of stakeholders that they represent, there are no members who are assigned to represent public interest. The Labour Proclamation is silent in this regard. The Proclamation requires the presence of at least one trade unions representative and employers' association in all

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[39] Alberta Labour Relation Board, Available at: http://www.alrb.gov.ab.ca. accessed on January 03, 2022.

[40] Id.

[41] United States of America National Labour Relations Act (1935), Section 3, Article 153 (d). Available at: https://www.archives.gov/milestone-documents/national-labor-relations-act. Accessed on 12 July, 2022.

[42] Japan Labour Relation Act No. 174 of June 1, 1949, Section 1, Article 19.

[43] Ryuichi Yamakawa, (2015), 'The Law of the Labour Relations Commission: Some Aspects of Japan's Unfair Labor Practice Law' *Japan Labor Review*, Vol. 12, No. 4, p. 2.

meetings of the Board. One can argue that, allowing them to decide on their case is antagonistic to the principle of *Nemo judex in causa sua.*[44]

Such caution is indeed required to ensure the independence of the LRB and the credibility of its decisions. Ethiopian Labour law is silent about the institutional independence of LRB, and the Labour Proclamation does not assert the independence of LRB. In South Africa, for example, the Labour Relations Amendment Act states that "the Labour Dispute Resolution Commission is independent of the State, any political party, trade union, employer, employers' organisation, a federation of trade unions or federation of employers' organisations."[45]

### 4.4 Meeting procedures of board members under the Labour Proclamation

Critically Examining Article 147 of Labour Proclamation No. 1156/2019 reveals its inclination towards the delivery of decisions over CLD rather than due concern for the quality of reasoning and fairness of decisions. Article 147(1) provides that "in the case where the Chairperson is absent in meeting, the person designated by him may act in his place and when there is no any designated member, the member of the Board who is senior in terms of his service shall act as a Chairperson." Article 147(2) stipulates that if a member is absent at any meeting, "the Chairperson may designate an alternate member to replace the absentee in the designated meeting." Therefore, the absence of the Chairperson or other members in the meeting of the Board cannot be a reason for adjournment or delay of decision.

With regard to quorum, Article 147(4) states that "the presence of four members shall constitute a quorum at any meeting, provided, however, that a minimum of one member representing the workers' side and another member representing the employers' side shall be present." This shows that the computation of the quorum takes the *seven* members of the LRB (other than the alternate members) into account.

### 4.5 Rules of evidence, procedures, hearing and decisions

According to the Article 149 of the Proclamation, a Permanent or an Ad hoc Board may adopt its own rules of evidence and procedure and in the absence of that procedure, the provisions of the Civil Procedure Code shall apply.

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[44] The Principle of '*Nemo judex in causa sua a dictum*' ("no one should be a judge in his/her own cause") is widely considered a pre-requisite to a reliable, trustworthy judicial system.

[45] The Republic of South Africa, Department of Labour, Labour Relations Amendment Act, No 12 of 2002, Article 113.

Moreover, Article 150(5) of the Labour Proclamation provides that a Permanent or an Ad hoc Board shall not be bound by the applicable to Courts of law and may apply any method as it thinks fit. Such flexibility in procedures can indeed facilitate the operational efficiency of the LRB.

With regard to hearing, the Labour Proclamation provides that "after receiving the case, the Board shall summon the parties concerned and provide them the opportunity to be heard and if any of the parties or any other person properly summoned fails to appear at the time and place, the Board may proceed with the hearing."[46] If the failure to appear was not attributable to the person concerned, the Board shall grant that person another opportunity to appear before it.[47]

After the verification of the parties' appearance the Board entertains the merit of the case in detail. In this regard, "the Board shall exert all possible effort to settle the disputes before it amicably, and to this end, it shall employ and make use of all conciliatory means as it deems appropriate."[48] As mentioned earlier, parties before bringing their cases to the attention of the Board may try to solve their disputes through a conciliator or arbitrator, which is advised even if it is not mandatory.

Although dispute resolution through conciliation is preferred, Article 148(1)(a) states the power of the LRB to entertain collective labour disputes and *conciliate the parties, issue orders and render decisions.* This shows that the LRB can go beyond amicable settlement and conciliatory means because it can give remedial orders and render merits-based decisions. In order to give such decisions, "the PLRB or ALRB shall take into account *the main merits of the case* (emphasis added), and need not follow strictly the principles of substantive law followed by Civil Courts."[49]

There is the need for caveat regarding the interpretation of the words "merits of the case" and "strict adherence to principles of substantive law." 'Merits of the case' are the essential issues or the main question which is at issue in an action or it is the substantive right presented by action or the strict legal rights of the parties to an action.[50] Hence, the merits of the case submitted to the Board may include the violation or otherwise of substantive rights determined and defined under substantive law. On the one hand, the

[46] Labour Proclamation, *supra* note 2, Article 150(1) and (2).
[47] Id.
[48] Id., Article 151(1).
[49] Id., Article 151(3).
[50] Merits of Case law and Legal Definition. Available at: https://definitions.uslegal.com/m/merits-of-case/. Accessed on 01 January 2022.

Proclamation requires the merits of the case to be taken into account, and on the other hand it states that LRB members need not strictly follow the principles of substantive law followed by Civil Courts. This lacks clarity because decision on the merits of the case inevitably necessitates due attention to substantive laws that embody substantive rights and duties of the parties in dispute.

The "decision of the LRB entertaining CLDs shall be taken by a majority vote of the members present."[51] As indicated above, only two members are required to have the legal knowledge and skill, and the quality of the decision can be questioned under the context that the minimum quorum is only four members.

The same concern applies to other powers of the LRB. According to Labour Relation Board Re-establishment Directive, the Board has the power to forward necessary ideas with regard to the amending or modifying the existing labour relation Laws, Regulations and Directives as well as enacting new ones.[52] These tasks apparently necessitate knowledge and skills in labour law.

According to Article 153 of the Labour Proclamation, any decision of a Permanent or an Ad hoc Board shall have an immediate effect.[53] The phrase 'immediate effect' indicates the timely execution of the decision of the Board. It is, however, to be noted that "where the decision of a Permanent or an Ad hoc Board relates to working conditions, *it shall be considered as the terms of the contract of employment between the employer and the worker*, to whom it applies, and the contract shall be adjusted accordingly" (emphasis added).[54] As stated earlier, the condition of work means the entire field of labour relations between workers and employers including hours of work, wage, leave, effects of dismissal, health and safety measures and any other similar matters. Thus, the decision of the Board concerning the conditions of work listed above and other similar matters are immediately considered as binding terms that are agreed upon by the parties.

[51] Labour Proclamation, *supra* note 2, Article 147(4) and (5).
[52] Relation Board Re-establishment Directive, *supra* note 28, Article 5 (a).
[53] Labour Proclamation, *supra* note 2, Article 153 (1).
[54] Id., Article 153 (2).

## 5. Appeal from the Decision of LRB and the Power of Labour Appellate Court

Unlike the experience of other countries like Japan, where the Labour Relation Commission decision on unfair labour practice can be reviewed by District Courts,[55] there is no judicial review system in Ethiopia on the decision of the LRB except for appeal on error of law. According to Article 155(1) of the Labour Proclamation, "in any labour dispute, an appeal may be taken to the High Court by an aggrieved party on questions of law, within 30 days after the decision has been served to the parties."[56]

As indicated above, many of the members of the LRB are not legal professionals; and the criteria for their appointment are not expressly mentioned. Yet, these members are legally allowed to adopt their own rules of evidence and procedure in rendering decisions. Moreover, they need not strictly follow the principles of the civil procedure law applied in civil courts. I argue that it seems inappropriate to restrict the scope of appeal from decisions rendered by the LRB under such settings,

With regard to error of law (Art. 155/1), the appellate court after evaluating the decision of the LRB, can affirm, reverse or modify the decision of the Board.[57] This requires due attention to the bench that handles the file of appeal thereby necessitating specialized labour law benches (referred to as labour divisions under Article 138(1) rather that reference of the case to ordinary benches irrespective of specialization.

## 6. Conclusion

The comment has critically investigated the legal frameworks for the resolution of collective labour disputes (CLDs) by LRB in Ethiopia. Even though the Proclamation does not expressly identify collective labour disputes from individual labour disputes, we can refer to Article 139 of the Proclamation that lists down individual labour disputes that are adjudicated by the Labour Division of the First Instance Court. Reference can be made to Article 148(1(a) that states the power of the Permanent LRB to "to entertain collective labour disputes except those in sub-article (1)(a) of Article 143", and Article 148(2) states the power of the Ad Hoc LRB. In both cases, the relative complexity of collective labour disputes require the involvement of

[55] Yamakawa, *supra* note 43.
[56] Labour Proclamation, *supra* note 2, Article 155(1).
[57] Id, Article 155(2).

expertise or legal professionals of labour relations or those who have extensive experience on labour matters.

As discussed in the preceding sections, there is the need for clear criteria for the selection of LRB members. Unlike the experience of various countries, Ethiopia's Labour Proclamation requires knowledge and skills on labour matters for only two members out of the seven members of the LRB (plus two alternate members). Moreover, there are various gaps highlighted above such as inadequate scope of judicial review, lack of express statement regarding the independence of the LRB, and inadequate clarity with regard to the power of the LRB to deviate from the principles of substantive law in rendering decisions. These problems thus necessitate addressing the gaps through express details in the Proclamation. ■

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