

A REVIEW ARTICLE ON THE SOMALI LABOUR CODE (1972)

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ABSTRACT

The Somali Labour Code of 1972 was designed to protect and further promote the labour rights across the country. This study examines and further assesses the compliance of the Somali Labour Code of 1972 with the international labour standards enshrined in major ILO Conventions and human rights treaties. The study involved the discussion of the international labour standards and examination of the Somali Labour Code and its compliance with the international labour standards set in ILO Conventions and Human Rights treaties. The study employed doctrinal legal research methodology which involved thorough analysis of the legal instruments concerning labour rights and other secondary sources which were textbooks, articles and journals. The study found that The Somali Labour Code of 1972 accepted and recognized most of the labour right enshrined in the ILO conventions, however, there are certain areas that the code does not go in detail. Another finding was that the code does not protect the employers from the illegal completion after the contract of employment ends. The study also found that Somalia has recently ratified ILO conventions and these convention was not domesticated. The study recommends Somali Ministry of Labour and Federal Parliament of Somalia to improve the code and make sure it in line with the major international instruments regarding labour right. It also recommends the government of Somalia and the Federal Parliament to domesticate the recent ILO Convention ratified by the Somali government.

Keywords: Labour Law, Human Rights, International Labour Standards, Domestication. 1.0

INTRODCUTION

Background

International labour standards have been the principal means through which the International Labour Organization has acted since it was created in 1919. They take the form of Conventions or Recommendations. Conventions are international treaties that bind the member States which ratify them. By ratifying them, member States formally commit themselves to putting their provisions into effect, both in law and in practice. Recommendations are not international treaties. They establish non-obligatory guiding principles for national policy and practice. They often supplement the provisions of Conventionsⁱ.

Henceforth, Somalia has a long history of protecting labour rights which started with the recognition of labour rights as a Constitutional rights in the country's first ever Constitution. The Constitution had guaranteed the following rights; Freedom of Associationⁱⁱ, the Right to Strikeⁱⁱⁱ and Work and Workers right^{iv} and after having recognized those rights, a legislative peace was needed to protect and to implement the right enshrined in the Constitution.

Therefore, the Somali labour Code (Law No. 65) which was adopted on 18 October 1972 came on board. The law regulates a wide range of labour relations including; trade unions^v, contract of employment^{vi}, Apprenticeship^{vii}, remuneration^{viii}, working conditions^{ix} Occupational health and safety^x, Settlement of labor disputes^{xi} and avails penalties whoever violates the provisions of the law.

Problem Statement

Labour standards cover a very wide variety of subjects, mainly concerning basic Human Rights at work, respect for safety and health and ensuring that employees are paid for their work. They also extend to questions of good governance, such as labour inspection and basic labour administration.

In an economic context, they are important for raising productivity and competitiveness over the long term. At the national level, labour standards are usually set by laws and regulations. Some can also be found in collective agreements. Normally, these bind only the contracting parties, trade unions and employers but once accepted in some countries, they acquire the force of law for the entire country or economic sector.^{xii} However, although Somali Labour Code of

1972 accepts most of the International Labour Standards, some crucial areas are not covered by the code for instance setting the minimum wages^{xiii} on addition to it failing to protect the use of employer's information after the contract of employment ends or what is known "Restrictive Covenants". Furthermore, on 20 March 2014, the Government of Somalia ratified three fundamental ILO Conventions which are Freedom of Association and Protection of the Rights to Organise Convention, 1948(No.87), The Right to Organise and Collective Bargaining Convention, 1949(No.98) and The worst Form of Child Labour Convention, 1999(No.182),^{xiv} all these convention are not domesticated and incorporated with the Labour Code of 1972.

Study Objectives

The main purpose of the study is to assess the provisions of the Somali Labour code (1972) and examines its compliance with the international labour standards enshrined in the major human right treaties and ILO Conventions. However the study has specific objectives which are:

- i. To discuss the international labour standards governing labour relations;
- ii. To assess and evaluate the compliance of the Somali Labour Code (1972) with the international labour standards governing labour relations, and;
- iii. To make necessary recommendation on the improvement of the Code

Methodology

The study follows a doctrinal legal research, which is the most common methodology employed by those undertaking legal research. By using doctrinal research, the researcher seeks to look into the legal gaps with in the Somalia Labour Code (1972). The study is based on primary and secondary sources of information. The primary sources for this case are the Constitution and other National Statutes. The secondary sources include articles, magazines, textbooks journals both hard copies and online information sources.

INTERNATIONAL LABOUR STANDARDS GOVERNING LABOUR RELATIONS

Introduction

International labour standards are a comprehensive set of legal instruments that establish basic principles and rights at work, with a goal of improving the working conditions of workers on a global scale. The Conventions and Recommendations of the ILO form the international labour standards. Conventions are legally binding international treaties that may be ratified by member states and on the other hand recommendations are non-binding guidelines. In many cases, a convention lays down the basic principles to be implemented by ratifying countries, while a related recommendation supplements the convention by providing more detailed guidelines on how it could be applied. Recommendations can also be autonomous that is to say not linked to a convention.^{xv}

The Role of International Labour Standards

In 1919, the signatory nations to the Treaty of Versailles created the International Labour Organization (ILO) in recognition of the fact that “conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled.” To tackle this problem, the newly founded organization established a system of international labour standards (international Conventions and Recommendations drawn up by representatives of governments, employers and workers from around the world) covering all matters related to work. What the ILO’s founders recognized in 1919 was that the global economy needed clear rules in order to ensure that economic progress would go hand in hand with social justice, prosperity and peace for all. The landmark Declaration on Social Justice for a Fair Globalization^{xvi}, adopted by governments, workers and employers in June 2008, was designed to strengthen the ILO’s capacity to promote its Decent Work Agenda and forge an effective response to the growing challenges of globalization. The Decent Work Agenda which takes up many of the same challenges that the Organization faced at its inception, aims to achieve decent work for all by promoting social dialogue, social protection and employment creation, as well as respect for international labour standards. International labour standards have grown into a comprehensive system of instruments on work and social policy, backed by a supervisory system designed to address all

sorts of problems in their application at the national level. They are the legal component in the ILO's strategy for governing globalization, promoting sustainable development, eradicating poverty, and ensuring that people can work in dignity and safety.^{xvii}

The Right to Associate

Freedom of association implies a respect for the right of all employers and all workers to freely and voluntarily establish and join groups for the promotion and defence of their occupational interests. Workers and employers have the right to set up, join and run their own organizations without interference from the State or any another entity. Employers should not interfere in workers' decision to associate, try to influence their decision in any way, or discriminate against either those workers who choose to associate or those who act as their representatives.

The right to freedom of association at work has come to be seen as an essential means for workers to defend their interests, express their concerns, and protect their entitlements. One human rights commentator has argued that the right to freedom of association is essential to ensure other human rights, such as the right to a decent standard of living, are protected.^{xviii}

A general right to freedom of association is part of the UDHR^{xix}, ICCPR^{xx} and ICESCR^{xxi}. These treaties specifically acknowledge the right to freedom of association at work. Indeed, the ICESCR and the ICCPR make explicit mention of the right to join trade unions and other interrelated rights. It is significant that the UN Committee on Economic, Social and Cultural Rights and the UN Human Rights Committee have interpreted both these treaties as supporting collective bargaining as an aspect of the right to freedom of association.

In addition, the right to freedom of association was recognized in the preamble to the Constitution of the International Labour Organization in 1919.^{xxii} The ILO was set up as part of the Treaty of Versailles at the end of World War I. The body's mission is based on the principles that labour is not merely a commodity and that social justice is necessary for world peace. A new preamble was adopted after World War II, when the ILO became a United Nations body, and freedom of association was again endorsed as a key method for attaining social justice, universal and lasting peace. Indeed, the obligation for member states to protect freedom of association is at times regarded as a requirement of ILO membership.^{xxiii}

Two major conventions that have emerged out of the ILO system, namely the Freedom of Association and Protection of the Right to Organise Convention (No 87) and the Right to Organise and Collectively Bargain Convention (No 98), are of particular importance in guaranteeing the right to freedom of association. These conventions define the scope of this right in more detail. Convention 87 provides protection to freedom of association in two key ways. First, it provides protection for the right of workers and employers to form and join organizations. Second, it provides protection for the autonomy of these organizations, once established, to further the interests of its members. Convention 98, to a significant extent, complements Convention 87. Convention 98 requires that workers enjoy adequate protection against anti-union discrimination.

A substantive function of Convention 98 is to enable collective bargaining between employers and unions. Indeed, under article 4, state parties must take steps to encourage and promote collective agreement. While neither of these conventions make express reference to the right to strike, supervisory bodies have taken the view that it is an integral aspect of freedom of association. These treaties have also been complemented by later instruments dealing with the specific application of freedom of association in particular industries. The ILO conventions and the jurisprudence of the treaty monitoring bodies have mainly been focused on the collective aspects of the right to freedom of association. However, a dichotomized view about the right as either 'individual' or 'collective' is overly simplistic. The ILO conventions clearly recognize the right as simultaneously individual and collective in key areas. For instance, provisions prohibiting discrimination on the basis of union membership are directly enjoyed by individuals, as well as groups or organizations.^{xxiv}

Prohibition of Forced Labour

Forced labour is not a new phenomenon although the incidence of this social phenomenon is on the rise. Certainly, if one is to go by the media highlighted occurrence of human trafficking, there is much truth to this claim. Yet, no accurate measurement of forced labour exists, with estimates putting the figures at twenty-seven million forced labourers on a global scale.^{xxv} Forced labour is a truly global problem affecting every region and all countries in the world whether industrialised or developing, rich or poor. Labour intensive and unregulated industries are affected the most: agriculture, domestic work, construction, mining, quarrying and brick kilns, manufacturing processing and packaging, entertainment and prostitution.^{xxvi}

The International Human right laws prohibit forced labour and regarded it as violation of the basic human rights. It is seen in the major human rights declarations and treaties such as UDHR^{xxvii}, ICCPR^{xxviii} and later adopted the 1957 (No.105) Convention on the abolition of forced labour.

Under ILO, Article 2(1) of the ILO Forced Labour Convention, 1930 (No. 29) forced labour is defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered him or herself voluntarily”. According to this definition, there are four legal elements to forced labour:

- i. Work or service** which refers to any type of work, service and employment occurring in any activity, industry or sector including in the informal economy. It also encompasses activities that may be illegal or not considered as “work” in certain countries, such as begging or prostitution. Forced labour can occur in both the public and private sectors.
- ii. Any person** who is to this case referred to as all human beings, adults and children, nationals and non-nationals, including migrants in irregular situations.
- iii. Menace of any penalty;** this should be understood in a very broad sense. It covers penal sanctions as well as a wide range of means of coercion used to compel someone to perform work or a service against their will. These include various forms of direct or indirect coercion, such as the actual or credible threat of:
 - a) physical, psychological or sexual violence against a worker or family or close associate;
 - b) retaliation;
 - c) imprisonment or other restriction of movement;
 - d) financial penalties;
 - e) withholding wages or other promised benefits;
 - f) withholding valuable documents, such as identity documents or residence permits;
 - g) debt bondage or manipulation of debt;
 - h) denunciation to authorities (such as police or immigration) and deportation;
 - i) dismissal from current employment;
 - j) exclusion from future employment;
 - k) exclusion from community and social life

- l) removal of rights or privileges (such as promotion, transfer, access to new employment, social benefits);
- m) deprivation of food, shelter or other necessities;
- n) shift to even worse working conditions; and
- o) loss of social status.^{xxix}

iv. Lack of voluntary offer: In the definition, the term “not offered himself/herself voluntarily” refers to workers not having given their free and informed consent to enter into an employment relationship and/or their inability to withdraw their consent at any time; that is to say to freely leave the employment. The free and informed consent to work must exist throughout the labour relationship. Certain practices may have an impact on the nature of the labour relation and vitiate the consent that was initially given. An employer or recruiter, for example, could interfere with this freedom by making false promises to induce a worker to take a job that they would not otherwise have accepted. Another example would be a worker who did accept to work freely but was prevented from revoking the initial consensual agreement. Circumstances that potentially give rise to involuntary work include, among others:

- a) birth or descent into “slave” or bonded status;
- b) physical abduction or kidnapping;
- c) sale of person into the ownership of another;
- d) physical confinement in the work location, in prison or in private detention;
- e) psychological compulsion, such as an order to work backed up by a credible threat of a penalty for non-compliance;
- f) induced indebtedness (for example by falsification of accounts, inflated prices, reduced value of goods or services produced, or excessive interest charges);
- g) deception or false promises about types of work, terms of work, activities or employers;
- h) withholding and non-payment of wages;
- i) retention of identity documents or other valuable personal possessions; and
- j) no or limited freedom to terminate the work contract.^{xxx}

Exceptions

Convention No. 29, in Article 2(2), also provides for exceptions to the definition of forced labour by specifically referring to five situations in which compulsory labour may be imposed:

- a) work of a purely military character exacted in virtue of compulsory military service;
- b) normal civic obligations;
- c) work or service exacted from any person as a consequence of a conviction in a court of law, carried out under the supervision of a public authority;
- d) work exacted in cases of emergency such as wars or natural calamities and
- e) Minor communal services in the direct interest of the community involved.

Each of these exceptions is subject to the observance of certain conditions that define their limits and if these limits are not respected, it can amount to a situation of compulsory labour imposed by the State.^{xxxii}

State-imposed Forced Labour

The ILO Abolition of Forced Labour Convention, 1957 (No. 105) complements Convention No. 29 and prohibits Member States from having recourse to any form of compulsory labour, including compulsory prison labour, in five specific circumstances:

- i. as a means of political coercion or as a punishment for expressing political views;
- ii. as a sanction for participating in strikes;
- iii. as a means of labour discipline;
- iv. as a means of racial, social, national or religious discrimination; and
- v. as a method of mobilizing labour for economic development purposes.^{xxxiii}

Non-Discrimination

It should be noted that millions of women and men around the world are denied access to jobs and training, confined to certain occupations or offered lower pay simply because of their special needs, ethnicity, indigenous or tribal status, race, religion, sex, sexual orientation, gender identity, political or other opinion, real or perceived HIV/AIDS-status or other status. The discrimination that the groups mentioned above go through in the labour market make them highly vulnerable to exploitation and abuses such as forced labour. Barriers to decent jobs often compel parents belonging to an ethnic minority to resort to the labour of their children to make ends meet. Though discrimination can have many manifestations, it is often subtle and insidious, undermining peoples' dignity and their future. Discrimination deprives people of

their voice at work and their ability to fully participate, it stifles opportunities, wasting the human talent needed for economic progress and accentuates social tensions and inequalities and it is at times considered as a basis for Social Exclusion and Poverty.^{xxxiii}

Since discrimination is human rights abuse, the United Nations adopted a series of human rights law including declarations and treaties such as UDHR^{xxxiv} and ICESCR^{xxxv} in an effort to combat and eradicate discrimination. The struggle against discrimination and gender inequality is also at the heart of the ILO and the subject of two fundamental conventions: the Equal Remuneration Convention, 1951 (No. 100) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Many other ILO instruments, such as the Workers with Family Responsibilities Convention, 1981 (No. 156), the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and the Domestic Workers Convention, 2011 (No. 189) deal with specific aspects of equality and non-discrimination.^{xxxvi}

Combating discrimination is an essential part of promoting decent work, and success on this front is felt well beyond the workplace. Issues linked to discrimination are present throughout the ILO's sphere of work. By bolstering freedom of association for example the ILO seeks to prevent discrimination against trade union members and officials. Programmes to fight forced labour and child labour include helping girls and women trapped in prostitution or coercive domestic labour. Non-discrimination is a main principle of the ILO's code of practice on HIV/AIDS and the world of work. ILO guidelines on labour law include provisions on discrimination. Violence and harassment, a serious manifestation of discrimination, is also being addressed by the ILO and its constituents.^{xxxvii}

Prohibition of Child Labour

Child labour is a global human and labour rights issue that affects us all. Child labour denies girls and boys of their right to a childhood, to a good education and to grow up safe and protected from harm. These children work long hours, for little or no pay and have no knowledge of their rights. About half of them work in hazardous work places and dangerous situations, sometimes resulting in injuries and illnesses that can have life-long effects on children, or may even be life-threatening.^{xxxviii}

The abolition of child labour is one of the principles on which the International Labour Organization (ILO) was founded in 1919, and has remained a constant concern ever since. The ILO's Centenary year presents an important occasion to look back at the history of efforts made to tackle the problem and the challenges which remain in achieving the goal of a child labour free world.^{xxxix}

According to the United Nations, a child is anyone under the age of 18.^{xl} Child labour is work that children should not be doing because they are too young, or if they are old enough to work, because it is dangerous or unsuitable for them. Whether or not work performed by children is defined as child labour depends on the child's age, the hours and type of work and the conditions in which the work is performed.^{xli}

Establishment of the ILO and abolition of Child Labour Set as an Aim

The aftermath of the First World War saw the opening in January 1919 of the Paris Peace Conference, which established a Commission on International Labour Legislation. This Commission recommended the creation of the ILO to promote peace through social justice and to overcome conflicts of interest through dialogue and cooperation. The ILO started functioning that same year bringing together employers' and workers' organizations and governments at the international level in a search for rules and policies from which all could benefit. The rules established by the ILO – International Labour Standards were to be legal instruments setting out basic principles and rights at work.^{xlii}

Conventions and Protocols were legally binding international treaties that could be ratified by member States, whilst Recommendations were to serve as non-binding guidelines addressed to all. The Constitution of the ILO was contained within the Treaty of Versailles adopted by the Peace Conference. As one of the ILO's aims it set "the abolition of child labour and the imposition of such limitations on the labour of young persons as shall permit the continuation of their education and assure their proper physical development". The regulation of children's work was on the agenda of the first International Labour Conference of the ILO in Washington DC in November 1919. Under the heading "Employment of children", the agenda specified three issues: the minimum age of employment; work during the night; and work in unhealthy processes.^{xliii}

ILO Conventions on Child Labour

The two ILO Conventions on child labour are Convention No.138 on Minimum Age and Convention No. 182 on the Worst Forms of Child Labour. These Conventions are “fundamental” Conventions. This means that, under the ILO Declaration on Fundamental Principles and Rights at Work, all ILO member States have an obligation to respect, promote and realize the abolition of child labour, even if they have not ratified the Conventions in question.

Minimum Age Convention, 1973 (No. 138)

This fundamental convention sets the general minimum age for admission to employment or work is 15 years (13 for right work) and the minimum age for hazardous work at 18 (16 under certain strict conditions). It provides for the possibility of initially setting the general minimum age at 14 (12 for right work) where the economy and educational facilities are insufficiently developed. ILO Convention No. 138 has also been widely ratified by ILO member States.

Worst Forms of Child Labour Convention, 1999 (No. 182)

This fundamental convention defines a "child" as a person under 18 years of age. It requires ratifying states to eliminate the worst forms of child labour, including all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; child prostitution and pornography; using children for illicit activities, in particular for the production and trafficking of drugs; and work which is likely to harm the health, safety or morals of children. The convention requires ratifying states to provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. It also requires states to ensure access to free basic education and, wherever possible and appropriate, vocational training for children removed from the worst forms of child labour.

ILO Convention No. 182 is the first ILO Convention to achieve universal ratification. It was also the most rapidly ratified Convention in the history of the ILO, with the majority of ratifications occurring within the first 3 years after it was adopted in 1999.

Minimum Wages

Minimum wages have been defined as the minimum amount of remuneration that an employer is required to pay wage earners for the work performed during a given period which cannot be reduced by collective agreement or an individual contract. Following this definition, minimum wages exist in more than 90 per cent of the International Labour Organization's (ILO) member States^{xliv} and also enshrined in the major human rights laws.^{xlv}

The purpose of minimum wages is to protect workers against unduly low pay. They help ensure a just and equitable share of the fruits of progress to all, and a minimum living wage to all who are employed and in need of such protection. Minimum wages can also be one element of a policy to overcome poverty and reduce inequality, including those between men and women. Minimum wage systems should be defined and designed in a way to supplement and reinforce other social and employment policies including collective bargaining which is used to set terms of employment and working conditions.^{xlvi}

Different Minimum Wage Rates

Across the world, minimum wage systems are diverse and many approaches are possible, depending on the needs and choices of individual countries. Some countries have only one minimum wage applied to all employees in the country; others have multiple minimum wage rates by sector of activity, occupation, or geographical region.^{xlvii}

Simple systems are easier to operate, communicate and enforce, but offer less scope to take into account the particular circumstances of different regions or sectors within a country while More complex systems can be better tailored at the circumstances of different sectors or regions, but require more institutional capacity. Systems that are overly complex tend to lose their effectiveness, and may in some instances interfere with collective bargaining between workers and employers.

Compliance with the principle of equal remuneration for work of equal value should be ensured, particularly when minimum wages are set by sector or occupational category. There may be discrimination for example, when minimum wages are systematically lower in female-dominated sectors. Similarly, it is important to avoid wage discrimination against migrant workers and workers with disabilities. There is also a link between equal pay for work of equal

value and the existence in some countries of reduced minimum wages applicable to young workers below a certain age, set with a view to facilitating their entry into the labour market.

Within the specific circumstances and policy objectives of each country, it is recommended to keep minimum wages "as complex as necessary but as simple as possible", and to avoid wage differentiation between different groups of workers which is not based on objective valid reasons, such as educational objectives, work experience or skills. Minimum wage systems should also leave space for the determination of wages through collective bargaining.^{xlviii}

COMPLIANCE OF THE SOMALI LABOUR CODE OF 1972 WITH THE INTERNATIONAL LABOUR STANDARDS

Introduction

Somalia has become the second country in Africa to ratify International Labour Standards seeking to end violence and harassment in the world of work. The Somali Minister of Labour and Social Affairs, Duran Farah, presented the instrument of ratification of the Violence and Harassment Convention, 2019 (No. 190) to ILO Director-General, Guy Ryder.^{xlix} He also presented the ratification instruments of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144); the Occupational Safety and Health Convention, 1981 (No. 155); the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187); the Migration for Employment (Revised) Convention, 1949 (No. 97); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); and the Private Employment Agencies Convention, 1997 (No. 181).

The seven conventions are the first ratifications by Somalia since 2014 and bring to 26 the total number of Conventions Somalia has ratified. Convention No. 190 calls on ratifying States to respect, promote and realize the right of everyone to a world of work free from violence and harassment and to this end adopt an inclusive, integrated and gender-responsive approach for the prevention and elimination of violence and harassment in the world of work. The seven Conventions will enter into force in Somalia on 8 March 2022.

Although it was adopted earlier, The Somali Labour Code is in line with most international labour standards and in particular those accepted and ratified by the Somalia government. However, there are some labour standards that the code ignored. Therefore, this section is a discussion of the international standards that the code recognizes and accepts and those neglected by the code.

International Labour Standards Recognized by The Somali Labour Laws

The Federal Constitution of 2012 and Labour Rights

The Somali Federal Constitution of 2012 has guaranteed most of the labour standards discussed in chapter two. It has not only guaranteed but also considered them as a Constitutional right which means whenever gets violated a legal remedy should be sought in the courts of law. The Constitution governs labour relations in different areas. Article 24(1) of the Constitution recognizes that everyone has the right to fair labour relations. Furthermore, since Trade Unions are important for workers to protect and to further promote their rights, paragraph 2 of the Article guarantees the right to form and join trade unions. The paragraph reflects this:

“Every worker has the right to form and join a trade union and also participate in the activities of a trade union”. The article also gives more rights and powers to the employees, under paragraph 3 of the article allows the employees to take further action whenever they feel their interest and right are at risk.

The Constitution under Article 24 (4) pays attention to women as they are vulnerable to special kinds of abuses. The paragraph says: *“All workers, particularly women, have a special right of protection from sexual abuse, segregation and discrimination in the work place. Every labour law and practice shall comply with gender equality in the work place”*.

Labour Standards Provided by the Somali Labour Code (1972)

The Somali Labour Code of 1972 provides a variety of right to the employees. It all proclaims for the protection of the right to associate, providing a decent working conditions to the workers and providing a decent minimum wages.

- Right to Associate

The right to associate or trade unions according to the code has been recognize as fundamental human rights and is seen many human right treaties such as UDHR, ICESCR and ILO Conventions. Trade unions also called labour unions have been defined as “an organized association of workers in a trade, group of trades, or profession, formed to protect and further their rights and interests.

It is also defined as: An organization whose membership consists of workers and union leaders united to protect and promote their common interests. A trade union is an organisation made up of members (a membership-based organisation) and its membership must be made up mainly of workers.¹

However, Article 9 of Somali Labour code provides the organization and purpose of trade unions. The article says: “*The organization of labour unions shall be free*”^{li} it has also stated the purpose in which the trade union was established. it says: “*the trade unions shall have as its purpose to study, protect and regulate the relation between employers and employees so as safeguard the right of the workers*”.^{lii} Again, article 10 of the code clarifies on the ways in which the trade unions may be established. it provides that “*Persons engaged in the same occupations, trades or industry, or related occupation, trades or industries may establish a trade union.*”^{liii} The article also guarantees the right to a trade unions where *every person is free to join a trade union with the framework of his occupation.*^{liv}

The code also regulates variety of areas regarding trade unions, these include autonomy^{lv}, contents of the Constitution of trade union^{lvi}, civil and criminal liability of trade unions^{lvii}, functions of trade unions^{lviii}, trade union committee^{lix}, rights of trade unions^{lx}, and obligation of trade unions.^{lxi}

- Non-discrimination

Discrimination in the workplace is based on certain prejudices and occurs when an employee is treated unfavourably because of gender, sexuality, race, religion, pregnancy and maternity or disability. However, the Somali Labour Code (1972) has tried to eliminate discrimination in regard to workplace. The code prohibits discrimination in workplace in many occurrences. Under article 3, the code guarantees the right of everyone to follow any occupation of his choses. The article says; “*Every person has the right to follow any occupation he chooses and has the right to equality and treatment in respect of employment and occupation without*

discrimination on the basis of language, race, colour, sex, religion, political opinion, national extraction or social origin and has the duty to offer such equality to other persons".^{lxii} The code also prohibits discrimination in regard to freedom of association, article 15(1) of the code provides that; *"it shall not be lawful to engage in any act of discrimination or any act restricting the right of freedom of association"*. Another crucial area that the code has highlighted is the discrimination in regard to remuneration. Article 70(2) of the code provides that; *"in fixing rates of remuneration, no discrimination shall be made on account of age, sex, nationality, and religion or political or trade union activities"*.

- Prohibition of Force Labour

The Somali Labour Code (1972) protects and further grantee the freedom of labour. The code prohibits forced and compulsory labour in any forms^{lxiii}, however it makes some exceptions in regard to forced labour. The following shall not apply to forced labour;

- a. Any work or service required by law in respect of service including the organization for national defence or in case of national calamity;*
- b. Any work or service required of a prisoner in pursuance of a sentence passed by competent court.*^{lxiv}

- Prohibition of Child Labour

Chapter three of the code further provides for the protection of women and children who seem to be vulnerable in regard to workplace. For example Article 90(1) orders for prohibition of some kind of works (which is hard) for women and children. The article says; *"The secretary may, by degree, prescribe the types of work prohibited for women, expectant and nursing mothers, children and young persons"*. The same article in paragraph 2 differentiates between child and young persons, it says; *"for the purpose of this chapter, the term "children" means the persons of either sex who have not attained the age of 15 years and the terms "young persons" means those who have attained the age of 15 years but have not attained the age of 18 years"*^{lxv}. However, it shall not be unlawful to employ a child under the age of 15 years if:

- a. pupils attending public and state-supervised trade schools or non-profit-making trainings workshops;*

- b. *members of the employer's family and his relatives if they are living with him and are supported by him and are employed on work under his order in undertaking in which no other persons are employed.*^{lxvi}

Existing Gap with the Somali Labour Code of 1972

Setting the Minimum Wages

As discussed in the previous chapters, the minimum wage system across the world are based on two approaches; simple system and complex systems. Under the simple system, countries have only one minimum wage applied to all employees in the country while multiple minimum wage rates by sector of activity, occupation or geographical region. However, the Somali labour code does not follow either system, he neither adopted one minimum wages applied to all occupation across the country, nor adopted multiple minimum wages rates in regard to different occupations. It is instead assigned onto the task of determination of the minimum wages by The Minister of Labour through labour commission, the code says: “Taking into consideration the economic and social conditions of the country and in consistency with the provisions of article 71, the minimum wages for any category of workers may be determined by degree of minister, having heard the central labour commission, and with the approval of the council of secretaries”.^{lxvii}

Restrictive Covenant

Every business has information that it considers both integral and invaluable to its success. Restricting the use of this information by employees after their employment has ended may be vital to the protection of business or customer contacts. An ex-employee who has knowledge of an organization's technology, strategic information or customers or clients may be an attractive asset to a competitor seeking to encroach upon its market.^{lxviii}

Restrictive covenants are contractual terms designed to protect a business from competition by a former employee that could harm the business. In the absence of contractual restrictive covenants, former employees except fiduciary employees are free to compete with their former employer, provided that confidential information of the former employer is not used.^{lxix}

However, an employer may seek to protect the use of this information both during employment and after the employment ends through the use of what are known as restrictive covenants. Many employers include these clauses in the contracts of employment of senior or highly skilled staff at the commencement of the employment relationship. Having such clauses set out in the contract from the outset may help to deter employees from joining competitors and may warn off potential new employers.^{lxx}

- Types of Restrictive Covenants

The standard types of restrictions which can be used by employers are:

- a) **Non-competition covenants:** restrictions on the former employee working in similar employment for a competitor;
- b) **Non-solicitation covenants:** which prevent poaching of clients/customers/suppliers of the former employer;
- c) **Non-dealing covenants:** which prevent a former employee from dealing with former clients/customers/suppliers, regardless of which party approached the other;
- d) **Non-poaching covenants:** which prevent an employee poaching former colleagues.^{lxxi}

The Somali Labour Code (1972) doesn't contain articles in regard to restrictive covenant although it falls under the principle "*pacta sunt servanda*" which literally means contracted must be abided by. This principle has been enshrined in the Somali Civil Code and in the Islamic Jurisprudence since the country adopted Islam as the state religion.^{lxxii}

Domestication of the Recent ILO Conventions

Somalia has become the second country in Africa to ratify International Labour Standards seeking to end violence and harassment in the world of work. The Somali Minister of Labour and Social Affairs, Duran Farah, presented the instrument of ratification of the Violence and Harassment Convention, 2019 to ILO Director-General, Guy Ryder. The seven conventions are the first ratifications by Somalia since 2014 and bring to 26 the total number of Conventions Somalia has ratified. Convention No. The seven Conventions will enter into force in Somalia on 8 March 2022.^{lxxiii}

All these conventions needs domestication and incorporation with the labour code. the Constitution of the country should also go in line with these international instruments according to article 140 of the Somali Federal Constitution of 2012.^{lxxiv}

CONCLUSION

Introduction

This chapter presents the findings and recommendations for improvement.

Findings

The study found the following:

1. The Somali Labour Code of 1972 has accepted and recognized the major labour standards provided by the international instruments regarding labour rights.
2. It is also reflected that the code is missing certain curial areas, for instance the code does not protect the employers from illegal competition after the contract of employment is terminated.
3. The study also found that the recent ILO Conventions ratified by the Somalia Government was not domesticated.
4. It also found that the Somali Federal Constitution of 2012 is not in line with the recreant ILO Convent that Somalia accepted and ratified.

Recommendations

- Recommendation for the improvement of the Federal Constitution of 2012 in regard to labour right and to make sure it in lines with the recent ILO conventions signed and ratified by the Somali government.

It was observed from the finding that the provisional Federal Constitution of 2012 is not in line with the recent ILO Conventions ratified by the Somali government. Henceforth, the Somali government is recommended to incorporate those convention into its Constitution and recognized it as Constitutional rights for both national and foreigners.

- Recommendation for the Improvement of the Somali Labour Code of 1972

It was also observed from the finding that the Somali Labour Code of 1972 did not regulate certain areas which is important in regard to labour relations. The study highlighted the areas needed for improvement for instance the Ministry of Labour and the parliament of the federal government of Somalia is recommended to improve the code and make necessary amendments in regard to areas that the study has highlighted.

- Recommendation for Domestication of the Recent ILO Conventions

It was also observed from the finding that the recent ILO Conventions was not domesticated and not incorporated with national laws regarding labour. Hence recommendations go to the Ministry of Labour to domesticate and incorporate the recent ILO Conventions ratified by the Somali government into the Somali Labour Code of 1972.

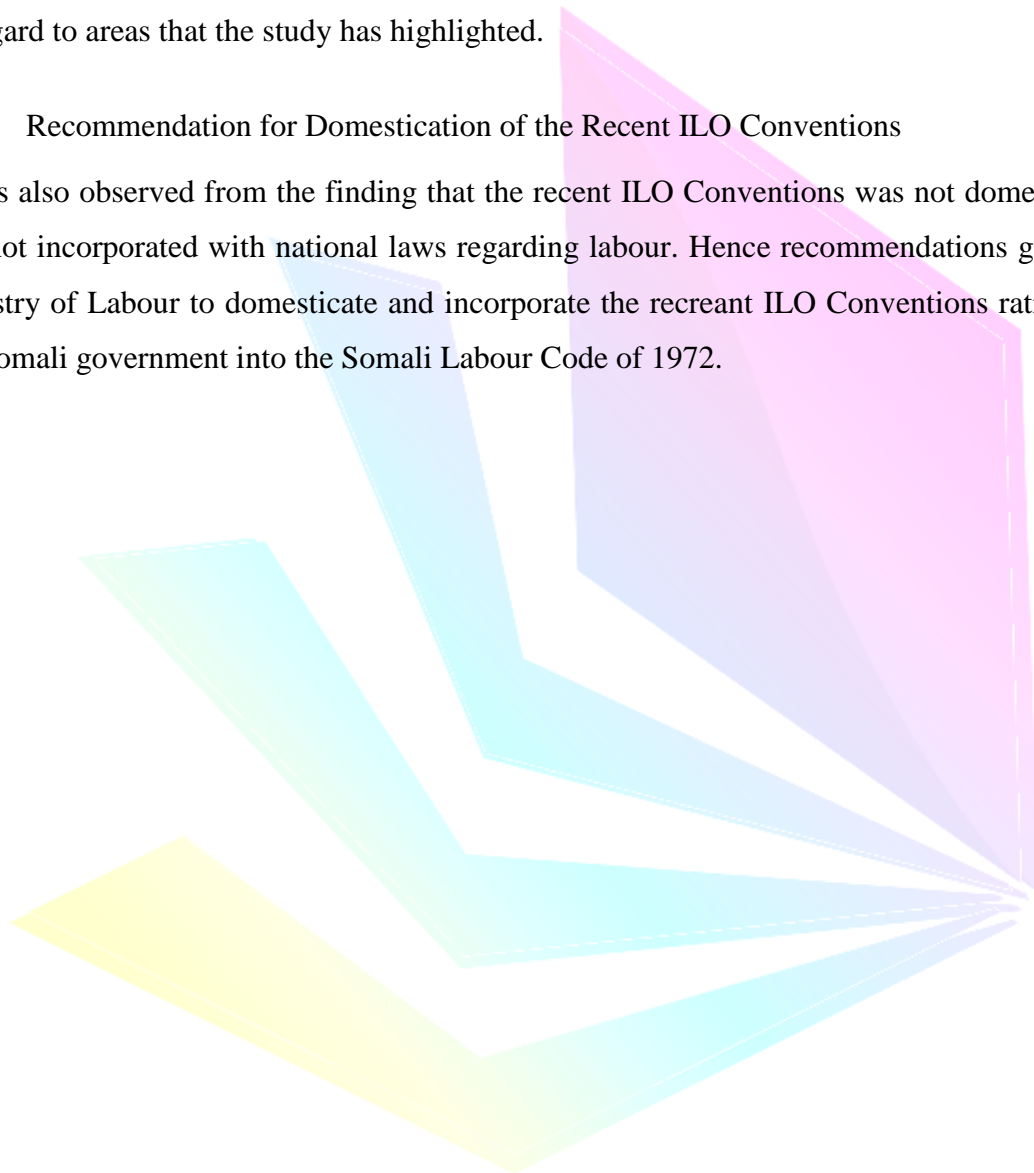


TABLE OF INSTRUMENTS

National Instruments

The 1960 Constitution

The Federal Constitution of Somali, 2012

The Somali Labour Code, 1972

International Instruments

Universal Declaration of Human Rights, 1948

The International Covenant on Economic, Social and Cultural Rights, 1966

The International Covenant on Civil and Political Rights, 1966

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Forced Labour Convention, 1930 (No. 29) (and its 2014 Protocol)

Abolition of Forced Labour Convention, 1957 (No. 105)

Minimum Age Convention, 1973 (No. 138)

Worst Forms of Child Labour Convention, 1999 (No. 182)

Equal Remuneration Convention, 1951 (No. 100)

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

TABLE OF ACRONYMS

UDHR:	Universal Declaration of Human Rights
ICCPR:	The International Covenant on Civil and Political Rights
ICESCR:	International Covenant on Economic, Social and Cultural Rights
ILO:	International Labour Organization
CAT:	Convention on the Rights of the Child

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ⁱⁱ See Article 19 of the 1960 Constitution of Somalia.

ⁱⁱⁱ Ibid, Article 20.

^{iv} Ibid, Article 55.

^v See Article 9 -27 of the Somalia Labor Code 1972.

^{vi} Ibid, Article 31-57.

^{vii} Ibid, Article 58-69.

^{viii} Ibid, Article 70-84.

^{ix} Ibid, Article 85-100.

^x Ibid, Article 101-105.

^{xi} Ibid, Article 154-146.

^{xii} Manila, Philippinesm “ CORE LABOR STANDARDS HANDBOOK, October 2006. Asian Development Bank.

^{xiii} See Article 72 of the Somali Labour Code.

^{xiv} International Labour Organization website https://www.ilo.org/global/standards/WCMS_238790/lang--en/index.htm

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^{xvi} See section 3.

^{xvii} Ibid

^{xviii} Hutchinson, Zoé, “The Right to Freedom of Association in the Workplace: Australia's Compliance with International Human Rights Law” Pacific Basin Law Journal, 27(2). 2010 Peer reviewed. p.126

^{xix} Article 23(4): “*Everyone has the right to form and to join trade unions for the protection of his interests*”.

^{xx} Article 22 (1): “*Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests*”.

^{xxi} Article 8(1) (a): “*The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others*”.

^{xxii} *Whereas universal and lasting peace can be established only if it is based upon social justice;*

And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required; as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures

^{xxiii} Hutchinson, Zoé, “The Right to Freedom of Association in the Workplace: Australia's Compliance with International Human Rights Law” *Pacific Basin Law Journal*, 27(2). 2010 Peer reviewed. p.126.

^{xxiv} *Ibid*

^{xxv} “Forced Labour: Definition, Indicators and Measurement”. InFocus Programme on Promoting the Declaration on Fundamental Principles and Rights at Work. International Labour Office. by: Kanchana N. Ruwanpura. and Pallavi Rai. p.3

^{xxvi} “Mini Action Guide”, ITUC - International Trade Union Confederation, May 2008. p.5

^{xxvii} Article 4: “*No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms*”.

^{xxviii} Article 8 (3) (a): “*No one shall be required to perform forced or compulsory labour*”.

^{xxix} ILO Toolkit on Developing National Action Plans on Forced Labour. p.1

^{xxx} *Ibid*, p.2

^{xxxi} *Ibid*, p.3.

^{xxxii} *Ibid*, p.3.

^{xxxiii} International Labour Organization <https://www.ilo.org/global/topics/dw4sd/themes/gender-equality/lang-en/index.htm#1>

^{xxxiv} Article 7: “*All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination*”.

^{xxxv} Article 3: “*The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant*”.

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^{xxxvii} *Ibid*

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^{xxxix} *Ibid*

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^{xliii} *Ibid*,

^{xliv} International Labour Organization. <https://www.ilo.org/global/topics/wages/minimum-wages/definition/lang-en/index.htm>

^{xlv} Under UDHR, Article 23(3): “*Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection*”.

Under ICESCR, Article 7: *“The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (a) Remuneration which provides all workers, as a minimum, with:*

- i. *Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*
- ii. *A decent living for themselves and their families in accordance with the provisions of the present Covenant.*

xlvi Ibid

xlvi ILO, “Minimum Wages Policy Guide”, p.1-2

xlvi Ibid.

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¹ Yusuf. Z., “Labour Law Teaching Materials” Puntland State University, 2021. Unpublished. p. 42

^{li} See Article 9(1) of the Somali Labour Code 1972

^{lii} Ibid, Article 9(2)

^{liii} Ibid, Article 10(1)

^{liiv} Ibid, Article 10(2)

^{liv} Ibid, Article 12

^{lvi} Ibid, Article 13

^{lvii} Ibid, Article 16

^{lviii} Ibid, Article 17

^{lix} Ibid, Article 19

^{lx} Ibid, Article 25

^{lxi} Ibid, Article 26

^{lxii} Ibid, Article 3 (1)

^{lxiii} Ibid, Article 6

^{lxiv} Ibid

^{lxv} Ibid, Article 90 (2)

^{lxvi} Ibid, Article 93 (1)

^{lxvii} Ibid, Article 71

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^{lxxi} Ibid

^{lxxii} See article 2 of the Federal Constitution of Somalia 2012

^{lxxiii} ILO Official Website, https://www.ilo.org/global/standards/WCMS_781495/lang--en/index.htm , 19 April 2021

^{lxxiv} Article 140: *“Until the treaty imposing a treaty obligation in effect on the date that this Constitution comes into force expires or is amended, that treaty obligation remains in effect”.*