

ACCESSES TO HOUSE OF FEDERATION AND ITS PROCEDURAL REQUIREMENTS IN SEEKING FOR CONSTITUTIONAL REMEDIES IN ETHIOPIA

Written by *Habtamu Birhanu*

LLM Candidate at Addis Ababa University, College of Law and Governance Studies in Constitutional and Public Law Stream

ABSTRACT

This article examines access to the House of Federation and its procedural requirements in seeking for constitutional remedies for the violation of constitutional rights in Ethiopia. Its emphasis is thus, firstly to examine the roles of House of Federation in the protection of constitutional rights. After outlining the roles of house of federation in the protection of constitutional rights, article will proceed to examine the procedural requirements to access the House of Federation in seeking for constitutional remedies for the violation of constitutional rights. Finally, the article scrutinizes available constitutional remedies for the violations of constitutional rights. Thus, the study is limited in its scope to the analysis of the roles of the House Federation in constitutional rights protection in general and access to the House Federation with its procedural requirements in seeking for constitutional remedies in particular. Methodologically, the paper employed desk-based research method. In doing so, it analyzes available literatures, constitutional provisions, Council of Constitutional Inquiry Establishment Proclamation, and proclamation enacted to consolidate the roles of House of Federation and other relevant legislations as the case may be and thus, it does not make case-based analysis.

Keywords: *Constitutional Remedy, Constitutional Rights, House of Federation, Procedural Requirements*

INTRODUCTION

The very emphasis given to constitutional rights in the contemporary legal development of Ethiopia is vehemently recognized in the preamble of the constitution, which states the full respect of individual and people's fundamental freedoms and rights as foundation for building a political community founded on the rule of law and capable of ensuring a lasting peace guaranteeing a democratic order. Accordingly, the FDRE Constitution devoted one third of its total provisions dealing with human rights and fundamental freedoms under *human rights* and *democratic rights* catalogues.ⁱ The Constitution also imposes the responsibility and duty to the respect and enforce the fundamental rights and freedoms on the federal and state legislative, executive and judicial bodies at all levels.ⁱⁱ

Structurally, federal legislative is bicameral that constitute House of People Representative and House of federation. Being among the organs of the federal government in general and legislative organ in particular on one hand and the guardian of the constitution on the other hand, House of Federation is also duty bound to protect and respect constitutional rights of the citizens in discharging its constitutional responsibilities and functions. This being the case, there is no scholarly works examining the exact constitutional duty of the House of Federation in the protection of constitutional rights in general and constitutional remedies in particular.ⁱⁱⁱ Accordingly, this study is new in its nature since it attempts to uncover issues that received little attention in Ethiopian legal development.

The paper has three interrelated objectives. These are, firstly, examining constitutional role the House of Federation in protecting constitutional rights in Ethiopia. Secondly, it examines procedural requirements in accessing the House of Federation in seeking constitutional remedies. Finally, the paper attempts to assess constitutional remedies for constitutional rights violation in Ethiopia. Having these objectives in mind, the paper consists of four sections. Section one makes an overview of normative frameworks for human rights protection in Ethiopia. Section two presents the roles of the House of Federation in constitutional rights protection. Access to House Federation and its procedural requirements in seeking for constitutional remedies for constitutional rights violation will be discussed under section three. Finally, the paper comes to an end with conclusion under section four.

OVERVIEWING A NORMATIVE FRAMEWORK FOR THE PROTECTION OF CONSTITUTIONAL RIGHTS IN ETHIOPIA

Fundamental Rights and Freedoms

Under FDRE Constitution, the very significance of human rights is clearly recognized in the preamble of the constitution, which states the full respect of individual and people's fundamental freedoms and rights as foundation for building a political community founded on the rule of law and capable of ensuring a lasting peace guaranteeing a democratic order.^{iv} It, following international human rights model, recognizes and guarantees a comprehensive list of human rights.^v It recognizes a fairly broad catalogue of human rights.^{vi} In its chapter three, it offers a long list of rights that are divided into two categories, namely that of 'Human Rights' and 'Democratic Rights'^{vii} and this list ranges from the most classic rights (e.g. life, liberty, property) to the most recent ones (e.g. Self-determination and environment rights).^{viii} It robustly enshrines several civil and political rights, most of which are the carbon copies of the provisions of the UDHR.^{ix} In this regard, about one-third of its provisions cover matters related to human rights.^x It further elevates the horizon of human rights through reference to international human rights instruments as thresholds for the interpretation of its human rights provisions.^{xi} Ethiopia, being party to international community, has ratified various international human rights instruments.^{xii} In this regard, among African countries, Ethiopia is notable for having signed numerous major international treaties on human rights and for having expressly made such treaties part of its domestic law.^{xiii} The Constitution takes all these international human rights agreements ratified by Ethiopia to be an integral part of the law of the land, which give assurance for Ethiopian peoples to exercise the rights provided under international human rights treaties adopted by Ethiopia.^{xiv} Moreover, the constitution imposes the responsibility and duty to respect and enforce the provision of human rights chapter on all federal and state legislative, executive, and judicial organs at all level.^{xv} It should also be noted that the fundamental rights and freedoms provisions are placed before those regulating the organization of the state and this appears to suggest privileged position given, at least theoretically, to the people-the beneficiaries of rights and freedoms.^{xvi} It is true that human rights are at the center of the current Ethiopian laws, policies, and programs.^{xvii} More importantly, the cumulative effect of the five fundamental principles of constitution is that they create a hospitable

environment for a better protection of human rights in Ethiopia.^{xviii} Such recognition is of immense significance in setting the standards and laying down the foundation for the growth of a vibrant human rights culture.^{xix} Thus, the constitutional bill of rights provides the fundamental legal framework for the protection of human rights in Ethiopia.^{xx} This shows explicit commitment of the government to ensure protection of constitutional rights. However, the issue of implementation of human rights is subject to different criticisms by different authorities.^{xxi} However, since the coming to power of new Prime Minister Dr. Abiy Ahmed, there are various measures being taking so as to assure and guarantee constitutional rights of citizens.^{xxii}

Interesting point in relation to human rights in Ethiopia is that, contrary to traditional classification of rights,^{xxiii} the constitution classify the fundamental rights and freedoms into human rights (Article 14-28)^{xxiv} and democratic rights (Article 29-44)^{xxv}, without identifying the practical consequence of such distinction. One may ask the practical implications of this classification. From practical point of view, it seems that there is no a formula into the classification since there is no hierarchical difference as to the practical protection between the two categories of rights. Hence, compartmentalization of rights as human rights on the one hand and democratic rights on the other is not watertight.^{xxvi} However, at theoretical level, article 10 of the Constitution gives us the impression that human rights are those that emanate from the nature of mankind, and democratic rights as those inherent in democracies.^{xxvii} It is further explained that “human rights in FDRE Constitution are entitlements bestowed on us by virtue of being human, democratic rights are rights we claim only as a consequences of our being members of a political community.”^{xxviii} Furthermore, human rights are to be accorded a relatively more robust protection as ‘inviolable and inalienable’ rights as compared with democratic rights which are just to be ‘respected’.^{xxix} It can also be contended that the gist of classifying fundamental rights and freedoms into human and democratic rights is that while human rights are applicable to all human being, democratic right are applicable only to the nationals. But, the assumption that all rights under democratic rights heading are citizen-specific is unfounded and erroneous.^{xxx} The ways many rights under democratic rights heading are framed help us nothing to reach at the conclusion that the enjoyment all democratic rights are limited to Ethiopian national.^{xxxi} It is true that all human rights are equally vital for a complete and meaningful human life and the Ethiopian constitution in this regard does not imply any hierarchy among its bill of rights.^{xxxii} Moreover, limiting the application of rights to

citizens will be inconsistent with international human rights instruments adopted by Ethiopia.^{xxxiii}

The constitution has also come up innovative right which is the most controversial right in the history of the country. This is the right to self-determination up to and including secession of ‘nations, nationalities and people’ up on whom sovereignty resides.^{xxxiv} It is the only exception in Africa that ambitiously recognizes the right to succession as an extension of right to self-determination.^{xxxv} Some authors assert that this right is the most ‘controversial issues in public discourse in Ethiopia and its Diaspora communities today’.^{xxxvi}

Institutional framework

The constitutional commitments to human rights are, however, nothing but ‘printed futility’ unless enforced through institutions established for that purpose, particularly those empowered to interpret the Constitution.^{xxxvii} There shall be the appropriate institutional framework so as to implement the human rights laws of the country. Thus, this sub-section is devoted of highlighting the major institutional frameworks for the protection of human rights in the system. Since all institutions are not equally involved in the adjudication of issues involving human rights, we shall not discuss all institutional frameworks and hence, the discussion is confined to the so called *primary* and *secondary institutions*.

- **Primary institutions**

Article 13 (1) of FDRE Constitution provides that, “all Federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of this Chapter (chapter three)”. This article identifies the role of the so-called primary institutions that responsible for the protection, promotion, and enforcement of human rights in Ethiopia. These are: - the legislature (both the House of Peoples’ Representatives [HPR] and the House of Federation [HoF]), the executive and the judiciary. Thus, one can note that the primary institutions that are custodians of the human rights norms in Ethiopia are the mainstream institutions in charge of rights administration.^{xxxviii} The consequence of this is that any attempt at strengthening the institutional framework for the better protection of human rights must start with strengthening these mainstream institutions.^{xxxix}

- **Legislative Organ**

This is the highest organ of the government entrusted to represent and speak on behalf of the people being a mirror reflection to whom it represents.^{xi} In fact, the legislature is of bicameral that constitutes House of People Representative's (HPR), the lower house representing the whole people in the federation and endowed with the highest legal legislative power and House of Federation (HoF) which represents the nation, nationalities and peoples with the power of constitutional interpretation and adjudications constitutional dispute.^{xii} Although the FDRE Constitution establishes two of house parliaments, the Ethiopian parliament is not bicameral in the strict sense of the term.^{xiii} The highest legislative authority is vested in the house of peoples' representatives which is comparable to the first or lower chamber of legislature, normally serving the interest of the people in the federation as whole.^{xiiii} This organ of the government has power of checking and supervising the executive whether it is abiding by constitution in its deed (Art 55(17)).^{xliv} It basically stands a head to represent the people, and strives to maintain the human rights implementation in conformity with the law of the land. Furthermore, it represents the people at grassroots level; it remains responsible to establish the executive having got majority seat in the parliament (Art 56).^{xlv} Thus, the duty of the legislature is to enact laws that ensure the better protection of the rights or to amend laws that violate these rights to be consistent with the constitutionally guaranteed human rights.^{xlvi}

- **Executive Organ**

This organ is primarily there to execute the mandates of law implementation or enforcement.^{xlvii} The council of minister along with prime minister vested with the highest executive authority.^{xlvi} It ensures the implementation of laws and decisions adopted by the house of peoples' representatives.^{xlix} It shall also ensure the observance of law and order.¹ It is vested with the power to declare state of emergency subject to approval by house of people representatives.^{li} It shall also submit draft laws to HoPR on any matter falling within its jurisdiction including draft laws on the declaration of law of war.^{lii} It shall also carry out other responsibility entrusted to it by the HoPR and Prime minister.^{liii} It has, above all, the power to enact regulation pursuant to power vested in it by HoPR.^{liv}

Police, security force, military, and prosecution are the prominent agents of non-political executive who stand for enforcement of human rights laws.^{lv} They do have imminent roles in the protection of constitutional rights of the citizens by properly implementing and enforcing

laws and policies enacted by legislature in consistent with the spirit of the constitution. Thus, the duty of the executive is to enforce laws in the way that ensure the better protection of the rights constitutionally guaranteed human rights

- **Judicial Organ**

The role of the judiciary in the protection of human rights is so immense that it cannot be exaggerated.^{lvi} The judicial branch is at the forefront of the effort at discharging the protective responsibility of the state apropos of human rights.^{lvii} No doubt, the judiciary, if not the only, is the proper custodian of the rule of law and individual rights.^{lviii} The judiciary as part of the three major organs of the state, the trias-politica, is one of those institutions that have these triune duties to respect, to protect, and to fulfill the exercise and enjoyment of human rights.^{lix} They can play a major role in ensuring that victims or potential victims of human rights violations obtain effective remedies and protection, that perpetrators of human rights violations are brought to justice and that anyone suspected of a criminal offence receives a fair trial according to international standards.^{lx} They have a key role to play in ensuring accountability, addressing impunity and ensuring remedies to the victims of human rights violations.^{lxi}

The judiciary in Ethiopia has no less important task than the one outlined for courts elsewhere.^{lxii} In the Ethiopian constitution too, the courts are identified as one of the three organs of the state that have the responsibility to respect and enforce the provisions relating to the Human rights. Art 13 (1) reads as follows:

“All Federal and State legislative, executive, and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of this chapter.”

Independent judiciary with judicial power both at federal and regional levels is established.^{lxiii} Moreover, the Constitution under article 37(1) clearly empowers everyone to bring among other before the courts and obtain decision as far as the justicaible^{lxiv} matter is concerned. In this case, Ethiopian Courts play major roles in ensuring that victims or potential victims of human rights violations can obtain effective remedies and protection. Despite the fact that courts are, equally with legislative and executive organs of government, imposed with the responsibility to respect the fundamental rights of individuals, they are constrained from having any say what the constitution is. The Constitution empowers the second house of Parliament, the HOF, to determine the constitutionality legislative act,^{lxv} to interpret the Constitution^{lxvi} and decides all constitutional disputes.^{lxvii} Apparently, the Constitution either does not consider the

role of the courts in the adjudication of constitutional disputes, or it has not made an exception to the judicial power of courts.^{lxviii}

Secondary Institutions

Adding to the primary institutions, Ethiopian Human Rights Commission (EHRC) and the Ombudsman Institutions are established as autonomous institution for the sake of promotion and protection of human rights in Ethiopia in 2000. It is important to stress that these institutions have a *secondary role* compared to the role of the mainstream rights administration institutions as such they cannot replace the mainstream institutions as they can only complement the work of these institutions.^{lxix}

- **The Human Rights Commission**

FDRE Constitution requires the HPR to establish institution of human rights commission whose power is to be determined by law.^{lxx} HPR established the Ethiopian Human Rights Commission as an autonomous organ of the government in July 2000. The establishing proclamation of the Ethiopian Human Rights Commission states that the Commission is established primarily for the enforcement of human rights as are enshrined in the FDRE Constitution.^{lxxi} It is designed to act as one of the organs in enforcing rights and freedoms of Ethiopian, with one of the primary functions to educate the public, using the mass media and other means, with a view to enhancing its tradition of respect for, and demand for enforcement of, rights upon acquiring sufficient awareness regarding human rights.^{lxxii}

The objectives of the Commission are educating the public about human rights; ensuring that human rights are protected, respected and fully enforced; and taking necessary measure where human rights are found to have been violated.^{lxxiii} The Commission is also entrusted with the task of investigating cases of violation of human rights enshrined in the Constitution, in its own initiatives or upon complaint submitted to it.^{lxxiv} It shall have also the power to ensure that laws, regulations and directives as well as government decisions and orders do not contravene the human rights of citizens guaranteed by the Constitution.^{lxxv}

- **Ombudsman Institutions**

Again, the Constitution requires the HoPR to establish Institution of Ombudsman.^{lxxvi} Accordingly, HPR established Ethiopian Institution of Ombudsman with the objective to protect citizens against administrative injustice and bureaucratic oppression and to provide citizens with accessible avenue for complaint when such injustices and oppression occurs. As it is set out in the establishing legislation of Ethiopian Institution of Ombudsman (EIO)^{lxxvii}; the basic function of the Ombudsman is “to protect citizens against administrative injustice and bureaucratic oppression and to provide citizens with accessible avenue for complaint when such injustices and oppression occurs.”^{lxxviii} The objective is to make government organs a duty bound to respect and enforce human rights as are enshrined in FDRE Constitution or any others legislations. The institution can investigate action taken by ministry or department of government or any members of such ministry or departments. In general, this institution is much important especially in redressing human rights violation at work place.^{lxxix}

THE ROLES OF THE HOUSE OF FEDERATION IN HUMAN RIGHTS PROTECTION IN ETHIOPIA

Introductory Remarks on the House of Federation

Since 1995, Ethiopia has been constitutionally a federal state.^{lxxx} The 1995 Federal Constitution of Ethiopia proclaims in its very first Article that “the Constitution establishes a Federal and Democratic State structure.”^{lxxxii} In stark departure from its predecessors, which were characterized by a unitary and centralized form of government, this Constitution establishes a federal form of government.^{lxxxii} Being informed of federal state structure, the Constitution establishes two federal houses: House of People Representative and House of Federation.^{lxxxiii}

House of Federation is one of federal legislative organ^{lxxxiv} which is the representative of Nation, Nationalities, and Peoples.^{lxxxv} Each Nation, Nationalities, and Peoples shall be represented in the House of Federation by at least one member and each nation or nationality shall be represented by one additional representative for one million of its population.^{lxxxvi} This indicates the majoritarian nature of the House in a sense that the largest ethnic groups have disproportional representation for each nation or nationality shall be represented by one additional representative for each one million of its population.

The member of the House of Federation may either be elected by state council or directly by the people.^{lxxxvii} With respect to tenure, HF's members are elected for five years^{lxxxviii} as result of which they lack tenure security. It shall hold two sessions annually which, in one way or another, makes the house less accessible. Above all, the house is accountable to different actors-: to the ethnic group they represent^{lxxxix}, to the HPR,^{xc} and state Council^{xcii} in which there might be conflicting interest. The combination of these factors negatively affects the role of the HoF as an adjudicatory body.^{xcii} Other important thing in relation to HoF is that unlike HPR^{xciii} in which the presence of more than half of the members constitute quorum, it is only the presence of two-third of the members constitute quorum.^{xciv} However, like HPR, the decision of HoF shall be by a majority vote of the members present and voting. The most important thing is that members of the house may only vote when they are present in person in the house.^{xcv}

Very important point in relation to house federation is that, as opposed to other federations in which Upper House has some legislative power^{xcvi} the HoF, does not have any role in the law making process as the HPR is the only with legislative power.^{xcvii} The principal roles of house of federation, in addition to the power listed under art 62^{xcviii} of the constitution, are to decide, jointly with the House of Peoples, 'Representatives on the exercise of powers of taxation on subject matters that have not been specifically provided for in the Constitution,^{xcix} vote in constitutional amendment,^c to decide border disputes between/among members of federation on the basis of settlement patterns and the wishes of the peoples concerned, and to protect the constitution.^{ci} It also has the power to authorize the deployment of federal forces in the regions if the constitutional order is put in jeopardy by state authority.^{cii} More importantly, it has given with more generic and plenary power to adjudicate the constitutionality of 'law'^{ciii} and decide all constitutional disputes.^{civ}

Since members of the HoF are not legal technocrats, the Constitution establishes the Council of Constitutional Inquiry (Council), composed predominantly of legal experts, to assist the HoF in determining whether there is need for constitutional interpretation and, if so, to provide recommendation to the HoF for final decision.^{cv} The Council of Constitutional Inquiry is composed of eleven members^{cvi} comprising president of Federal Supreme Court who shall

serve as its president, vice president of Federal Supreme Court who shall serve as its vice president, six legal expert appointed by president of the Republic on the recommendation by House Peoples' Representatives who shall have proven professional competence and high moral standing, three persons designated by the House of Peoples' Representative.^{cvi}

The CCI is constitutionally obligated to carry out such an investigation on constitutional issues submitted to it by any federal or state court or a party to a dispute contesting the constitutionality of a federal or state law and to submit its recommendations to the HoF for final decision.^{cvi} The CCI cannot, on its own, take up a constitutional dispute or contested unconstitutionality of a federal or state law for investigation and forward its recommendations to the HoF for final interpretation.^{cix} Rather, it shall determine whether or not the case submitted involves constitutional interpretation. If the investigation of the CCI results in a finding that the case involves a matter requiring interpretation of the Constitution, the CCI is required to submit its recommendations to the HoF for its final decision.^{cx} However, if a constitutional issue referred to the CCI by a court that does not involve any constitutional interpretation, it is, required to remand it back to the concerned court for disposal. The parties to the dispute, if dissatisfied with the CCI's ruling, can appeal, within sixty days from receipt of the CCI's decision, to the HoF.^{cx}

The Roles of the House of Federation and Human Rights Protection in Ethiopia

The most important issue which in fact one of the objectives of the paper is that, what are the roles of House of Federation in human rights protection in Ethiopia? Are there any constitutional roles of House of Federation in protecting human rights at all? A cursory looking at the constitutional provisions dealing with fundamental rights and freedoms indicates that the duty to respect, protect, and enforce constitutionally entrenched fundamental human rights and freedoms seems to primarily be limited to legislative, executive, and judicial organs. However, a deep looking at the constitutional provisions especially those dealing with the powers and functions of the House of federation reveal that the House of Federation has vital role in human rights protection in Ethiopia. Here bellows are some constitutional provisions that indicate the roles of the HoF in the protection of constitutional rights.

Duty to enforce constitutional provisions

The FDRE Constitution under the section dealing with fundamental principles of the constitution imposes the duty to, among other, on *all organs of state*, as well as on their officials to ensure the observance of the constitution and obey it.^{cxii} It can be argued that the term “*organs of state*,” is broad enough to include House of Federation. Accordingly, the HoF is duty bound to ensure the observance the constitutional provisions in general and the provisions dealing fundamental rights and freedoms in particular in its day to day activities.

Moreover, the Constitution under art 13 (1) requires all Federal and State legislative, executive, and judicial organs at all levels to respect and enforce the provisions of chapter three of the constitution that deals with fundamental rights and freedoms. To be more specific art 13(1) of the Constitution provides that: -

“All Federal and State legislative, executive, and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of this chapter.”

The HoF though it does not take part in law making process in the strict sense of the term, it is (at least theoretically speaking) established as one of the legislative organ of federal government^{cxiii} and is structurally upper legislative house and functionally performs acts other than law making.^{cxiv} Lack of legislative power, however, does not mean that it has no role at all in the protection of human rights. For example, it has the power to decide on the issue of self-determination including and up to secession of nation, nationality and peoples which is among one of the core fundamental rights and even most controversial rights in Ethiopian legal discourses. This in one way or another has significant impacts on the fundamental rights of the citizens.

Constitutional Review Power

Article 62(1) 83 and 84(2) of the 1995 Constitution grants power to interpret the Constitution, adjudicate all constitutional disputes and decide the unconstitutionality of federal and state legislative laws respectively to the House of Federation. Although there is no consensus among the scholars as to the power relation between the HoF federation and regular courts in constitutional review, no one can gainsay the fact that HoF has robust constitutional review power. A reading of articles 62(1), 83(1) and 84(2) in one breath conveys that the HoF is the only organ vested with triple powers, namely the power: (1) to ‘interpret the Constitution’; (2) to ‘decide a constitutional dispute’ and (3) to adjudge the constitutionality of ‘law’.^{cxv} The constitutional review power given to the HoF is general and plenary to include the matter

related to fundamental rights and freedoms. Therefore, by the virtue of its constitutional review and adjudicating all constitutional disputes power, it has vital roles in dealing with the issues of constitutional dispute involving matters relating to constitutional rights.

Constitutional Amendment

The FDRE Constitution under articles 104 and 105 set forth clauses dealing how formal constitutional change takes place. The amendment to fundamental rights and freedom can be made only when all state councils approve the proposed amendment by majority vote and the House of Peoples' Representatives and the House of Federation approved the proposed amendment with a two-thirds majority vote in their separate session.^{cxvi} The vote of the HoF is a precondition with respect to the amendment of the constitutional provisions relating to bill of rights and the amendment clauses art 104 and 105.^{cxvii} As one of the partakers in constitutional amendment, it can veto unnecessary constitutional amendment which it thinks potentially determinant to human rights.

Federal Intervention

The FDRE Constitution under art 9(1) recognizes the fact that the constitution is supreme law of land against which no any kind of government actions stand on its way. Moreover, it is provided for in article 51(1) of the Constitution that the Federal Government has power and responsibility to protect and defend the Constitution.

A system of federal intervention is a mechanism to discharge this constitutional responsibility. The Constitution provides three possible ways of federal intervention. These are federal government intervention at request of state administration,^{cxviii} federal government intervention on its own initiatives (it is on joint session of HoF and HPR in case where the state authorities are unable to arrest violation of human rights under their jurisdiction),^{cxix} federal government intervention at the order of HoF, if any state endangers the constitutional order.^{cxx} Here, federal intervention in case of human rights violations requires the vote of House Federation. From this, we can recall House of federation is, thus, among the vanguard organs with constitutional duty to protect and even ensure the protection of human rights.

ACCESS TO THE HOUSE OF FEDERATION AND ITS PROCEDURAL REQUIREMENTS IN SEEKING CONSTITUTIONAL REMEDIES FOR HUMAN RIGHTS VIOLATION IN ETHIOPIA

Having establishing the roles of House of Federation in the protection of constitutional rights, the next important question is whether or not individuals can bring their case to the House of Federation to claim remedies for human right violations? If they can bring, what are procedural requirements are there to access the house of federation? Finally, what remedies the House of Federation may order in case of human right violation if any? These and related issues will in depth be discussed in this sub-section.

Access to the House of Federation

Despite the fact the House of Federation has vital role the protection of constitutional rights, the FDRE Constitution in nowhere contains explicit provision on how individual or group of individuals can approach to the House of Federation whenever their constitutional rights are violated in seeking for remedies. The only constitutional provision dealing with how individual or group of individuals can approach to the House of Federation is article 84(2). It provides that where any federal or state law is contested as being unconstitutional, such a dispute shall be submitted to the House of Federation only through the Council of Constitutional Inquiry (CCI) for final decision. This provision is limited to challenging the unconstitutionality federal or state laws. Even in this case, applicant cannot directly access to the House of Federation. It is only in the form of appeal from a party to a dispute against the CCI's ruling that the applicant can approach to the house of federation. Article 84(3a) of the Constitution in this regard provides that interested parties can bring his/her case to the House of Federation only by way of appeal if she/ he is dissatisfied by the decision of the CCI. But that what if a person brings his/her claims directly to the House Federation without first bringing to the CCI? The Constitution has no answer in this regard. Article 6 of the CCI proclamation in this regard, however, provides that "the House shall forward new cases of Constitutional interpretation, submitted to it directly, to the Council of Constitutional Inquiry."

The other point here is that what if a person wants to challenge the decision of other organs of government other than challenging the unconstitutionality of federal or state legislations for their violation of constitutional rights? Again, the Constitution gives no answer to this question. However, under art 17(2) the CCI's provides that "where any law or *decision given by any*

government organ or official which is alleged to be contradictory to the Constitution is submitted to it, the Council shall investigate the matter and submit its recommendations thereon to the House of the Federation for a final decision.” The term ‘*decision given by any government organ*’ in this provision is broad enough and may indisputably include any decision given by executive or/and judiciary or by their officials. Thus, it is not only unconstitutionality law of that can reach House of Federation for final decision through Council of Constitutional Inquiry but also the *decisions given by any government organs*. It should have to be that noted the under both the constitution and proclamation, a person who wants to bring a case before House of Federation must first submit his/her claim to the CCI and should the CCI believes that the case involves constitutional interpretation, then it submit the same to the house with possible recommendation and only she/he can reach House of Federation by way appeal should he/she dissatisfied by the decision of CCI in case the CCI reject the claim on the ground that it involves no constitutional interpretation.

Procedural Requirements to Access to the House of Federation

At this phase, the petitioner required to launch different procedural requirements. These procedural requirements, among other, include standing, meaning that whether or not the parties have the right to bring the action and of exhaustion of prior remedies before accessing the House of Federation.

Who has Standing to approach the HoF/CCI?

If human rights protection is to be effective, remedies have to be regularly applied to and claimed by those who are entitled to do so for human rights violation whenever situations giving rise to their application exist. This, among other, raises important procedural issue who can bring action for human right violation? The question of who can sue is the question of standing.^{cxxxi} Standing determines who has the right to claim redress before a tribunal authorized to grant the redress sought and, is a preliminary issue, the lack of which precludes any form of determination over the merits of the case.^{cxxii} It is the first aspect that determines the enforcement of constitutionally-entrenched human rights through courts and other judicial bodies.^{cxxiii} It is the set of principles that governs “*who*” is entitled to bring action for

adjudication. The answer to such inquiry may be either *anyone* or *those who are affected* like the direct victims of a given action or inaction.^{cxxiv}

Coming to Ethiopia, we have different laws governing who has the right to bring action (standing) for human rights violation. These are, among other; include Ethiopian the Civil Procedure Code, FDRE Constitution, Constitutional Inquiry Council Proclamation, Ethiopian Human Rights Commission Proclamation, Environmental Pollution Control Proclamation and Commission of Ombudsman Proclamation. However, since our discussion is standing in relation to the House of Federation, our discussion is limited FDRE Constitution, Constitutional Inquiry Council Proclamation.

Standing under FDRE Constitution

The first constitutional provision governing legal standing is art 37. Article 37(1) provides that “everyone has the right to bring a justiciable matter to, and to obtain a decision or judgment by, court law or any other competent body with judicial power.” It entitles everyone to access courts or other competent bodies with judicial power to obtain a decision or judgment concerning any ‘justiciable matter’. This article is, in fact, a broad provision that applies to all actions, whether based on the Constitution or any other legal instrument, and whether the case is a human rights case or not.^{cxxv} Apparently, the Constitution gives everyone the widest possible right to seek redress in any issue irrespective of their personal interest in the particular case.^{cxxvi} Yet, there are some inherent limitations on this provision. Firstly, it is limited to the organs with judicial function in sense that the organ with judicial power and quasi-judicial power. It does not refer to the organ without judicial power but relevant to address the issues of constitutional rights. Secondly, only justiciable matter can be brought to these organs. It does not tell us what matter is justiciable and what matter is not. However, in the case of *Ashenafi Amare et al v the Ethiopian Revenues and Customs Authority*, the CCI firmly recommended that since the judiciary is established within parliamentary system, it is within the parliament to decide whether these issues are justiciable or not, provided that it is within the constitutional limit.^{cxxvii} However, up to date, there is no legislative effort to determine what matters are justiciable or not. In other case, the Cassation Bench stated that an issue is justiciable only when the power to decide that case is not given by law to another institution.^{cxxviii} These two decisions apparently reveal that issue of justiciability is subjected to inconsistent understanding and it lacks jurisprudential corps.

The other constitutional provision that addresses issues concerning standing to enforce constitutional rights in the Council and the House of Federation is article 84(2) which provides:

Where any federal or state law is contested as being unconstitutional and such a dispute is submitted to it [the Council] by any court or interested party, the Council shall consider the matter and submit it to the House of the Federation for a final decision.

This article answers the question as to who can access to the house through Council. Hence, ‘any court’ and interested parties’ have the standing to set the Council in motion. However, it is not clear from this constitutional provision what the term ‘court and interested parties’ stands for.

It is not clear whether it includes sharia courts and customary court.^{cxxix} The other point is that the Constitution does not define the term ‘interested party’ and it is controversial issue among the scholars. There are some scholars who interpret the term interested parties narrowly referring ‘plaintiff or a defendant.’ For example, Wagasa citing Idris argued that ‘where an issue of constitutional interpretation or disputes arises in the course of litigation in a court, an interested party may mean a plaintiff or a defendant.’ According to him, it is a plaintiff or a defendant whose interest is inevitably affected by the outcome of a case.^{cxxx} On the other hand according to Abebe ‘interested parties may be understood to refer to the litigants in a case pending before a court of law or anyone who is interested in the particular case he or she is complaining about, whether or not the case is pending before a court’.^{cxxxi} The latter interpretation should generally be preferred because, constitutionally, the term “interested party” could mean the defendant or the plaintiff or any party or any organ or any individual whose constitutional rights is affected by the operation of the law, by the decision of public officials as well as by any other customary practices.^{cxxxii} It should, however, be noted that this provision applies to challenges against ‘federal or state law’ only.^{cxxxiii}

Standing under the CCI’s Proclamation

The proclamation number 798/2003 is among legal regimes that govern the procedure of accessing the House of Federation.^{cxxxiv} Though FDRE Constitution lacks clarity on issue of

standing, the CCI's proclamation has attempted to clarify the matter to some extents. This Proclamation envisaged two sets of constitutional complaints: one is concerning cases pending before courts of law, and second is those human rights cases that arise outside of the context of courts. Parties have standing also varies accordingly.

In the court proceeding

In cases where the constitutional challenge relates to a pending case before, the court or interested parties to the case may approach the Council for constitutional investigation.^{cxxxv}

In such a case, court can refer the case 'only if it believes that there is a need for constitutional interpretation in deciding the case'.^{cxxxvi} In clarifying what term 'court' stands for, unlike the Constitution, under article 4(3) it provides "the court being see the case shall refer the issue of constitutional interpretation to the Council when it believes that the interpretation of the Constitution is necessary to decide the case." Therefore, it is the court handling the case submits the same to the council. In doing so, it shall limit with the issue necessary for constitutional interpretation in referring to the Council.

The parties to a court case may also initiate a complaint to the Council. However, they can only refer a complaint to the Council through that court. Hence, the party or parties will have to first apply to the court, which then has to be convinced that there is a need for constitutional interpretation before submitting the case to the Council. This procedure may serve to streamline frivolous complaints, maliciously intended to distract or filibuster proceedings.^{cxxxvii} If the court believes that there is no case for constitutional interpretation, the court will reject the invitation to refer. However, this is not final and where the court rejects the case, the party concerned shall submit his/her case to the Council of Inquiry within 90 days from receipt of the decision of the court. It should, however, be noted that this provision applies in when the case before the court necessitates constitutional interpretation. Indeed, the issue of constitutional interpretation is broad enough to include issues relating to fundamental rights and freedoms. Finally, this proclamation likes that of the FDRE Constitution, is less clear on the issue of who are interested parties.

Out of the Court Proceeding

Unlike the Constitution, the Council's Proclamation establishes separate procedures for the enforcement of human rights provisions in the Constitution in cases arising outside the context of the courts. It provides:^{cxxxviii}

“Any person who alleges that his fundamental rights and freedoms have been violated by the final decision of any government institution or official may present his case to the Council of Inquiry for constitutional interpretation.”

What can be clearly seen from this provision is that it allows only those whose constitutional rights have been violated to have the standing to apply to the council for constitutional interpretation. Thus, it adopts the traditional standing rule where the potential applicant is required to show his/her personal interest has been violated. Moreover, this provision has also envisaged that the complainant is required to show that his/her fundamental rights have really (actually) been violated and it does not include potential violation. As such, individuals and entities would have to face the risk of violation and suffering the consequences, which might be dire, before asserting their constitutional rights.^{cxxxix}

A rule of procedure of the Council of Constitutional Inquiry is another legal regime governing issue of standing to access the HoF/CCI. Compared to both the Constitution and the Proclamation of the Council, the rules of procedure adopted by the Council of Constitutional Inquiry went further in elaborating entities entitled to set the Council in motion upon and apparently widen the scope of a list of those who are authorized to launch a constitutional adjudication. According to the rules of procedure of the Council of Constitutional Inquiry and the Council of Constitutional Inquiry Proclamation, the House of Federation, state legislative and executive bodies, courts and any interested party are allowed to launch the process.^{cxl} Therefore, the scope of those who or which are considered an 'interested party' and entitled to exercise the right to initiate constitutional adjudication is therefore likely to be the subject of controversy.^{cxli}

Exhaustion of Prior Remedies before Accessing HoF

The Council is, nonetheless, a forum of last resort concerning cases arising outside the context of courts.^{cxlii} The party who wants to approach the house through CCI claiming for constitutional adjudication in general and fundamental freedoms in particular should first exhaust all available remedies in the government institution having the power with due

hierarchy to consider it. The Council of Constitutional Inquiry Proclamation requires that a case should first be investigated as to whether it has exhausted all the possibilities for seeking remedies from different and relevant institutions having the power with due hierarchy to consider it.^{cxliii}

Constitutional Remedies for Human Rights violation

Despite the fact Ethiopia is party to various international human rights instrument, the Ethiopian Constitution does not have a provision dealing with constitutional remedies that may come out of application of constitutional provisions. It is only article 37(1) that entitles everyone to access courts or other competent bodies to obtain a decision or judgment concerning any 'justiciable matter'. Though this provision is broad enough to include all actions, whether the case is a human rights case or not, it envisaged no kind of constitutional remedies that may come out of constitutional dispute resolutions^{cxliv}. Hence, an individual who alleges the violation of his human right by the government cannot make a complaint before them.^{cxlv} Here, it is natural to think that constitutional interpretation is the only important mechanism of resolving such kind of issue in case where the constitution is silent.^{cxlvi}

House of Federation is appropriate organ since it has the power to interpret constitution and decide all constitutional issues,^{cxlvii} to determine the kind of constitutional remedies. Abebe rightly argued that 'the orders and remedies will therefore have to be determined by the House of Federation in each case.'^{cxlviii} The proclamation enacted to define the power and function of House of Federation seems relevant in this regard. However, like that of the Constitution, it does not provide any kinds of remedies available for a victim of human rights violation. It does not tell us the types of remedies that the house required to order such as compensation, injunction, reparation and restitution other than declaring the unconstitutionality of the actions or omission of government organs. The only available remedy is declaring the unconstitutionality of the actions or omission of government organs. Even this decision by itself applies prospectively and has no retrospective effect. It provides that unless otherwise conspicuously stated in the decision, the decision of the House on constitutional interpretation comes into effect as of the date of the passing of the decision.^{cxlix} It does not have retrospective effect as a principle unless the house decides otherwise. Yet, this article does not tell us the conditions in which the house may decide its decision to have retrospective effect.

The legislation also authorizes the House to give period of up to six months to the Federal or the State legislative body to amend, change or repeal the law in question before a final decision on its unconstitutionality is taken.^{cl} This is ‘a novel approach that gives the HoF a rather mediatory role between disputants.’^{cli} However, the house is on the other hand required to, within thirty days from the days of receipt; decide constitutional disputes submitted to it by the council of Constitutional Inquiry.^{clii} The proclamation further commands the house to give its final decision promptly after investigating constitutional issues.^{cliii} Therefore, any attempt to extend this period would be unconstitutional by virtue of art 9(1) of the constitution.^{cliv}

The interpretation of the HoF generally applies on similar constitutional matters that may arise in the future.^{clv} Although the decisions of the HoF are non-appealable, this should not be understood to preclude the HoF from changing or modifying its previous interpretations.^{clvi} The legislation also introduces the principle of severability which limits the effect of declaration of invalidity to parts of a given law which are inconsistent unless otherwise necessary to completely invalidate the whole law, and, hence, if the rest of the law can be given effect without the flawed provision, the law remains valid.^{clvii}

CONCLUSION

In conclusion, FDRE Constitution recognizes fairly broad lists of constitutional rights. Nevertheless, however there is justiciable bill of rights with an effective constitutional review system, effective constitutional rights would have no sense unless there is well organized and informed mechanism of lodging constitutional complaint before authoritative organ to give possible remedies.

Coming to FDRE Constitution, the problem is that it is less clear on the procedure of lodging constitutional complaint in seeking for constitutional remedies for constitutional rights violation before HoF. The only procedure governing the issue at hand is limited to challenging constitutionality federal and state legislations. And hence, it does include challenging the decision of other organ of government. Moreover, both constitution and subsidiary legislations lacks clarity on the issue of standing. Under both constitution and proclamation the term ‘court and interested party’ are not clear and they are controversial issue among the scholars.

The CCI’s proclamation adopts tradition rule of standing that requires the plaintiff to prove that he is the one whose constitution rights have been violated. Even, in this strict rule of standing,

the applicant cannot directly approaches to the house, rather in form of appeal against the decision of CCI which may come to CCI after exhaustion of prior remedies. Above all, both constitution and the subsidiary proclamations do not have any constitutional remedies for violation of constitutional rights. Thus, there is need to have clear procedure on how to access HoF for the enforcement of constitutional rights to have a possible constitutional remedies for constitutional rights violation. In general, access to house of federation in seeking for constitutional remedies is problematic and suffers from procedural problem. Therefore, more need to be done if protection of constitutional rights needs to be effective.

REFERENCES

-
- ⁱ See chapter three of the Federal Democratic Republic of Ethiopia (FDRE) Constitution, Proclamation No. 1/1995, FED. NEGARIT GAZETA, 1st Year No. 1, 1995 (herein after FDRE Constitution)
- ⁱⁱ *ibid* art 13(1)
- ⁱⁱⁱ The studies up until now are entirely focuses on the potential role of constitutional review of House of Federation and the power relation between House of Federation and regular courts in constitutional interpretation. None of the studies conducted so far has directly attempted to establish the constitutional role of House Federation in protecting constitution rights
- ^{iv} Endalkachew Bayeh. (2014). Incorporation of Human Rights into Legal Frameworks of the three Successive Regimes of Ethiopia and their Treatment: A Comparative Analysis. *European Journal of Humanities and Social Sciences*, 32,(1), 1739-1751; See also the preamble of the Constitution par 2 and 5
- ^v Tedesse Melaku. (2017). Ethiopian Constitutional Law Past and Present, Volume II at 87
- ^{vi} Adem, K. Abebe. (2011). Towards more liberal standing rules to enforce constitutional rights in Ethiopia. *African Human Rights Law Journal*, 10, (2), 407-431
- ^{vii} Tsegaye Regassa. (2009) MAKING LEGAL SENSE OF HUMAN RIGHTS: The Judicial Role in Protecting Human Rights in Ethiopia. *Mizan Law Review Journal*, 3(2), 289-330; see also chapter three of the FDRE Constitution
- ^{viii} Melaku *supra* note 5 at 87
- ^{ix} Shimales Hailu. (2014). Ethiopian Anti-Terrorism Law and Human Rights Nexus: An Appraisal, LLM thesis submitted to AAU, at 29
- ^x See Chapter three of the FDRE Constitution
- ^{xi} Adem Kassie Abebe. (2011). Human Rights under the Ethiopian Constitution: A Descriptive Overview. *Mizan Law Review Journal*, 5(1), at 43
- ^{xii} For instance, it has ratified the (Banjul) African Charter on Human and Peoples Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, Convention on the Elimination of Racial Discrimination, Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the 1948 Convention on the Prevention and Punishment of the Crime of Genocide
- ^{xiii} Assefa Fiseha. (2011). Separation of Powers and its implications for the judiciary in Ethiopia. *Journal of Eastern African Studies*, 5(4), 702-715, pp. 709-710, DOI: 10.1080/17531055.2011.649576
- ^{xiv} Regassa. *supra* note 7 at

^{xv} Art 13(1) provides that ‘All Federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of this Chapter’

^{xvi}Bianca Seejan-Gutan, Rights and Courts in Transitions: Separation of power, Access to Justice and Human Dignity in Post-communist States: the Romanian Case in Melaku *supra* note 5 at 87

^{xvii} Endalcachew Bayeh. (2015). Human Rights in Ethiopia: An Assessment on the Law and Practice of Women’s Rights. *Humanities and Social Sciences*, 3(2), 83-87, doi: 10.11648/j.hss.20150302.13

^{xviii} Regassa *supra* note 7 at 302; These principles are popular sovereignty, constitutional supremacy, sanctity of human rights, secularism, accountability and transparency; see chapter two of the Constitution that could in one way or another have inordinate influence to regulate political-legal climate of the system as they provide a framework of understanding the system

^{xix}*ibid* at 288

^{xx} Amare Tesfaye (2017). Child Rights Protection in Ethiopia: Critical Analysis of the Statutory Rape Provisions of the Criminal Code and Their Application. *Beijing Law Review*, (8), 499-525. <https://doi.org/10.4236/blr.2017.84028>

^{xxi} Bayeh *supra* note 4 at 1745

^{xxii} These include among other release of political prisoners, journalists, activists, revision of various legislation such as Civil Society proclamation, Anti-Terrorism Proclamation, Broadcast Proclamation and other reforming measures

^{xxiii} Traditionally human rights are classified as civil and political rights, social and economic right and collective rights

^{xxiv} The right to life (Art 14 and 15), liberty (Art 14 and 17), security of the person (Art 14 and 16), rights against torture, slavery, forced labor and related vices (Art 18), rights of arrested (Art 19), accused (Art 20), and detained (Art 21) persons, rights against retroactive laws (Art 22), double jeopardy(Art 23), rights to honor and reputation (Art 24), equality (Art 25), privacy (Art 26), religion, belief, and opinion (Art 27), and rights against crimes against humanity (Art 28) are all clustered under a category of “Human Rights”

^{xxv} The right to thought, opinion, and expression (Art.29), assembly, demonstration, and petition (Art 30), association (Art 31), movement (Art 32), nationality [alias citizenship] (art 33), marital, personal, and family rights (art 34), access to justice (art 37), vote and be voted for (art.38), property (art 40), economic, social, and cultural rights (art. 41), dignified labor (art 42), development (art 43), environment (Art 44), rights of women (art.35), children (art 36), and nations, nationalities, and peoples (art 39) are enumerated under “Democratic Rights”

^{xxvi} Ameha Wondrad. (2014). AN OVERVIEW OF THE ETHIOPIAN LEGAL SYSTEM. *CLJP/JDCP*, (20), 174-196.

^{xxvii} Abebe *supra* note 11 at 57; See also Gedion Timothewos (2010), ‘Freedom of Expression in Ethiopia: The Jurisprudential Dearth,’ *Mizan Law Review*, 4(2), 207-213; Tsegaye Regassa. (2009). MAKING LEGAL SENSE OF HUMAN RIGHTS: The Judicial Role in Protecting Human Rights in Ethiopia. *Mizan Law Rev* 3(2), 289-330

^{xxviii} Regassa *supra* note 7 at 305. According to him, no matter where a right is placed, there hardly is any consequence flowing from it as there is no hierarchy among rights. So, there is not much of a method into the classification; see also SA Yeshaneh. (2008). The justiciability of human rights in the Federal Democratic Republic of Ethiopia. *African Human Rights Law Journal*, 8(2), 273-293

^{xxix} Abadir Mohamed (2008), The Human Rights Provisions of the FDRE Constitution in Light of the Theoretical Foundations of Human Rights, (AAU Printing Press), p.85 cited in Gedion Timothewos .(2010). Freedom of Expression in Ethiopia: The Jurisprudential Dearth. *Mizan Law Review*, 4(2), 207-213 at 208

^{xxx} Melaku *supra* note 5 at 113

^{xxxi} The only provisions in the constitution that limits the application of democratic rights to Ethiopians are art 33 (the nationality), 38(the right to vote and to be voted), art 39(the right to self-determination), art 40(the right to property), art 41(economic, social and cultural rights), and art 44(the right to development). The remaining all rights are applicable to all human nature without nationality requirement.

^{xxxii} Melaku *supra* note 5 at 97

^{xxxiii} Abebe *supra* note 11 at 57

xxxiv See art 39 and 8 FDRE Constitution

xxxv Adem Kassie Abebe. (2012). Litigating Constitutional Human Right in Ethiopia. *Ethiopian Bar Review*,4(2)

xxxvi Alem Habtu. (2003). Ethnic Federalism in Ethiopia: Background, Present Conditions and Future Prospects. Department of Sociology, Queens College/CUNY, Paper Submitted to the Second EAF International Symposium on Contemporary Development Issues in Ethiopia July 11-12, 2003; Ghion Hotel; Addis Ababa; Ethiopia

xxxvii Abebe *supra* note 6 at 408

xxxviii Regassa *supra* note 7 at 303

xxxix *ibid*

xl Alene Agegnehu and Worku Dibu. (2015). Ethiopian Human Rights System: an overview. *Journal of Culture, Society and Development*, (9), 26-35, ISSN 2422-8400 An International Peer-reviewed Journal

xli See generally art 53,54(4),55(1), 61, 62(1) and 83 of the FDRE Constitution

xlii Gimachew, A. Amante. (2010). Introduction to the Ethiopian legal system and Legal Research. Available at <https://www.nyulawglobal.org/globalex/Ethiopia.html>. Last visited on 8/11/2019

xliii *ibid*

xliv Agegnehu and Dibu *supra* note 40 at 30

xliv *ibid*

xlvi Amsalu Darge Mayessa. (2013). Derivation of Rights: Affording Protection to Latent Socio-Economic Rights in The FDRE Constitution. *Oromia Law Journal* 2(2),32-74

xlvii Agegnehu and Dibu *supra* note 40 at 30

xlviii Amante *supra* note 42. Available at <https://www.nyulawglobal.org/globalex/Ethiopia.html>. Last visited on 8/11/2019

xlix Art 77(1) of FDRE Constitution

ibid art 77(9)

li *ibid* art 77(10)

lii *ibid* art 77(11)

liii *ibid* art 77(12)

liv *ibid* art 77(13)

lv Agegnehu and Dibu *supra* note 40 at 30

lvi Regasa *supra* note 7 at 322

lvii *ibid*

lviii Yemane Kassa (2011), THE JUDICIARY AND ITS INTERPRETIVE POWER IN ETHIOPIA: A CASE STUDY OF THE ETHIOPIAN REVENUES AND CUSTOMS AUTHORITY. LLM Thesis Submitted Addis Ababa University(unpublished)

lix Regasa *supra* note 7 at 323

lx International Commission of Jurists, International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors, A Practitioners' Guide Series No. 1, 1 (Geneva, 2004)

lxi Manual For Embassies Of EU Member States, Strengthening The National Human Rights Protection System, 49(2009) available at <http://www.globalequality.org/storage/documents/pdf/manual%20nrps-web.pdf> accessed on 12/8/2016

lxii Regasa *supra* note 7 at 326

lxiii See art 78 and 79 of FDRE Constitution

lxiv For more discussion on the issue of justiciability in Ethiopi, see Yemene Kassa. (2015). Dealing with Justiciability: in Defense of Judicial Power in Ethiopia. *Mekelle University Law Journal*,3(1), 42-87

lxv Art 84(2) of FDRE Constitution

lxvi *ibid* art 62(1)

lxvii *ibid* art 83

lxviii Abebe *supra* note 11 at 65

lxix Ragasa *supra* note 14 at 304

lxx Art 55(14) of the Constitution

^{lxxi}See art 6(1) of Ethiopian Human Rights Commission Establishment Proclamation No.210/2000, Federal Negarit Gazeta of FDRE, 6th year No.40, 4th July 2000, Addis Ababa

^{lxxii} *ibid* art 6(3)

^{lxxiii} *ibid* art 5

^{lxxiv} *ibid* art 6(4)

^{lxxv} *ibid* art 6(2)

^{lxxvi} Art 55(1) of the Constitution

^{lxxvii} Institution of the Ombudsman Establishment Proclamation No. 211/2000, Federal Negarit Gazeta of FDRE, 6th year No. 41, 4th July 2000, Addis Ababa.

^{lxxviii} *ibid* art 6

^{lxxix} Mohammad, Habib. (2011). The Ethiopian Federal System: The Formative Stage. Forum for Federalism and Democracy: Friedrich Ebert Stiftung; see also Abdi Jibril Ali. (N.D) The Role of the Ethiopian Ombudsman Institution in Good Governance. Available at <https://www.academia.edu/9359478> last visited on 8/14/2019

^{lxxx} Getachew Assefa. (2011). Federalism and Legal Pluralism in Ethiopia: Preliminary Observations on Their Impacts on the Protection of Human Rights. *East African Journal of Peace & Human Rights*, 17(1), 173-194

^{lxxxi} *Ibid*; see also art 1, 47, and 47 of the FDRE constitution

^{lxxxii} Adem K. Abebe. (2013). Umpiring Federalism in Africa: Institutional Mosaic and Innovations. *African Studies Quarterly Volume*, 13(4), 53- 79, ISSN: 2152-2448, <http://www.africa.ufl.edu/asq/v13/v13i4a3.pdf>

^{lxxxiii} FDRE Constitution, 1995: art 53

^{lxxxiv} Art 53 of the Constitution

^{lxxxv} Art 61(1) of the Constitution

^{lxxxvi} *ibid*

^{lxxxvii} See art 62 of the constitution

^{lxxxviii} Art 67(2)

^{lxxxix} This can be inferred from the reading of art 49 of the CCI proclamation which reads “Where a member of the House fails to competently represent his Nation Nationality or people, he may be subjected to disciplinary measure in accordance with the regulations of the House.”

^{xc} As per art 65 of the Constitution, the HoF is required to submit its budget to approval to the house of people representatives. This, in one way or another subject the HoF subordinate to the HPR

^{xci} Article 50 of the CCI proclamation also provides procedure for removal of the member of the house. These are Where the a) State Council that elected him decides that he be removed; (b) Where a member is directly elected by the people fifteen percent (15%) of the electorate decided that he be removed in accordance with relevant regulations of the Electoral Board; (c) where the House by two-thirds vote decided that a member does not represent properly his constituency due to moral incompetent.

^{xcii} Melaku *supra* note 5 at 228

^{xciii} Art 58(1)

^{xciv} Art 64

^{xcv} Art 64

^{xcvi} For example see through art 23 and 50 of Germany and art 42 of the South Africa constitutions

^{xcvii} *ibid*, art 50 and 55)

^{xcviii} See art 62

^{xcix} See art 99

^c See art 104 and 105

^{ci} See art 51(1)

^{cii} See 55(16)

^{ciii} See art 83

^{civ} See art 83

^{cv} Adem Kassie Abebe , A constitution without a guardian: Is the Ethiopian Constitution really supreme?, Centre for Human Rights, University of Pretoria, Available at www.academia.edu last visited on 11/27/17 (read also the FDRE Constitution, articles 62(2), & 82 – 84).

cvi See art 82(2) of FDRE Constitution

cvi See 82

cvi See art 84 (1) and (2) of FDRE Constitution

cix *K.I.Vibhute. (2014). Non-Judicial Review in Ethiopia: Constitutional Paradigm, Premise and Precinct. African Journal of International and Comparative Law, 22(1), 120–139, Edinburgh University Press DOI: 10.3366/ajicl.2014.0083*

cx article 84(3)

cx See art 84 (3a)

cxii Art 9(2) provides “All citizens, organs of state, political organizations, other associations as well as their officials have the duty to ensure observance of the Constitution and to obey it.”

cxiii *ibid* art 53

cxiv Muluken Kassahun. (2018). The Relationship between the Federal and Regional States’ Constitutional Review System in Ethiopia: The Case of Oromia Regional State. *Oromia Law Journal. Vol.7, (1), 1-23*

cxv *VIBHUTE supra note 111 p.124-125*

cxvi See art 105(1) of FDRE Constitution

cxvii *ibid* art 105(1)

cxviii *ibid* art 51(14)

cxix *ibid* art 55(16) NB. Federal government gives only directives to the concerned regional authorities

cxx *ibid* art 62(9)

cxxi Dejene G. Janka. (2013). Remedies for Environmental Wrong-doings in Ethiopia. *Mekelle University Law Journal Vol.2(1), 17*

cxvii Abebe *supra* note 6 at 408

cxviii *ibid*

cxviii Janka *supra* note 121 at 17

cxvii Abebe *supra* note 6 at 417

cxviii *ibid*

cxvii Ashenafi Amare et al v the Ethiopian Revenues and Customs Authority, the Council of Constitutional Inquiry (CCI) File No 101/2009, 9, 2010

cxviii Welday Zeru et al v the Ethiopian Revenues and Customs Authority, (Federal Supreme Court Cassation Division, May 23, 2011), Federal Supreme Court Cassation Division, vol.12, p.484

cxviii CCI proclamation define courts as the Federal or State Courts at any level

cxviii Dessalegn Berhanu Wagasa. All About Words on The Procedure of Constitutional Interpretation in Ethiopia: A Comment On Melaku Fanta Case. *Oromia Law Journal, 4, (1), 207-221*

cxviii Abebe *supra* note 6 at 419

cxviii Wagasa *supra* note 130 at 219

cxviii Constitution does not define as to what ‘law’ stands for: however, proclamation to consolidate the power and function of House of federation under art 2(2) provides that “Law” shall mean Proclamations issued by the Federal or State legislative organs, and regulations and directives issued by the Federal and States government institutions and it shall also include international agreements that have been ratified by Ethiopia

cxviii Council of Constitutional Inquiry Proclamation 798/2003

cxviii Arts 4(1) CCI’s proclamation

cxviii *ibid* art 4(3)

cxviii Abebe *supra* note 6 at 420

cxviii Art 5(1) CCI’s proclamation

cxviii Abebe *supra* note 6 at 421

cxl Getahun Kassa. (2007). MECHANISMS OF CONSTITUTIONAL CONTROL: A PRELIMINARY OBSERVATION OF THE ETHIOPIAN SYSTEM. *Africa Focus, Vol. 20, (1-2), 75-104*

cxli *ibid* at 85

cxlii Abebe *supra* note 6 at 424

cxliii Art 5(2) CCI proclamation

cxliv The only exceptions in this regard are exclusion of evidence under coercion and physical release of if not brought before court within 48 hours. See art 19(4 and 5) of the FDRE Constitution

cxlv Kidus Meskele A. and Teketel Labena T. (2017). The Right to Reparation for Human Right Violation in Ethiopian Legal Framework. *Journal of Poverty, Investment and Development*, (31), ISSN 2422-846X An International Peer-reviewed Journal, at 5 www.iiste.org

cxlvi Constitutional interpretation come to table in case where the constitution is silent on particular issue

cxlvii Art 62(1), 83 and 84 FDRE Constitution

cxlviii Abebe *supra* 11 at 69

cxlix Art 16(1) of Proclamation No. 251/2001, 'Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities,' Federal Negarit Gazeta, 7th Year No. 41, Addis Ababa, 6th July, 2001

cl *ibid* art 16(2)

cli Abebe *supra* note 11 at 70

clii Art 83(2)

cliii *Supra* note art 13(1)

cliv Art 9(1) of the constitution provides that 'the Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect'

clv *Supra* note art 11(1)

clvi Abebe *supra* 11 at 71

clvii *ibid*