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Constitutional Law II

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Sponsored by the Justice and Legal System Research Institute

2009

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Introduction

This text is not yet polished not well pounded. It remains on you, instructors and students to contribute for its embitterment. For the time being I'm grateful for Dr. Assefa Fisseha and Dr. Solomon for their beautiful works, which I made a lot of use. In doing, I might have committed some distortions. I apologize. I did it for good of our students; not for any malice aforethought.

This course is divided into three main parts which are further divided into chapters.

A) Part I, course chapters that focus on Historical Paradigm, Nations, Nationalities and Peoples; Policy Paradigms (the Agenda); and Typology of Federation.
B) Part II addressed salient features of FDRE Constitution. Hence, the First Chapter is devoted to revealing allocation of power between the Federal Government and the States and, the power of HPR. The second deals under the powers of HOF. Them, attempt has been made to give a short glimpse of the Office of the Presidency. The last section outlines the powers and responsibilities of the Offices of the PM and COM.
C) The third Part deals with multiple concerns; which include Bill of Rights and Emergency, theories of constitutional interpretations, making nexus with or mainstreaming of constitutional values.

Acknowledgments

My acknowledgment goes to all those who assisted me in preparing this Course on Law of Constitution (I and II), which I believe would be of vital value to Ethiopian students and instructors of law.

My acknowledgment also goes to those who walked along and stood beside me – Ermias Tedla Z., Kassahun Minda and Abinare Assfaw A. Of all, allow me to forward my acknowledgment to all those who, through bitter experience recognize and underscore that a genuine understanding of Law of Constitution is of crucial importance to our country. Though not involved in any way with this piece of work, allow me as well to extend my humble thanks to my mentor, Ato Tedla Zeyohannes.

I am very thankful to my wife, Abeba Mengistu, and my beloved children for their understanding and tolerance to the inconveniences created during this period.

Seleshi Zeyohannes

Part I: Historical Paradigm

Chapter I

Development of Documentary Constitution

Section I: Ancient and Medieval Documents of Constitutional Nature:

1.1 The Ser'ata Mengist[1]

The Ser'ata Mangist can hardly be considered to be a document of Constitutional Law in its widest sense. Nonetheless, as it is the first document known to have been used for allocating power among the Crown, its dignitaries and the Church, by means of ".. *a protocol of ceremonies which had to be consulted whenever occasions required it…"* and tried to lay out a pattern of succession to power, though *"[t]he problem of primogeniture was more theoretical than practical as incessant rivalries among members of the royal house intermittently switched lines. .. The tradition of mountain prison was doubtless a by product of such an anomaly."*, may be considered as the initial document of the Axumite Civilization, which was reinstituted during the time of Amda Tsion (1314-1344) culminating at the time of Fasiladas (1632-1667). As it contained some twenty one articles of law, it seems appropriate to mention some of its most important features.

The leader being crowned used to be referred to as *'Atse'* meaning King or *'Niguse Negest'* meaning King of Kings. He also was referred to as *'Jhan'* meaning Judge. Signs attributing power used to be the *'Blull'* - a ring worn in the right-ear by the leader, the *'Sendeq Alama'* or the Royal Flag having an orb and a cross on top as emblem, with two live lions sitting at either side. Paraphernalia of any official ceremony consisted of the *'Negarit'* and *'Quenda'* (big and small drums), *'Meleket'* and the *'Imbilta'* (various types of horns).

As to what concerns the dignitaries, it was initially headed by the twelve law-givers, who has been said to have come with Ebna-Hakim, the son of Solomon and Queen Mekeda from

[1] Bairu Tafla and Heinrich Scholler, SER'ATA MANGEST: an early Ethiopian Constitution, (Institute of Ethiopian Studies Addis Ababa, November 1974), pp. 1-6 & 28-46.

Jerusalem, followed by *'Bitweded'*. High ranking military functionaries used to be referred as *'Ras', 'Dejazmach', 'Fitawrari', 'Qegn-Azmach', 'Gera-Azmach'* and the *'Barambaras'*. Religious dignitaries were the *'Abune', 'Ichege', 'Liqe Meameran'* and the *'Debteras'*. The civilian functionaries were the *'Worq Aqafi',* the *'Tsehafi Te'ezaz'* meaning Bearer of the Seal, *'Agafari'* meaning Master of Official Ceremonies and the various *'Jandereba-Azaj'* (eunuch) meaning administrators of the Palace and the various offices. It was an established fact that rank did not strictly attribute entitlement in either the civil, or the military departments; i.e. hierarchy was not strictly adhered to.

The most real decrees of the Sar'ata Mangist were:

1. *King's Coronation;*
2. *According to a custom initiated by King Amda Seyon, the daughters of Zion bar – the way of the new King with a rope when he goes to Axum to be crowned, and*
3. *Queen's coronation (on Sunday's);*

The Fetha Nagast[2]

"'Law of the Kings', is a collection of laws which in use in Christian Ethiopia for many centuries. It was originally written in Arabic by the Coptic Egyptian writer Abu-l Fada'il Ibn al-Assal(commonly known as Ibn al-'Assal) when Cyril III was the Patriarch of Alexandria (1235-1243).

> *"Ibn al-'Assal divided his work into two distinct parts. The first dealt with religious matters and the second with secular matters. In compiling the first, he relied largely on the Old and New Testaments, writings supposed to be of Apostolic origin, and the canons of such early church councils as the Councils of Nicaea and the Council of Antioch, and the writings of a number of Fathers of the Church St.Hippolytus and others. These sources were also consulted in compiling the second with this latter effort Ibn al-'Assal relied most heavily on a collection of laws found in four books known as "The Canons of the Kings".*

[2] Abba Paulos Tzadua, "The Fetha Nagast, The Law of the Kings", (Faculity of Law, HSIU Addis Abeba Etiopia, 1968), pp. foreword XV-XVI.

> *"C.A. Nallino and G.A. Costanzo have carried on the work begun by two German scholars, Sachau and Riedel, towards identification of these four books. According to them, the first book is the Procheiros Nomos, a handbook of Roman Byzantine laws enacted between 870 and 878 by the Byzantine Emperor Basilius the Macedonian. The second is an Arabic version of what is commonly known as '[t]he Syro-Roman Law Book'. This was originally written in Greek at about 480 A.D. as a handbook, probably of didactic character, intended to explain the ancient Roman ius civile in light of the ius novum. The third book has been identified as an Arabic version of another handbook of Roman-Byzantine law,the Ecloga of the Emperors Leo III (Isauricus) and Constantine V (Copronimus), which was published in Constantinople in the year 726. The fourth book has been identified as the 'precepts of the Old Testament', a compilation of ritual and moral precepts from the Pentateuch, together with some Christian interpolations.*
>
> *"Given the Roman background of three of the major sources of the secular part of Ibn al-Assal's work, it is no surprise to find it pervaded by principles of Roman Law."*

Here it is worth noting that Ethiopia's present Civil Law owes its origin from Roman Law via two different epochs: first through the Fetha Negest in the 14th Century, and second through Emperor Haile Selassie's codification program. The first part of *Fetha Nagast* deals exclusively with ecclesiastical matters, whereas the second part deals with secular matters, of which Chapter XLIV talks with the relationship between kings and their subjects. The earlier, Chapter XLIII, deals about the judge and what concerns judgment. Except these two chapters, *Fatha Nagast* has very little to say as to what actually constitutes the Law of Constitution; let alone to the present, even to times of its writing. In terms of practice the picture that we get becomes even glimmer, especially as to what concerns Customary Law. Moreover, the letters of *Fatha Nagast* were left in the abyss; i.e. the gulf between "*the is"* and "*the ought"* continued to drift apart for over six hundred years. This was the state of fact (political culture) that developed in what was known as the Axumite Empire on later on Abyssinian Empire. In contrast to this there was another historical development from south to north of which the most revealing is the Gada system.

1.1 The Classical Gada System

The Gada system of the *Borena* Oromo's is one of the Neolithic [sic] social systems practiced by indigenous nationalities of Ethiopia proper. For the purpose of clarifying its attributes to the Law of Constitution, we make a short note of the Gada system.
The *Borena* Gada system represents a structure of

> *"a society that is stratified into two .. cross-cutting systems of peer-group structures. One... on the basis of chronological age [the harriya system].. [t]he other .. on the basis of genealogical ties [gada system]. .. Both sets of groups pass from one stage of development to the next every eight years ..[, while] newly born infant boy always enters the system of grades exactly forty years behind the father, regardless of the age of the father."*[3]

The Gada system, accompanied by specific rituals, gives entitlement to each group of peers within the same life-age which include giving protective, political, judicial, administrative, etc ... services. Of these, one that interests us is the judicial service. As no referential document is passed on from the once previously assigned to those newly entitled to take-up the function, any judgment they pass might only be to affecting traditionally recognized and accepted problems; meaning, the system can hardly be presumed to pass consistent judgments throughout as well as not fail to be circumstantial, let alone outline or devise new decrees in time to newly emerging social phenomena.

So, from the point view of social-structural, and historical approaches, which we chose as a means of evaluation and means of formulating constitutional paradigms, we find the Gada system serving as framework of power allocation (most earliest attribute of Constitution).

Not only this, the Gada system presented the epi-center and the final move that was waged from south to north i.e. 'Yodit Gudit', Agew, (Cushitic against Semitic); 'Geragn Mohamed'

[3] Asmarom Legase, GADA: The Approaches to the Study of African Society, (The Free Press New York, 1973), pp. 50-117.

(Islam/Issa against Christian, Amhara/Tigray), which was countered balanced by north south moves (Axumit Empire to Abyssinian Empire, culminated in Amdetsion reign deep into central Ethiopia).

Is it historical compensation?

Section II: 1931 Constitution and 1955 Revised Constitution (Aristocratic/Monarchical Paradigm)

In the nineteenth Century Ethiopia was marked by the era of princes; each region having its own king, ruler or chieftain. Some were in a state of war with one another as much with the authority at the centre; in fact as one goes from the centre to the periphery, power of the centre seems to fade away gradually. The authority of the centre was subject to the perennial tendency of certain regional warlords to become endowed with an aura of legitimacy in their own right, which poses a central theme in Ethiopian politics; i.e. persisting dualism – centralization and regionalism.

The tendency towards centralization and the formation of nation-state picked up pace in the second half of the nineteen century.[4] Parallel to this another set of events was at its full swing-colonialism. By the beginning of the twentieth century all the surrounding areas were fallen under the different colonial powers. Both, as counter-reaction and as a power in her own right, Ethiopia expanded conquesting more than half of her original size. The eastern, southern and a portion of the western regions of the present-day Ethiopia were thus incorporated, into the Empire. If colonialism had not conquered Ethiopia socially or politically, it can be said that it influenced its legal institutions to a significant degree, at least by default, as for instance the territorial definition of Ethiopia.

In 1896, the Italia's attempt to colonize Ethiopia collapsed at the battle of Adwa. This set a new historical propelling event.

[4] Emperor Theodros of Gnder, Emperor Yohannes of Tigray and Finally Emperor Menilik of Shoa were knots in the chain of development of this direction.

As late as 1908 all State affair were embodied in the person of the Emperor who the unique formal central organ for their disposition. Ii is true that the Emperor used to avail himself of the help of some advisor and assistants. Exception may be made for the first fitawrary of the Empire or Abegas, who could assume command of the army in the eventuality of a war or great military expeditions and so for the Afe-Negus, who as alter egos of the Emperor administered justice. The public central organ properly so-called was then the Emperor. Because of the multiplying of State activities, as said before, and for the purpose of modernizing the administrative system, Menelik in 1908 created the first ministerial frame work in the history of Ethiopia.

This move resulted in the following ministries:

1. Ministry of Justice
2. Ministry of Interior
3. Ministry of Commerce and Foreign Affairs
4. Ministry of Finance
5. Ministry of Agriculture and Industry
6. Ministry of Public works
7. Ministry of War
8. Ministry of Pen
9. Ministry of Palace

This was also one an other move in the direction of producing forging documentary constitution.

The socio-economic system prevailing at that time in Ethiopia can safely be characterized as aristocratic and patriarchal, at national, village and family level. In 1929 there were patches of urban and communal way of life. The people living in the most of the newly conquered area were dispossessed of their lands and were reduced to the status of tenancy. In the rest of the country i.e. in the North and central Ethiopia, *land lordism* was grafted on family joint land ownership system in the form of curve, tribute or tax. The social and economic typifies this period was dualism- small and very few urban area on one hand and enclaves of modem agricultural undertakings upon which a huge rural subsistence sector was super imposed on top of which the imperial house, the nobility and the high clergy formed the optic of the

power structure. On the other hand. Dualism, though "varying degree of disengagement of political social, and economic activities from divergent traditional social structures and processes of production resulted in wide variety of physical, political, social, economic, technological and legal distance between and among individual, groups, and regions. Blood relationship with Christ (in the House of David),[5] thus, inherited by Ethiopia and due to the Solomonic Dynasty, which legitimized its rule and helped inculcate its divinity and supremacy in the minds of its subjects so much so that it served as a powerful unchallenged source of authority for nearly two thousand years as the most venerated institution that may be compared only to the Emperor of Japan.[6]

The imperial omnipotence was beautifully elucidated by an Ethiopian historian in the following words:

> *"The kings of Abyssinia are above all laws, they are supreme in all causes, ecclesiastical and civil, the land and persons are equally their property … if (one) bears a high rank it is by the kings gift"*[7]

The super-human virtue attributed to him by the royal ideology manifested itself in the belief that his mere presence guaranteed order by virtue inherent in the person of the king. The person of the Emperor provided also a common symbol for national unity. The nobility, as a class and individually were totally dependent on the Emperor for the acquisition. Of land, office and title, which confer status and dignity were highly cherished things in Ethiopia? So was the continued possession of them made contingent on the sovereign's caprice?

The Emperor's position at the pinnacle of power was so pervasive that he was the sole arbiter and source of governmental action, whatever this might constitute. In short, *"Flowed from and was maintained by the grace of the emperor and from his subjects he "received habitual*

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[5] Margery Perham, The Government of Ethiopia: (Faber and Faber Limited, London 1969), pp. 69-80.

[6] Beardsley, Japan's Political System, in Hall & Beardsley, Twelve Doors to Japan (1962), pp. 463- 466. As Quoted by James C. N. Paul and Christopher Clapham, Ethiopian Constitutional Development: A Source Book Vol. 1, (Faculty of Law HSU Addis Ababa, 1967), pp. 339-340.

[7] James Bruce (Sir), Travels to Discover the Source of the Nile, 1769-1773, Vol. 2, (Edinburgh, 1790), pp. 396 ff..

obedience"[8] in the same line Burke, the protagonist of tradition, supported institution of this kind by the following remarkable paragraph.

> *"The science of constructing a commonwealth, or renovating it, or reforming it as like every other experimental science, not to be though a prior:-----it is with infinite caution that any man ought to venture upon pulling down an edifice which has answered in any tolerable degree for ages the common purpose of society----"*[9]

The point is not that the traditional institution ought not to be destroyed, but to underscore the importance of the role that such institutions play in the process of nation-building, in the emergence and development of legal institution.

If monarchy is typical form of government in traditional society, the nobility and landed gentry are the concomitant adjunct of the ruling block.

The Nobility

As mentioned above, the mere presence of the king was seen as a precondition for civil order, and the existence of the *"Mekuanent"* and the *"Kahenat"* (the nobility and the clergy, respectively) was, likewise, upheld as another significant factor for the maintenance of the status quo. The class of nobility consisted of the royal nobility,[10] landed gentry and the high clergy. Like the king, their power was all encompassing with respect to the particular material and local jurisdiction.

Status was made dependent on the possession of three dimensional factors –i.e. land governmental office and honorific title, which inclined to reinforce one another. More importantly, they were vassals of the king, whose benefices could be withdrawn inter vivo or morti causa, at his pleasure.

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[8] Paul and Clapham, op.cit, note no.6, p.293.

[9] Id., pp. 36-39.

[10] Although it was customary for the king to exile all potential candidates for the Crown, some distance relatives ere privileged to hold offices and titles.

Thus titles were made and unmade by the traditional prerogative of the Emperor known as *"Shum-Shir"* (appointee demotion) a very counter productive practice which goes against the principle of permanency and stability. Conversely, however it was a blessing in disguise, for room was left for the nobility to become a closed, hereditary estate capable of forging a corporate identity of its own.

One other contingent class of the nobility was the high office of the clergy[11] whose attribute can better be observed with another basic traditional institution of the Ethiopian polity; i.e. the Orthodox Church.

The Church

The Church and State were, in form and in essence, one and the same thing in traditional Ethiopian polity though them respective source of authority was different. The kings authority emanated from Solomoic, King David of Jerusalem, whereas that of the "Abuna", the patriarch, was appointed by the patriarch of Alexanderia, Egypt.[12] All the same, the fortunes of the Solomonic Dynasty were interwoven by historical associations and mutual interest with those of the church. The Emperor and the Church working together "provided the unifying elements which continually countered the centrifugal forces of Geography, Ethnicity and aristocracy".[13]

The patriarch sat in *"solemn significance"* upon the Emperor's right hand at all public occasions. He alone could crown the Emperor, though, he made his submission immediately after his most import functions were completed; which included blessing the altar, ex-

[11] The lower-clergy lived on whatever that is paid in cash or in kind for their services and quite often were simple farmers or even tenants.

[12] Popes were appointed from the Monastery of Saint Anthony at the request of the Emperor, in power. Ethiopia, until the beginning of the later of the 20th century, Constitution one single bishopric of the Alexandria Coptic church.

[13] Donald Levin, Wax and Gold: Tradition and Innovation in Ethiopia Culture (Chicago: The University of Chicago Press, 1965). Pp.155-163.

communicating[14] rebels, commanding obedience, tendering oath for allegiance to the Emperor and intervening for clemency.

For restoring the Solomonic Dynasty from usurpation the church was awarded one third of the land in perpetuity to the emissary, saint Tekla Haimanot for the maintenance of his office, the support of the Church and the clergy. The fact that a good portion of the arable land was owned by the church is not so for contributed authoritatively. All these show that the high clergy constituted a sub-class of the nobility; and the church was an inalienable institutional partner of the crown.

The problem is that, unlike the kings of England or France, the monarchy of Ethiopia, which claimed the existence of at least two thousand years of unbroken rule actually failed to build up any kind of administrative framework.

The first attempt made in this direction was the establishment of ministerial office in 1908 and the promulgation of the 1931 Constitution. It is the latter which deserves consideration here.

Section II: 1931 Constitution and 1955 Revised Constitution (Aristocratic/Monarchical Paradigm)

2.1 The 1931 Constitution: the Japanese Paradigm

The Meiji Constitution was conceived as a benevolent gift of the Emperor of Japan to his people. The emperor embodied the state itself and was the source and repository of all state power. The myth of legitimating claimed that ruling Japan had been entrusted to the Emperor through his ancestors from Amaterase Omikami, the son Godess.[15]

[14] Kings of Ethiopia have themselves been victims of ex-communication, as for instance, King Ze-Dengel (1604) was condemned and killed for his conversion to the Catholic creed, and as recently as 1916 king Iyasu was deposed for favouring Islam.

[15] loc..cit., note no. 6.

The most novel aspect of the Mejji constitution was its bi-cameral nature. The House of peers, the Upper House, consisted of members from the imperial nobility, marques, lower nobility, the imperial academy and high taxpayers. The House of Representative was popularly elected from constituencies.[16] The Emperor had veto power over any executive acts and enactments.

The Emperor had the prerogative to determine the organization of all organs of administration, pursuant to which the cabinet[17] headed by the prime Minister was appointed by the Emperor on the advice of elder statesmen. Judicial authority was, in similar manner, invested in the sovereign power of the Emperor.

The social-structure and the corresponding political configuration of Japanese society at the close of the 19th Century were very much in line with that of Ethiopia as can be abstracted from the above bird's eye-view exposition.

There were some very few foreign educated men who had limited access to the ears of the Emperor. One such person[18] was entrusted with the responsibility of drafting a constitution, which he did, relying heavily on the afore mentioned constitution of Japan, which was provided for him by the Japanese legation.[19] The Emperor with the advice of the nobility promulgated what is said to be the first written Constitution of Ethiopia.

The first and foremost political dynamics of that period was centralization with a view to build a nation–state. Naturally, that was what was sought from the model. Japan with its homogenous people, speaking the same mother tongue, by and large following one religion and with strong affinity to tradition can be nothing but an ideal paradigm for Ethiopia for extrapolation. And that was what the Constitution did. The Constitution was meant to serve as an instrument of centralization under the Emperor, reflecting the traditional institution of

[16] Id., Article 35 of Japan's Constitution of 1889.

[17] loc.cit., note no. 6.

[18] Bajirond (Exchequer) Tekla-Hawarit. Minister of Finance, one of the groups of intellectuals known by some categories of scholars as "japanisers".

[19] Op.cit., note no. 6, p. 336.

absolute imperial power without any limitation and modification. The point noticed here is that law is primarily the fact that the Constitution laid down the formal basis for the process of centralization and for the institutionalization of administrative machinery. The Constitution was not intended to serve as instrument of modernization. Albeit the establishment of Parliament, which had, but only the power of discussion.

In general, this Constitution was nothing less or more than a mere confirmation of the powers and prerogatives of the Emperor, which he would, in any have exercised.

At this particular historical juncture, where there was little of modernism and yet so much was wanting, the Italians invaded the country forty years after their first attempt had failed, and conduced Ethiopia all in shambles.[20] Yet, the people put up a fight – protracted guerrilla warfare. After five years of occupation, Italy was defeated with the support of the Allied forces.[21]

After of liberation two trends were set in motion the continuation of the process of modernization and the reorganization of the status quo As regards to the former, the legal order was established, new laws were enacted, and that the corresponding political structures were either reorganized or new ones were established. The powers and duties of the various organs of government were better articulated and administrative units redefined. Parallel to this, the old order was renovating and institutionalizing itself in the direction of constitutional monarchy.

The train of events in favor of modernization was further enhanced by the federation of Eritrea with Ethiopia by the Resolution of the United Nations. The inadequacies of the 1931 Constitution became more apparent; it became glaringly clear in the face of the new political climate.

[20] Emperor Haile selassie fled and went to Geneva to Appeal to the League of Nations.

[21] The Emperor returned back home in 1941 along with the Allied Forces, in particular with the support of the British Army.

Hence, if the 1931 Constitution was benevolent gift of the Emperor, the revised Constitution of 1955 was largely the cumulative and resultant effect of external and internal pressures that was brought to bear on the status quo.

The fact that power is the control over resources, taken to encompass all sorts of political, economic and cultural spheres of social life, has been reiterated as a basic postulate and have been dealt with above. The other element that may be introduced at this juncture is the question of the 'elite', the purpose of which is enhancing the emergence, development and role of the "new", while maintaining the "traditional context" at the centre of the political structure.

By the 1950s there were a good number of educated elite in Ethiopia. Most of them were oriented towards Western Europe type of democracy. Together with this and sometimes standing against this group, there were the traditional elites, who stood for the maintenance of the old order – the Crown, the Church, the land system and Ethiopianism – isolation and independence. The compromise sought was that the English system of government to which both members of the old and the new elite turned their eyes to.

2.2 The 1955 Revised Constitution: Seemingly the Westminster Paradigm and the Aborted Reform thereof

West Minister model is a political theory and a constitutional framework brewed and distilled in the English soil and has been operating to date in Britain, its ex-colonies, in particular the Commonwealth Countries, mainly.[22]

According to this model, there is, politically speaking, the belief or commitment of non-violent evolution or gradual development. The model itself comprises the following basic elements. Firstly, it devolves power to formulate governmental policy from the sovereign body to the various departments of the government. The sovereign body, here, means the Crown in Parliament, and Parliament, in turn, constitutes the House of Lords, composed of

[22] The Executive is itself a group of parliamentarian mostly members of the Commons, who come from a party, which command majority in this same House. See, Roy C. Macridis and Robert E. Ward (Editors), Modern Political Systems: Europe, Prentice-Hall, Inc., Englewood Cliffs, New Jersey, pp.102ff.

appointees of the Crown and the House of Commons – an elected body. Secondly, an elected government coming of party/parties, holding majority seat in Parliament and constituting a cabinet of which the Prime Minister is the Head of Government. Thirdly, popular will expressed, not only formally through Parliament, but also through other agencies of interest articulation, which are a *faci* for political expression and association. Finally, all theses are accompanied by a strong and independent judiciary, which does not only interpret laws, but also sets down new laws by way of predicament.

The hybrid intelligential brooding under the Emperor thus managed to hatch this kind a Constitution modeled after the British Government.

The ruling body did not want to declare a new Constitution for obvious reason. Instead, it christened the 1931 Constitution as the Revised Constitution of 1955. This Constitution, like any other, defined and distributed powers, rights and obligations within the country; notably, between the Emperor who had the most *self sufficient* source of political authority, and the rest of branches of government (which enjoyed derivative powers, either from the Crown and the people or from both).

Moreover, the Constitution incorporated the basic tenets of fundamental human and political rights from the United Nation Universal Declaration of Human Rightes to which Ethiopia was then a signatory, though it did not matter much for it was a mere declaration, not a Convention.

The Emperor held a pre-eminent place in the Constitution. He stood apart from other agencies of government and, at the same time, He was the embodiment of them all; and as such he enjoyed a lot of executive, legislative and judiciary prerogatives. There were, too, others with respect to which he shared power. The provision among others, which prompted the writer to make assertion of this kind, runs as follows:

> *"The sovereignty of the Empire is vested in the Emperor and the supreme authority over all the affairs of the Empire is exercised by him as a Head of state, in the manner provided for in the present constitution."* [23]

[23] Article 26, Proclamation Promulgating the Revised Constitution of the Empire of Ethiopia, no. 49, Nagarit Gazetta ,Yr. 15, no. 2 (1955).

By them, though nominally, His power seemed to have been circumscribed by the terms of the Constitution. The Emperor was most closely connected with the executive, with respect to which he had power to appoint and dismiss all the officials including the Prime Minister and members of the cabinet, for they owed their position and were answerable to His and to Him only. The power to determine the organization and jurisdiction of government departments, as well as to constitute the civil service belonged to him. He had wide discretionary power concerning foreign policy as well.

Although the cabinet and its members had some limited constitutional powers in their own right, the Office of the Prime Minister and that of the ministers were adjuncts of the Emperor with no organic linkage to the legislative body.

The legislative body was bi-cameral: senators were appointed from the nobility and a few from the commons for their meritorious achievements, while the deputies were directly elected from equally populated constituencies. Election was made purely on personal basis, for there was none in the nature of political party. Member of Parliament enjoyed, constitutionally some privileges such as free debate and immunity from arrest. They also had the power only to call the Prime Minister or other ministers to answer questions concerning the conduct of government affairs or legislative proposals. Essentially, the cabinet, particularly the Prime Minister, stood between the Emperor and the Parliaments; i.e. the PM stood as sort of a Liaison-Officer.

The judiciary was appointed by the Emperor, according to a special law, which was yet to come and which was supposed to regulate manner of selection, tenure, appointment and dismissal. Judges were to submit "to no other authority", but to the law – law, in the absence of contrary stipulation, presumably included the Constitution.[24] The Emperor had also judicial function, in the capacity of final Appellate Court of Equity,[25] which may be

[24] In this line, some cases invoking the question of constitutionality were brought before the regular courts.

[25] "Chilot" and "Firid Mirmera" (the king court and court of investigation) were courts which were outside the ambit of the jurisdictional competence of regular courts. They were maintained by the Emperor.

comparable to that of the Queen's Bench. Other than this, the Emperor had a sort of umbrella power of "maintaining justice through courts".[26]

Finally, the Constitution was declared to be the supreme law of the Empire and as such, acts or enactments which were found inconsistent with the Constitution were rendered null and void.

In the annals of Ethiopian history, it was this Constitution, which, for the first time, articulated the power structure of Ethiopian polity. It was this document which spelt out fundamental rights of citizens. Nonetheless, it was prerogatives and other powers of the Emperor, which, even his over-appointees, felt intolerable, and which the people found imposed on them too heavy burden to shoulder.

i. The 1960 foiled *coup des etats* was a clear sign for the need to reform His government, but He believed that He had done away with the actors as well as the effects.
ii. Some attempted reforms were however taken. One such an attempt was to empower the Prime Minister as per Order 44, to nominate the members of his cabinet; yet, he had to get the approval of the Emperor. This, too, failed to meet the needs of the time.
iii. In the eyes of the then elites one of the premordial needs of the time was the establishment of parliamentary form of government maintaining the Crown as a symbol.
iv. By early 1974, events started to take a different course; the entire Cabinet of Aklilu Habtewold resigned and a creeping coup was set in motion.
v. A new cabinet was established under Endalkachew Mekonnen, which was, among other things, one major step as it established a Constitution Revision Commission. The Commission managed to come up with a draft, which appeared in one of the daily papers.
vi. The draft was modeled after what would be characterized as Constitutional Monarchy of Western Democracy with separation of power and controlling mechanisms, with the Emperor, as Head of State, had one effective power

[26] Op.cit., note no. 23, Article 35.

only – Commander-in-Chief of the army. The draft was not ratified; instead a new government was established by September of the same year – the P.M.A.C. As a result a shift took place: egalitarian economic oriented.

Section III: The 1974 Revolution and the 1987 Constitution: the Soviet Paradigm

The given system could have been saved, had the appropriate reform measures been taken, like, among other things, making the Prime Ministers accountable to the Parliament and introducing economic reforms – more particularly, agrarian reform. These and other measures, if supplanted by the political legitimacy of the monarchy had been enjoyed, would have had ameliorated some of the major problems that beset the society.

In Eritrea, which had been reduced to mere provincial status from a federal unit by imperial order, secessionist forces were out in the fields picking up arms. In the southern part of the Country the conflict between landlords and tenants escalated to a point of bursting into flame. There was general discontentment among the urban populace and in particular among the disenchanted intelligentsia. In short, contradictions were getting polarized ever more and conflicts were escalating. Yet, the Ethiopian ruling class, including its Head, the Emperor stood blind to the smoldering volcano that lay beneath their feet and on which they rested quite assured. Ethiopia, thus, was just at the brink of an impeding revolution, which eventually erupted.

"Equality, liberty and fraternity" was the motto of the French Revolution: *"Down with Tsarism"* was that of the Russians. In Ethiopia the slogan was *"Down with Feudalism, land to the tiller".* The slogan against feudalism meant the destruction of the imperial order – the crown, the nobility and the landed gentry. *'Land to the tiller'*, on the other hand, meant land to the peasants, which actually ended up with *Socialism* including demands of such questions as right of nations and nationalities to self determination. But, in general, it was a cry for equality, equal opportunity and access to resources.

The lower rank of the new elite constituting professionals, vocational workers and students together with the lower ranks and non commissioned officers took up the political stage,

headed by the military; the Provisional Military Administrative (sic) Council (PMAC).[27] It was said then: *"The Revolution has been hijacked".*

Rural and urban lands were nationalized. All private production and distribution enterprises, including rental houses were brought under the ownership and control of the state. The Emperor, along with ministers, governors, the high nobility and the top brass were executed, the rest were detained. *Red Terror* was unleashed against opposition and even against individual dissenters. In short, the Russian model of revolution and socialism were in the making; what made different the Ethiopian case was that military dictatorship was combined and co-mingled with totalitarianism[28] of the Soviet type. In line with the soviet system, but which is said to be more appropriate for a socio-economic system of our kind, the military adopted *Revolutionary Democracy* and then *Peoples Democratic Republic*.[29]

By the vigour of the locomotive of history or by sudden and unexpected turn of event the Socialist Revolution took place, for the first time in the history of the world on the soil of Russia. To this extent and in addition to what and been supplied by Marxist ideology itself, Socialism, as reflected in the Soviet model, had considerable imprints of the political and social structure of Tsarist Russia contrary to what many would like to view it. Unfortunately, however, Soviet socialism was to a degree, continuum of the past. Tsarism represented in history as one of the most absolute and pervasive form of autocracy, ever existed, whose role had been assumed by the totalitarian Ex-Soviet Socialist State. The Russian Orthodox Church had been the mainstay of the monarch, provider of ideology, and stakeholder in the semi- feudal, semi-capitalist economic structure of Tsarist Russia, a role which was "no rule of law", neither was there a trace of separation of power. Under socialism there was no rule

[27] Originally, it consisted of 120 members representing different groups and departments of the armed forces i.e. the Ground Force (the Royal Body Guard, the National Army and the Territorial Force), Air Force and Naval Force. The vast majority were consumed by their own Revolution, as it was said that "Revolution eats it own sons", in the French Revolution.

[28] When, the developer says, totalitarian, he means, a form of government which embraces, controls and guides all works of life.

[29] According to the level of development attained and according to the nature of the government, states under soviet leadership were categorized as, in ascending order, non-capitalist, socialist-oriented. Peoples democracies, socialist and advanced socialist. This last rank was held by U.S.S.R. itself.

of law, but socialist legality".[30] No separation of power, but Unity of state power. Although the above assertion suffered from all sort of weaknesses that were associated with all gross generalization, but to have an over all view of the two systems, it did help to create contrasting picture that socialist state presents vis-à-vis the state under *Tsarism*.

Soviets were organizational cells formed at factory and local levels and served as a focus of the Russian Revolution. After the Revolution, the Soviets were structured and institutionalized. Both the 1918 and 1924 Constitution of Russia envisaged Soviets as the creators of the Soviet state in which the concentration of the entire and complete authority was manifested. The soviets were the organ of the proletarian dictatorship, which meant that they were organs of the Communist Party of U.S.S.R, Soviet of Workers Deputies were, ipso facto, the prototype of the Soviet authority. The guiding principles of the Ex-Soviet States were embodied in socialist legality (meaning: "Rule by Law".), from which the nature and function of Soviet law could be deduced. The following words articulate this very basic interrelationship:

> *"In Soviet law such a single and general principle is that of socialism – the principle of a socialist economic and social system resting on socialist property, distribution in proportion to labour…"*[31]

The content of Soviet Law was made up, not of *corpus juris Romani*, but out who of revolutionary legal consciousness, which depended on the interest of the working class. From this three fundamental proposition should have to be brought to the forefront for better understanding of the Soviet political and legal typology.

1. In the Soviet system one observes the progressive elimination of civil legal relationship and the broadening of the horizon of public law. This policy had been articulated and underscored as early as 1922. Lenin declared that "(*we) acknowledge nothing as private. For us everything in the province of economic is the domain of public law…"*[32] The object of public law was the prevalence of

[30] Some equate it with the concept of "Rule of Law ". Some one the contrary see it as "Rule of Law", for all purposes, it may be said to include all that which goes with obedience to the law, respecting the law and functioning in accordance with principles of socialist law.

[31] Andrei Y. Vyshinksy, The Law of the Soviet Union, (the Macmillan Company, N.Y, 1961), pp. 76ff.

[32] Ibid.

legal norms and institutions which reflect, confirm and develop the state and the social order, the principle that governed the interaction as well as the definition of the rights and duties of the individual both in relation to state and to one another. Generally speaking Soviet, public law used to ascertain the socialist order – the order that governed the society and the state. More precisely it did not only legalize the juridical nature of the state, but the socio-economic nature as the foundation and determinate of the juridical properties and the peculiar institutions of public law itself. In this sense, it was taken to mean all branches of law; more specifically it meant the Constitution. In the main, the Constitution of the U.S.S.R. defined the state and the state structure, which would lead us to the second proposition.

2. The second most important postulate enshrined in the Soviet conception of laws was the unity and totalitarian nature of the Socialist State.

   Modern constitutional theorists invariably hold that the doctrine of the separation of power is the single most important aspect of democratic institutional arrangement of the political structure. Montesquieu assumed that there are "three sorts of power in government: the legislative (law making), the judiciary (interpreting, dispute settling), and the executive (foreign relation, public security and law enforcing).[33] As to how separate they should be is something that was not contemplated by Montesquieu. The framers of U.S. Constitution took it to mean a government where the three branches exercise control over each other through a system of check and balances among and between the President, the Congress and the Courts. In France, the expression was taken in a more literal sense of the word; i.e. keeping the three organ of government insulated from each other. Courts are not for instance, allowed to exercise any jurisdiction to review the legality or constitutionality of legislative enactment, nor are they to condemn acts of the executive as unconstitutional. In Ex-Soviet Union what was there was not separation but unity of power.

3. The third category of concept which served as a foundation upon which the entire edifice of the Soviet polity was built was socialist property relationship.

[33] Eeron de Montesquieu, The Sprit of Law, Vol. II, Ch. 6, as quoted by Paul and Chlapham , Op.cit., note no. 6, pp. 46-51.

> The *corpus jurist Romani*, according to Vyshinsky, was the gospel of capitalist society which restsed on private property, wherein ownership was understood as constituting the widest possible right that one could have; i.e. uses, *fructs* and *abusus*. After and by the Revolution the hitherto existing property relations had been completely transformed. The panacea for doing away with exploitation was thought to be achieved by the total abolishment of private property and its replacement by socialized property and labour relationship. Consequently, the main form of property relationship in socialist society was state ownership.[34] The state, as a corporate body representing the proletariat. Individual persons and corporate bodies might have "use-right" over land for instance, but no one except the state would have ownership right, as conceived in the true sense of the word. The concept referred to as "use-right" is analogous to what is known as usufruct in private economies and it is devoid of or shorn off the right to dispose. The right to dispose of a property is a manifestation of the highest degree of the will of the individual. In socialism, the contrary was true.

Society is an organism and it becomes, according to Marx and Engels, real organism in a system where property and labour are socialized and the distribution of commodities is supposed to follow the well known maxim, *"from each according to his ability, to each according to his work."*

All taken together, the concepts of law, constitution included, were essentially different from those conceived in capitalist society. The soviet model provided for one party i.e. a vanguard party, one state the workers state and that state had oneness characteristic in contradiction to separation of power. Finally, all these superstructures were built upon the social ownership of property and the progressive development of society into communism i.e. the ideal paradigms of the model.

[34] The second form of ownership is cooperative ownership. It is a kind of condominium or joint ownership; wherein ownership is held individually and/or in group/collectively. The other category is social ownership i.e. tread unions, women and youth associations' property. There are also personal and private ownership the former is inalienable to the person of the individual, whereas the later is transferable.

When a country becomes soviet satellite it meats, therefore, that the economic, political and social structure of that country would have to conform or progressively made to conform to the line of development set by the Soviet system. Depending on the degree of development attained in this direction and measured against the bar of the ladder which the U.S.S.R. has managed to ascend; countries were categorized as followers of *"non-capitalist-road", "Socialist oriented states"* and "*people's democracies"*. By the end of the nineteen seventies, Ethiopia was categorized as falling between people's democratic states and socialist oriented ones.

Whatever was the case, by the nineteen seventies, Ethiopia ended in being a full-fledged soviet satellite state. After ten years revolutionary exercise, Ethiopia was said to have managed to set up a government modeled after Hungary, Romania Vietnam and that was what exactly was reflected in the 1987 Constitution.

Since 1974 a new social order was in the making. The Provisional Military Administration was also in the process of reconstituting itself. To legitimize itself within and broad it had, at least, to take off the uniform and appear in a civil dress. The PMAC presented itself for elections through a new party- the Workers' Party of Ethiopia. The party became the vanguard communist party. The Head of the PMAC became the president. Naturally, the country became the Peoples Democratic Republic of Ethiopia. The 1987 Constitution in its very first Article, therefore, declared as follows:

> *"The People's Democratic Republic of Ethiopia is a state of the working People founded on the alliance of worker and Peasants and the Participation of the intelligentsia, the revolutionary army, artisans and other democratic section of the society."*[35]

Having overthrown the monarchy and the nobility and having identified itself with the working class, the military did not take time to declare that the alliance would henceforth constitute the vanguard of the toiling masses. Indeed, it was declared in the constitution that:

[35] Article 1, Part 1, Ch. 1, Proc. No. 1, The Constitution of the Peoples Democratic Republic of Ethiopia, (1987).

> *"The Workers Party of Ethiopia, which is guided by Marxism-Leninism is (the) a vanguard party dedicated to serve the working people and protect their interest."*[36]

The party took upon itself to change the political, economic and cultural life of the country. The new elite brought under its control all resources – power, economy and culture. All production and distribution enterprises had been nationalized. The rural and urban lands were under state ownership. Rented houses were transferred to the government. Truly, the government by the 1980's was in full control of the economy.

The new order represented a new social order, a new set of values. The Ministry of Education and the Ministry of information could, for instance, be better understood as ministries of national guidance-ministries which are entrusted with responsibility of educating the present society and molding the coming generation with ideals of socialism. As regards the role of the party in social and cultural respect it was stipulated that the state:

> *"Shall ensure the expansion of education and other means of enriching knowledge in order to develop a new culture and lay the foundation for socialism by enhancing citizens intellectual and physical development as well as their capability for work"*[37] *(emphasis added)*

Be it in Ethiopia or anywhere's under socialist system, one of the primordial tasks of party-state is to develop a new culture in line with official creed. However, in Ethiopia, there was a degree of cooperation at the first stage of the Revolution; but later on it was confronted with intense resistance, and some times back-lashes.

The organ of state machinery was also curved out from socialist countries. The national *"Shengo"* (Parliament) was modeled after the Supreme Soviet of the U.S.S.R. It had a standing body, the Council of state, which was acting as executive committee of the parliament. The president of the council was also the president of the Republic. The power to interpret the constitution and the constitutionality of other laws were given to this body,

[36] Id., Article 6.

[37] Ibid.

which was a contradiction in terms, for the Council itself was the mainstay of parliamentary and presidential powers.[38]

The president enjoyed a lot of power. He was the Head of State and had no less power than any head of Government. He had the power to present the Prime Minister, and though him members of the council of Minister to the Parliament, as well as the power to ensure that the council of Minister discharged its responsibilities, and presided over the council as necessary.[39] Upon the occurrence of compelling circumstances, the President had the power to dismiss and appoint the Prime Minster and other ministers.

Judges were elected, recalled and dismissed by the parliament and more interestingly the term of their office was made to be congruent of that of the parliament. Although judges were in those days, as in the past, were to be guided by "no other authority than that the law", it was clear more than even before that the judiciary was under the double yoke of the executive and the parliament. On top of this, socialist legality required the construction of laws in accordance with *"revolutionary legal consciouness"*.[40]

This Constitution does not merit so much discussion because it died well before it was born. It was only there for four years before it was buried. Soviet communism too collapsed. The Berlin Wall was smashed. The Wall was a symbol of the Cold War. Its fall did also symbolize a new era – on the international front it seemed to mean uni-polar globalization.

Marx and Engels had envisaged *"the withering away of the state"*. After seventy years of exercise the whole structure of the U.S.S.R. disintegrated – and withered away. The fifteen Ex-Soviet Republics rebelled, including Russia, the nucleus of the Federation. All what remained was Michael Gorbachev with his ministers in Kremlin. Some suggested that it was he himself who initiated the collapse.

[38] Id., Article 84-87.

[39] Ibid.

[40] Ob-cit., Note No. 31, p. 76.

In 1991 some parallel things seemed to happen in Ethiopia. The entire people revolted. War engulfed the capital city. Eritrea declared its independence. Mengistu Haile Mariam left for Harare; Zimbabwe.

Cuban Socialism was certainly in its death-bed while the Korean Socialism was faltering. Only the Chinese brand seemd to be surviving the challenges of the new era.

For many, socialism was a vision. For some others, it represented a panacea, while sill for others it was a nightmare. In the history of Soviet Socialism, it had, at least, done one major thing – i.e. fair allocation of economic resources, unequalled anywhere in the Capitalist World. But economic equality alone did not bring about democracy. In this respect the Marxist paradigm had, been disproved to a great extent.

In Ethiopia, what the Constitution modeled after the former USSR did was to replace the aristocrats by totalitarian technocrats. Yet, there are certain social, economic, political realities and attitudes that still operate in the present society, which seem to have taken root and would not so easily vanish. It is for this very fact that we have been compelled to go so deep into the past, so as to appreciate the present and look forward to the future.

Questions that matter

1. Characterized the following paradigms of constitutions
    - 1.1 The 1931 constitution, Miji Japanese paradigm (aristocratic)
    - 1.2 The 1955 Revised Constitution (seemingly constitutional monarchy: Westminster paradigm)
    - 1.3 The 1987 Constitution peoples' democracy (socialist paradigm)
    - 1.4 The 1991 Charter and the 1995 FDRE Constitution (Federal with parliamentary form of government)
2. The pendulum of the search for Constitutional paradigm has been swinging from East to West. (1.1 – 1.3)
    - 2.1. Do you observe points, where major shifts have been made? (Explain)
    - 2.2. Where is the pendulum resting now? (Explain)

A shift in historical perspective or paradigm took place: egalitarian yet, ethnic oriented.

Section IV: The Transitional Charter: Reverse Approach to Nation-State Formation – Prelude to Federalism[41]

"The P.D.R.E. Constitution was a short lived one. The Transitional Period Charter of 1991 replaced it. The Transitional Period Charter has completely changed the structure of the State; i.e., from a unitary to a federal structure. Although there was no mention of federal arrangement in the Charter in an explicit manner, it can be inferred from the Charter itself and from the subsequent proclamations that the forthcoming constitution would make the Country a federal one. Party pluralism has also been an innovation of the Charter.

The Transitional Period Charter came to force immediately after the downfall of the P.D.R.E. Government, which was the extension of the military administration. The Charter declared that the provisions of the Universal Declaration of Human Rights were respected fully.

Article 1

"Based on the Universal Declaration of Human Rights of the United Nations of December 10, 1948, Individual Human Rights shall be respected fully and without any limitation whatsoever. Particularly every individual shall have

a) *"The freedom of conscience, expression, association and peaceful assembly;*
b) *"The right to engage in unrestricted political activity and to organize political parties provided the exercise of such right does not infringe upon the rights of others.*

"The Charter in its preamble declared the overthrow of the military dictatorship that has ruled Ethiopia for seventeen years presented a historical moment and opened a new chapter in Ethiopia in which freedom, equal rights and self-administration of all the peoples shall be the governing principles of

[41] With a few alteration taken from Fasil Nahum (Dr.).

political, economic and social life. The Charter also guaranteed each nation, nationality and peoples the right to administer its own affairs within its own defined territory and effectively participate in the central government on the basis of freedom, and fair and proper presentation.

"Although the Charter mentioned nothing about federalism, from the rights given to the 'nations, nationalities and peoples to exercise their self-determination up to independence, if they are convinced that their rights to preserve their identity, promote their culture and history' clearly indicated that the envisaged structure of state was federal. The National/Regional Transitional self-governments established by Proclamation No. 7 of 1991 were mainly based on ethno-linguistic boundaries. The proclamation further stated that, 'National/Regional Transitional Self-Governments shall have legislative, executive and judicial powers in respect of all matters within their geographical areas …' It was considered that the Transitional Period Charter has served as a precursor to the 1994 F.D.R.E. Constitution.

"Ethiopia has a long history of feudal monarchy. Theoretically, it has always been a centralized unitary state. In reality, it had been a centralized state only under strong emperors. More often than not, each region was part of the empire only in name.

"The extent of empire even at its lowest ebb and its mountainous and broken topography, its lack of effective communication, its numerous ethnicities, and above all its quarrelsome regional feudal lords all conspired to perpetuate a backward and inefficient governmental system. At one point during known as the Era of the Princes, Ethiopia reached the comico-tragic climax of six 'Emperors' all claiming simultaneously to be supreme rulers of the same country. With the emergence of strong emperors in the middle of the nineteenth century onwards, centralization was given full rein at the expense of the many ethnic groups, large and small, around the Country, who craved some autonomy. Centralization was carried a step further with the overthrow of the monarchy and the emergence of the Derg. The regional autonomy of certain

regions, that was later proclaimed, was never really put into practice. It was only after years of destabilization and destruction due to war, drought, famine, and mass migration that a new effort was made to build up a viable system.

"The point of departure for the National/Regional Self-Government set-up during the transitional period July 22, 1991 to August 21, 1995 is the Transitional Period Charter of Ethiopia proclaimed by the Peace and Democracy Conference convened on July 1-5, 1991 in Addis Ababa.

"The Charter in its preamble having declared the 'starting of a new chapter in Ethiopian history in which freedom, equal rights and self-determination of all peoples shall be the governing principles of political, economic and social life,' went on in Article 2, to affirm the right of nations, nationalities, and peoples to self-determination. To this effect, Article 2 (b) guaranteed 'each nation, nationality and people the right to administer its own affairs within its own defined territory and effectively participate in the central government on the basis of freedom, and fair and proper representation.'

"With respect to the central government, the Charter having stated that the Transitional Government shall exercise all legal and political responsibilities for the governance of Ethiopia, proceeded to establish the Council of Representatives, which exercised legislative functions and oversaw the work of the Council of Ministers. Further legislation of the Council of Representatives, namely Proclamations No. 1 and 2 of 1991 provided in detail for the powers and functions of the President of the Transitional Government as well as the Prime Minister and Council of Ministers – all of these institutions having been already established by the Charter.

"The establishment of National Regional Self-Government was provided for in Proclamation 7 of 1991 by the same title. Article 3 of the proclamation enumerated 63 identified nations, nationalities, and peoples[3] and established 14 regions. Eight of these regions were composite regions embracing from 3 up to 13 identified nations, nationalities, and peoples. Four regions had one*

identified nation each and greater Addis Ababa with its amalgam of urban and rural peoples formed a region by itself.

"The proclamation provided for 48 of the identified nations, nationalities, and peoples to be able to establish their own National/Regional Self-Governments at the Wereda or above level. Moreover, it was provide that these Self-Governments of these adjacent nations, nationalities, and peoples may, by agreement, jointly establish a larger Regional Self-Government within any of the 14 regions specified.

"The remaining 17 nationalities and peoples having small-sized population – and therefore less than 50% of the population of the Self-Government Wereda – were incorporated in it. These nationalities and peoples with small-sized population, and known as 'minority nationalities', nevertheless, were provided with appropriate representations in the Wereda Council.

"It is clear that, in the Charter, ultimate power rests with the central government. In the language of the Charter 'The Transitional Government shall exercise all legal and Political power for the governance of Ethiopia.' In no unequivocal manner the Proclamation also stated 'National/Regional Transitional Self-Governments are, in every respect, entities subordinate to the Central Transitional Government.' Moreover, the National/Regional Council, which was 'the repository of overall political power regarding the internal affairs of the region' was made 'accountable to the people which elected and to the Council of Representatives of the Central Transitional Government.'
"A somewhat ambiguous and less precise language was introduced in Article 9(1) of the Proclamation, which seemed to indicate that except for specifically enumerated powers of the Central Government, all other powers including residual powers belonged to the National/Regional Self-governments. Article 9(1) stated, 'National/Regional Transitional Self-Governments shall have legislative, executive and judicial powers in respect of all matters within their geographical areas except ..' This, however, was immediately negated by not only specifying nine major areas 'reserved for the Central Transitional

Government because of their nature,' and including in them broad concepts such as 'economic policy', 'establishing and administering major development establishments' and 'building and administering major communications network', but encasing the whole enumerative section by the phrase 'such matters as .. and the like,' which indicates that such enumeration was not exhaustive. To add to it, It was immediately provided by the proclamation that powers and responsibilities of ministries, authorities, and commissions of the central government were to be proposed by the Council of Representatives of the Central Government. This provision provided that the proposal of the Council of Ministers be consistent with the powers and duties of National/Regional Self-Governments. But the ultimate arbiter was the Council of Representatives of the Central Government.

"The special powers of the National/Regional Self-Governments were enumerated in Article 10 of the Proclamation. The Article, having been stated as a caveat 'subject to the provisions of Article9,' went on to enumerate these special powers in ten sub-articles. These special powers and duties were economic, fiscal, and administrative in nature. The economic and fiscal powers dealt with the right to:

1. *borrow from domestic sources and levy dues and taxes;*
2. *prepare, approve and implement their own budget;*
3. *plan, direct and supervise social and economic development programmes;*
4. *establish, direct and supervise social and economic development programmes;*
5. *administer, develop and protect the natural resources of the Region; and*
6. *be the owner of the properties of the Self-Government, acquire ownership of and transfer property.*

"With respect to the structure of the Self-Government, the proclamation provided seven organs, namely:-

1. *The National/Regional Council,*
2. *The National/Regional Executive Committee,*
3. *The Judicial Organ,*

4. *The Public Prosecution Office,*
5. *The Audit and Control Office,*
6. *The police and Security Office, and*
7. *The service and development Committee.*

"The most important of these organs was the Council, which had four regular meetings yearly and whose powers were enumerated in Article 15 of the Proclamation. The Council, as the legislative organ of the Self-Government was the repository of overall political power regarding the internal affairs of the Region State. As such it had the following special powers.

1. *To issue the constitution and laws of the Self-Government;*
2. *To elect the Executive Committee and the Chairman and Secretary of the Council from among its membership;*
3. *To determine the seat of government and the working language of the Self-Government;*
4. *To negotiate and approve agreements concluded with adjacent Self-Governments with respect to national and border matters;*
5. *To establish the various organs of the Self-Government, define their responsibilities, appoint their officers and supervise their activities; and*
6. *To generally exercise the economic, fiscal and budgetary powers granted to the Self-Government.*

"The highest executive organ of the National/Regional Self-Government was the Executive Committee of 11 to 19 members elected by and from the National/Regional Council. The executive Committee was accountable both to the Council of Ministers and to the Council that elected it.

"With respect to the Court structure, the Proclamation envisaged a Wereda and a superior court system. The Proclamation also referred to the Central Government's court system. Thus, it envisaged two parallel court systems.

"The Charter and the Proclamation have set in motion a new experimental process for the governance of Ethiopia. The broad demarcation lines are clear,

but the system will require legislative and structural fine-tuning to make it work. Indeed the Proclamation mentions various important areas which are to be determined by law. These include:

a) *the adoption of Regional Constitutions,*
b) *the collection and utilization of revenue by the Self-Government,*
c) *the jurisdiction of Regional Courts,*
d) *the administration of the regional judiciary,*
e) *The assignment of duties to the Regional Prosecutor, the powers and duties of Kebeles and Higher and similar areas.*

Chapter II

Dimensions in respect of Nation, Nationality and Peoples of Ethiopia

Section I: Putting the Conflict in Perspective[42]

> **"***Multi-ethnic society can survive only if all respective groups within the polity feel themselves as winners."* **[43]**

One of the most contested issues in the public discourse of Ethiopian politics remains the difficulty one gets in interpreting State failure, and cause of that failure in the twentieth century. Some attribute it to *'Beherawi Chekona'* or 'national oppression'. Actually, a broader and more comprehensive approach is necessary. State failure should be analyzed in terms of failing to build a multi-cultural State from the whole diversity that the modern state has brought together during the second half of the 19th Century.

1.1 Instrumentalists

The underlying factor in exacerbating the prolonged war in Ethiopia in the 20th Century, as the majority of authors seem to point, was the result of over centralization of power and economic resources by the 'dominant' group from Showa, which defined itself and the State along its narrow line and marginalized the others, which led to too strong feelings of ethnicity.

According to J. Markakis, the gist of the conflict is political because the bone of contention is state power – not politicization of ethnicity; i.e. the conflict should not be characterized as ethnic. Others such as (Clapham and Abbink) too disagree in characterizing the conflict as ethnic, pointing to recent anthropological and political science discoveries and suspecting ideological ploy by elite groups.

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[42] Taken by and enlarge from, abridge and adjusted to into teaching material, Assefa Fiseha, Federalism and the accommodation of Diversity in Ethiopia: A Comparative Study,(Netherlands, 2005), pp. 52ff.

[43] Ibid. As quoted by Lidija Basta Fleiner, 'Minority and Legitimacy of a Federal State: An Outsider Perception of the Swiss Model,' in Lidja Dasta Fleiner, Thomas Fleiner, eds., Federalism and Multi-ethnic State: The Case of Switzerland v. 16, 2nd edn. (Bale: Helbinng & Lichtenhahn, PIFF, 2000) at 102.

1.2 The Process of State Formation: Political, Economic and Cultural[44]

Emperor Menilik II established the modern Ethiopian State (1889-1913) at the turn of the 20th Century due to confluence of domestic and external forces. The State that emerged by crushing previously existing autonomous kings, was qualitatively different from the previously existing Ethiopia; not only in terms of its territorial size, but also in terms of it ethno-linguistic composition and religious diversity.

He, thus, incorporated a whole variety of ethno-linguistic and religious groups into His direct administration, thereby imposing and instituting the *Gebar* system with its prescribed 'classes of manner' and the 'Neftegna' on the newly incorporated areas in the South and Southwest; the imposition of the Amharic language and Christian Religion on the indigenous people.

Menilik's march to the South took two distinct forms with slightly different outcomes. In areas like Wollega and Jimma in which there was less resistance the incorporated regions were left with their socio-political foundation less disturbed. The tribute system was introduced and new leaders from the local people, who accepted Christianity and spoke Amharic, were appointed. In the other areas in which there was stiff resistance, the consequences were severe. The land was declared *empty*, a metaphor for the land to be occupied by force and the rights on it transferred to the new occupying forces.

By alienating land to the conquered communities and thereby reducing them to servitude and degradation and by imposing the Amhara culture and Christian religion, the distinction between the victors and the vanquished became clear, resulting in class distinction and national oppression.

Later on, rather than attempting to forge a state from the newly introduced diversity, the regime imposed its narrowly defined imperial, mainly Christian state with Amharic as its national language on members of *historic* Ethiopia. As a result, Showa emerged as the core

[44] Id., 54 ff.

of the modern Ethiopian central state with political dominance, economic development and cultural hegemony, which aroused resentment.

Economical implications, as one author notes, were such that

> *"The actual diversity in Ethiopia and the enduring problem of ethno-regional disparity in education, infrastructure, development and representation in leading administrative positions at the* level *of the central state. Both the large Oromo population and the many minority groups in Ethiopia, if looked at proportionally were unrepresented in all major domains."* [45]

The propagation of what may be called state nationalism in the guise of national integration or nation building was one political initiative taken by ruling groups in an attempt to reinforce the shallow foundation of the state as opposed to a pluralistic approach as one may observe from Switzerland and India. Contrary to what transpired in India and Switzerland, integration was premised on assimilation, into what was presented as the superior culture of the ruling ethnic group. Although the Muslims constituted a very large section of the country's population, their religion was ignored by the state whose official religion was Christianity until 1974.

Finally, the 1974 Revolution that destroyed the old monarchy by expropriating land from the land lords, instilled in its place Marxism-Leninism. It also dis-legitimized and abolished the right to '*divine rule'* paving the way for the leftist ideology to step in.

1.3 Some Reflections

There is no doubt that the approach to the crisis from a political angle goes a long way to illustrate the conflict. But to reduce it to only politics is to miss another essential component of the crisis. One is the idea that *'ethnic'* aspirations do not always attain political expression. The other is the instrumentalist's approach (or *statist version of nationalism*), which among

[45] Id., pp. 57, Jon Abbink, 'Ethnicity and Constitutionalism in Contemporary Ethiopia' , Journal of African Law 41;2 (1997), p. 160

other things states that ethnicity is fluid in constant flux and has no objective existence. But, as the experiences of Switzerland and India and the discourses on ethnicity demonstrate,

> *"[t]o study tradition is not simply to study what happened long ago: it is to study an interlocking system of ideas and attitudes which have been held by a people over a long period, and which continues to affect their ideas and behavior in a large number of ways. Tradition is always with us; it may be changed, partly destroyed, or adopted by education or by social and economic development, but can never be abolished…it is a force that binds a people together and gives them a national coherence and identity."* [46]

In the Ethiopian context, it was normal and healthy that people took an interest in defending and adhering to their cultures. It was, therefore, a struggle for survival of the cultures, nationalities, for which they needed political protection in the form of self-rule, federalism or decentralized government.

Therefore, there is the adherence, historical and political dimensions to identity, which deserves merit on its own. Furthermore, the view that nationalism/ethnicity will vanish with greater economic and political integration has become less convincing as this has become the most potent force reshaping the state and its legitimacy in post Cold War era, and because empirical evidences from Switzerland and India point out that *"Identity does not necessarily vanish from the face of the earth even if political and economic situations are favorably accommodative, let alone when it is a state target of destruction under the guise of 'nation-building".*

1.4 The Other Perspective

To the conflicting interpretations over the state crisis that ensued after Menilik's coming to power, aside from the instrumentalist's approach, These are three other versions of analysis, namely *(Abyssinian)* 'colonial', 'Greater Ethiopia' *(*or *Nation Builders)* and 'national oppression'.

[46] Id., p. 59, Paul and Clapham, p. 282.

Though important differences exist in social organization, religion and economy between the Oromos, the proponents of the *colonial* approach like the OLF, seek to set up an independent Oromia. Others like ONC and OPDO do not seem to view the issue of the South being that of liberation from colony, but of Oromo development, .. within federal Ethiopia.

Apart from these, though current political climate in Ethiopia is tolerant to ethnic diversity and the request for cultural and linguistic plurality is accommodated, the Oromo elites have dropped the '*Geez* script' and opted for the Latin alphabet and *Oromiffa*. Thus, there is certainly a problem in the political sphere and the solution to be taken on this rather crucial issue is to define the future context of the political debate.

On Menilik's conquest of the South, some proponents of Greater Ethiopia approach, like Dr. Bahiru, speak of (re-) unification and incorporation of member communities, emphasizing more the glories and independence and hammering on the victory of Adwa. MEISON, one of the affiliate groups to the 1960's Ethiopian Student's Movement (ESM), speaks of expansion; i.e. incorporation of new land. But in general, this is the view expounded by the architects of modern Ethiopia in their bid to build a single society through political centralization backed by cultural homogenization. In any case, this position places them against the ruling party, which has introduced radical changes along its paradigm of 'multiculturalism', since 1991.

Modern Ethiopia after Menilik qualitatively changed its territories as well as its ethno-linguistic and religious composition and although there is a grim truth in the view of that there is shared historical experience, it is futile to argue in this context that the nation state project set by Menilik and aggressively pursued by his successors along with its assimilation paradigm has effectively integrated Ethiopia. What transpired in 1991 among other things simply is the complete failure of such a project and the triumph of the 'multicultural Ethiopian paradigm' rather than a homogenized one.

Therefore, advocates of Greater Ethiopia (Ethiopia as a single unit) should explain why, on what basis, 'Ethiopian nationalism and culture is much broader than any ethnic based nationalism, however inclusive the latter may be.'

Pan Ethiopianism, recently reviving as a reaction to the claim of secession by others, with all due respect to its positive virtues, is suspiciously viewed by many as a method in disguise to return to the pre-1991 epoch of ethnic domination. Not attempting to change its perception, the major obstacle to the 'multicultural Ethiopian paradigm' is the Amhara elite. Equating itself with the identity of the Ethiopian state it is still preventing proponents of multiculturalism giving the state its image by joining hands.

Although it is naively perceived as a present phenomenon, multiculturalism in Ethiopia is a fact that has existed as old as the country itself. So, this paradigm shift of unity in diversity is one not unique to Ethiopia or anti-Ethiopian.

Section II: The National Oppression Thesis and the Question of Nationalities[47]

Despite the general foundation and common understanding that Ethiopia should be viewed as a multicultural state and its nationalities need to be treated equally and have to be 'liberated from' the degrading situation they were put in, authors of this view (ESM of the 1960s) could not agree on further details of the new paradigm. With their slogans 'land to the tiller', 'national equality', and 'social justice', they managed to become very popular in their challenge of the imperial regime. By identifying the Showan Amhara as the single 'oppressor nation', the nation-building project as well became under fundamental challenge. Ironically, both ESM affiliates (EPRP and MEISON) ended up in becoming one another's worst enemy. This left the issue of the nationalities unresolved, making it the Achilles' heel to all political parties.

As those like the 'Waz League', who advocated for regional autonomy, the ESM affiliates preferred to define the struggle of the 'oppressed nations' as indivisible (excluding secession), to whom a solution should be sought within class rather than along national lines. On the other hand, all the 'ethno-nationalist movements' preferred to define their course of struggle on the basis of 'nationality' than class.

2.1 Building Multi-Cultural Democracies

[47] Id., 66ff

In the Preamble of the Constitution, we read:

> *".. Further convinced by continuing to live with our rich and proud cultural legacies in territories we have long inhabited have, through continuous interaction on various levels and forms of life, built up common interests and have also contributed to the emergence of a common outlook;*
> *"Fully cognizant that our common destiny can best be served by rectifying historically unjust relationships and by further promoting our shared interests;"*[48]

2.2 Ethnicity, Nationalism and Multicultural States[49]

> *'Great evils and atrocities have been committed in the name of liberal and socialist ideals, but their scope and intensity does not equal the evils and crimes that have been committed in the name of nationalist ideals.'*

Ethnicity is a state of mind emanating from feeling of separate identity, based, more importantly on the myth of common descent. Here, one group claims that ethnicity is an aspect of human nature, while others claim otherwise. The latter ones claim that ethnicity gets shaped and reshaped through interaction with others and point out that ethnicity can change at both individual and collective levels.

Nations, on the other hand, are more inclusive as they are supposed to be culturally or politically defined. In this respect, nationalism combines shared common identity, feeling of distinctness from other nationals, concerted political action to these ends. It also has the objective of attaining some level of statehood.

As building and/or enhancing the nation can be achieved by advancing political values like democracy, economic welfare, especially in a multicultural federal system that should be done by entrusting only those commonly shared interests to the federal state. To this end, various approaches are being witnessed.

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[48] The 4th & 5th part of the preamble of A Proclamation to Pronounce the Coming into Effect of the Constitution of the Federal Democratic Republic of Ethiopia, Proc. No.1/1995, Federal Negarit Gazeta, 1st year, no. 1.

[49] Id., p. 79, Chaim Gans, The Limits of Nationalism (Cambridge: Cambridge Universty Press, 2003), p. 14.

2.3 The Position of FDRE Constitution of Nation Nationality and Peoples

Here Abera Degafa writes:-[50]

> *"From the text of the Constitution, the right of Nations, Nationalities and Peoples seem to occupy a central place. For example, the opening words of the Preamble read 'We, the Nations, Nationalities and Peoples of Ethiopia …' The Preamble identifies the Nations, Nationalities and Peoples of Ethiopia as the authors of the Constitution. In addition, the provisions of the Constitution dealing with the rights of Nations, Nationalities and Peoples of Ethiopia are made difficult to amend and even during a state of emergency these rights may not be suspended, although many other rights can be.*
>
> *Although the Preamble has taken it for granted that the federation was the agreement of the Nations, Nationalities and Peoples of Ethiopia, the Ethiopian Federation was not the result of any agreement by the member states preexisting the Constitution. Arts 8(1) and 39(1) of the Constitution continue the pretense that the Ethiopian federal arrangement was the outcome of a contract between sovereign Nations, Nationalities and Peoples of Ethiopia. These Articles suggest that the same sovereign Nations, Nationalities and Peoples should have existed legally as sovereign entities before one can say that they have retained part of their sovereignty.*
>
> *"As a rule, Constitutions are intended to provide solutions for the existing or pre-existing social, economic and political problems that a society has to contend with. In Ethiopia the present federal set up has come about mainly as a response of the central authority to pressures of territorial national minorities seeking self-government. The Constitution reflected the needs of the ruling ethno-national movement and its supporters and some argue that the constitution was 'solo-authored by the EPRDF cadres'. The inclusion of the secession clause in the Constitution was merely a calculated and misleading*

[50] Abera Degafa, The Scope of Rights of National Minorities under the Constitution of the Federal Democratic Republic of Ethiopia, Series on Ethiopian Constitutional Law, (Faculty of Law Addis Ababa University), pp. 93-95.

action used by the EPRDF to gain the support of nations and nationalities of Ethiopia, which were opposed to the old unitary system. Under the new Constitution that established a federal state, all sovereign power resides in the Nations, Nationalities and Peoples of Ethiopia. The FDRE Constitution is the supreme law of the land, in which case, any law, customary practice or decision of an organ of a state or a public official that contravenes the Constitution becomes ineffective. According to this Constitution, all international agreements ratified by Ethiopia are an integral part of the law of the land.

"Besides, the Constitution declares that the fundamental rights and freedoms specified in the Constitution shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia. In the following sub-sections, the rights of Nations, Nationalities and Peoples of Ethiopia as provided in the scope of their rights. But in order to do that, having the general overview of the Nations, Nationalities and Peoples living in Ethiopia is necessary."

2.4 National Minorities in Ethiopia[51]

"There are over eighty ethnic groups in Ethiopia and the same number of linguistic groups. Some say that nobody knows exactly how many ethnic groups exist in Ethiopia. In a number of cases, whether a certain group is part of another group or stands alone by itself is not yet settled. … Altogether, the seven ethnic groups having over one million populations account for 85 percent of the total population of Ethiopia.

Now, the question is, to the extent that it has a recognized the right to self-determination of the different ethnic groups of Ethiopia whose numerical sizes range from a few tens to tens of millions, how does the Constitution deal with

[51] Id., pp. 96-100.

their rights? But at first, we have to look at the position of the FDRE Constitution pertaining to the existence of 'minorities'".

2.5 Minorities in the Context of Nations, Nationalities and Peoples[52]

"'Minorities' is a term that defies simple literal definition. The dictionary meaning of the term minority is 'the condition or fact of being small, inferior, or subordinate. If we give the term the simple literal interpretation, almost all communities existing within a State can easily be taken as minorities. Since minorities usually appear in various forms and sizes, it is possible for any person to belong to a minority. For example, cultural groups, social classes, persons belonging to a group of particular profession, immigrants, refugees and nearly all communities within a state could be styled minorities."

In order to avoid such undesired consequences, the term 'minority' in its legal sense disdained in Art. 27 of the International Covenant on Civil and Political Rights (ICCPR) as.

"The ICCPR [provided the] first internationally accepted and binding rule for the protection of minorities. Manfred Nowak believes that this article is 'the only binding provision for the protection of minorities in the universal human rights instruments.' It was Art. 27 of the ICCPR which gave different authors a framework in dealing with the notion of 'minority.

"Art. 27 of the ICCPR provides that, in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. For the purpose of applying Art. 27 of the ICCPR, it became necessary to determine those groups, which are competent to enjoy the rights under this provision of the ICCPR. It is difficult to speak about protection of minorities if the holders of the rights remain undefined.

[52] Id., pp. 22-27.

"In view of the fact that the terms 'minorities' and 'peoples' are interrelated, it is important to distinguish the two concepts first. Some argue that the term 'peoples' may possibly refer to the entire population of a sovereign state or it may apply to the entire population of political dependency or, in the case of multinational or multiethnic states and dependencies; it may apply to the national or ethnic subdivisions. In the broader sense, the term 'peoples' seems to include the term 'minorities'.

"If 'minorities' are considered to be 'peoples', they become full beneficiaries of the right to self-determination as provided under Art. 1 of the ICCPR. Higgins maintains that minorities do not have the right to self-determination because 'people' in all instruments have to be understood as referring to all peoples of a given country. The basis of this argument is that in including two separate Arts, 27 and 1, for 'minorities' and 'peoples' respectively in the ICCPR, the parties to the ICCPR have intended to explain that 'peoples' and 'minorities' are different.

"When looked at, the intention of the signatories of the ICCPR seems to favor those who argue that 'minorities' and 'peoples' are different. Surely, the fact that the two Covenants each have provisions regarding minority rights separate from provisions regarding self-determination indicates that the States had the intention to exclude minorities from being the beneficiaries of the right to self-determination. But still, in the absence of a clear definition of the term 'peoples', it is possible for ethno-nationalists to widen their claim to the right to self-determination including to secession.

"As regards the general definition of minorities, the definitions given by Capotorti and Deschenes, the two Special Rapporteurs of the UN Sub-Commission are always raised within the Un because 'they are well known and carry some weight'. According to Capotori, a minority is a group numerically inferior to the rest of the population of a state – possess ethnic, religious or linguistic characteristics differing from the rest of the population and show, if

only implicitly, a sense of solidarity, directed towards preserving their culture, tradition, religion or language.

According to Capotorti, to be a minority, a group's members are required to be nationals of a state. In addition to that, to be a minority, essentially, members of a group should posses the common distinguishing characteristics. Obviously, this definition seems to exclude non-nationals, immigrants, refugees and sexual groups like gay men, lesbians, and many others who do not satisfy the specified conditions.

"Another definition, perhaps equally accepted is that of Jules Deschenes. For Deschenes, a minority refers to (a) group of citizens of a state, constituting a numerical minority and in a non-dominant position in that state, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated if only implicitly by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law.

"Of course, there is a strong similarity between the two definitions. They concur regarding the constituent elements of the definition of a minority and they both seem to exclude aliens. It is evident from the two definitions that the numerical factor, non-dominant position, possession of distinguishing characteristics, being nationals of the given state and sense of solidarity are singled out as the necessary elements for determining a minority. Certainly, Art. 27 of the ICCPR was the foundation for the two definitions of Capotorti and Dschenes.

"One notable difference between the definitions of Capotorti and Dschenes relates to the addition of 'equality of fact and in law'in Dschenes' definition as a goal of members of a minority group. Indeed, the aim to achieve equality in fact and in law forms an integral part of the collective will of the group to survive and maintain its identity without any discrimination. Of course, here, if a group belonging to a certain minority, wants to assimilate into the majority

population, instead of maintaining its distinctiveness, it should be protected based on the principle of equality. What Dschenes refers to in his definition as aim of a group 'to achieve equality with the majority in fact and in law' is criticized as having the tendency of limiting the notion of minority.

"One important issue both definitions seem to have overlooked is situations where instead of a minority a majority requires protection. Some tend to argue that a majority is entitled to the right to self-determination rather than minority protection. For example, during Apartheid South Africa, the Blacks didn't need minority rights; they need the right to self-determination. The definitions given have failed to consider particular situations in some multinational States where no group in the country constitutes a majority.

"Asbjorne Eide has tried to define the term in a slightly different way. According to him, a minority refers to 'any group of persons resident within a sovereign State which constitutes less than half of the population of the national society and whose members share common characteristics of an ethnic, religious or linguistic nature that distinguishes them from the rest of the population'. In his case, he gave the term minority a broader meaning. Since it does not specifically state the requirement of nationality or citizenship, as it was the case in the definitions given by Capotorti and Dschenes, neither does it seem to include a requirement of a desire for equality or for preservation of culture. Hence, one can say Eide's definition is broader than those given either by Capotorti or Dschenes."

2.6 Types of Minoritie[53]

"As the term ethnic refers to all biological, cultural and historical characteristics, it is wider than the term 'racial' which seems to be limited to inherited physical characteristics. Thus, after 1950, the term 'ethnic' came to replace the term 'racial'.

[53] Id., pp. 33-41.

In the law of the United Nations, an ethnic minority is a group having its own language, culture or history. Such group has to be a self-conscious group 'whose members want to uphold its particularities'. This may be taken as a mere 'psychological reality' but along with that, certain objective cultural features are also required'.

"As used in the text of Art. 27, the term 'ethnic minority' should be seen so as 'to cover the concept of national as well as racial origins'.

"Normally, 'religious minority' within the meaning of the UN law refers to a group of persons who manifest (profess) religious thoughts which differ from a State religion; differs from the religion manifested by the majority of a people, which is in opposition to an atheistic behavior of the majority of a population in particular if there is not complete freedom of religious tolerance in a given country and if the members of the religious group want to uphold their religion.
"According to Art. 27 of the ICCPR, a linguistic group shall not be denied the right to use its own language in private or in public, in community with other members of the group. A linguistic minority differs from the rest of the population in the language it uses, which it wants to be recognized and protected.

"The Parliamentary Assembly, Council of Europe, defines by a list of criteria (Rec. 1201) 'national minority' as follows:- '.. a group of persons in a State who (a) reside on the territory of that State and are citizens thereof; (b) maintain longstanding, firm and lasting ties with that State; (c) display distinctive ethnic, cultural, religious or linguistic characteristics; (d) are sufficiently representative although smaller in number than the rest of the population of the state; (e) are motivated by the concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion and their language.'

"This definition differs from that of Capotorti and Deschenes in failing to refer to the requirement of non-dominance, which is an important qualifying attribute of 'national minority'.

"Neither Art. 1 nor Art. 27 of the ICCPR has included the notion of indigenous people because it was believed that the protection of minority groups was sufficient to protect indigenous groups. However it was decided later on that indigenous groups should be given special protection as well. Accordingly, the working definition proposed by the United Nations Study on Indigenous Populations provides that:

> *'Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.'*[54]

"Generally, non-nationals consist of a number of categories including migrant workers, refugees and stateless persons. The general Comment No. 23 provides that "the terms used in Art. 27 indicate that the individuals designed to be protected need not be citizens of the state party. The persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language."

"Here, the reference is made in respect of the term "Persons", not to citizens. And, if that is the case, in so far as aliens are also persons, and as a group,

[54] Id., p. 39. UN, United Nation Study on Indigenous Populations, U.N. sSales No. E. 89, XIV.3, pp. 50-51.

with some characteristics of minorities, then, it seems, that protections applied to minorities should, likewise, be extended to them.

"In the comment referred to one finds a statement to the effect that a State's Party to the Covenant are obliged to ensure that the rights protected under the Covenant are available to all individuals within their minorities and subject to their jurisdictions except those rights which are specifically applicable only to citizens."

Questions for review

1. Where a Constitution establishing a federal state is ratified or adopted,
   a) by representatives of the people on the basis of "single return" or proportional or on any other electoral system put in place by the law again enacted by duly representative law making body; or
   a. referenda or referendum

   It would be legitimate, if the Preamble of such a Constitution reads as "We, the People of..." but where such a Constitution has been adopted by representatives of the unites (the members) like that of U.S.A. (the Constitution was first adopted by representatives of some eight of the 13 States) would it then be legitimate for the Preamble to run as "We, the People of U.S.A. …"?
2. In our case, the FDRE draft Constitution was signed and adopted by a Constituent Assembly, which represented the Nations, Nationalities, and Peoples of Ethiopia; not the representatives of the whole people, in a manner the HPR is being constituted now. Would it then be legitimate for the Preamble to run as "We, the Ethiopian People"? Or would there be a better formulation than the one we have now? How do you evaluate this proposition?
3. "The FDRE Constitution springs from the association that initially (prior to the establishment of the Constitution) it is the Nation, Nationalities and Peoples of Ethiopia, who are sovereign."
4. The title of Article 8 runs "Sovereignty of the People...", but the sub-article (1) states that it is the Nations and Nationalities, in whom sovereignty resides, and sub-article (2) declares that the Constitution is an expression of their sovereignty.
5. The sovereignty of these activities is expressed through their representatives (sub-article 3)
6. The House of Federation is composed of representatives of the Nations, Nationalities and Peoples; which, according to the Constitution decides on issues relating to the rights of these entities, in particular, "… including the right to secession".

   Supposing we divide sovereignty into actual/ultimate and external/internal, then, where do these aspects of sovereignty reside, in the People of Ethiopia, as a whole, in the Nation, Nationalities or Peoples, in the House of Federation, or In the House of Representatives?

Questions that matter – II

Article 39(5) gives the definition of "Nation, Nationality or People...". The definition applies to all three categories of ethnic groupings.

1. Do you think that the rights and obligations indicated in this Constitution apply equally?
2. If that is what the Constitution contemplates to achieve then, would it not be better to designate or refer to them as 'Nationality' at least for economy of point view?
3. If it is otherwise, i.e. the initial intention was to establish asymmetrical federalism, which can hardly be detected from the letters and formulation of the Constitution, then how would you characterize the last grouping – 'Peoples'? (In light of Article 54(2 and 3), would the term 'minority' is meant to refer to thes last grouping)
4. Suppose the concept of national minority is not distinguishable from ethnic minority, and this considers them as one and the same, which one of them do you categorize as indigenous minorities.
5. Give examples of 'indigenous minorities' in Ethiopia? Explain the status of the Agew People under the Amhara State. Would this entitle them to a differentiated form of treatment? What about the others?
6. For some, such minorities who find themselves outside the political net 'simple representation' seems to be a better solution. But shouldn't one ask numerical strength of one between and among the other minorities? Shouldn't one also consider numerical strength vis-à-vis representatives of nations, nationalities and Peoples in the House of Federation?
7. According to the prevailing state of condition, the *Wereda* is the lowest unit where participation can be expressed. Would this go with the notion of ensuring minority rights? (Supposing, here the term 'Peoples' as used under Art. 39, and supposing these taken as minorities.)

So fare we have seen the historical and ethnic dimension to be taken into consideration in the understanding of FDRE Constitution. One question remains to be considered. i.e. the socio-structural as well political reality.

Propositions:

1. at the beginning, the historical forces (motive?) that were propelling Ethiopians destiny:

1.1 building emigrated and ethnically and in religion as well homogeneous unified nation state one two

1.2 development (western oriented, also their were some east oriented, in particular Japanizers).

Do you agree with these propositions? If not, why? The developer based on and following the same chain of logic would like to posse the following question at the time of the demise of PMAC and the raise of EPRDF.

What is to be done?

Section III: - The Agenda of the Then, Today and Tomorrow[55]

Historically, states have tried to establish and enhance their political legitimacy through nation-building strategies. They sought to secure their territories and borders, expand the administrative reach of their institutions and acquire the loyalty and obedience of their citizens through policies of assimilation or integration. Attaining these objectives was not easy, especially in a context of cultural diversity where citizens, in addition to their identification with their country, might also feel a strong sense of identity with their community – ethnic, religious, linguistic and so on.

Most states feared that the recognition of such variance would lead to social fragmentation and prevent the creation of a harmonious society. In short, such identity politics was considered a threat to state unity. In addition, accommodating these variances is politically challenging; so many states in the past had usually resorted to either suppressing these diverse identities, or ignoring them in the political domain.

[55] Abridged and reformulated from "Building Multicultural Democracies", Human Development Report 2004: Cultural Liberty in Today's Diverse World (UN Plaza, New York, UNDP, 2004), pp. 47-72.

Policies of assimilation – often involving outright suppression of the identities of ethnic, religious or linguistic groups – try to erode the cultural variations between groups. Policies of integration seek to assert a single national identity an attempting to eliminate ethno-national and cultural differences from the public and political arena, while allowing them in the private domain. Both sets of policies attempt to form a singular national identity.

Assimilationist and integrationist strategies try to establish singular national identities through various interventions.

- Centralization of political power, eliminating forms of local sovereignty or autonomy historically enjoyed by minority groups, so that all important decisions are made in forums where the dominant group constitutes a majority.
- Construction of a unified legal and judicial system, operating in the dominant group's language and using its legal traditions, and the abolition of any pre-existing legal systems used by minority groups.
- Adoption of official-language laws, which define the dominant group's language as the only official national language to be used in/at each levels of the bureaucracy, courts, public services, the army, higher education and other official institutions.
- Construction of a nationalized system of compulsory education promoting standardized curricula and teaching the dominant group's language, literature and history (favoring the dominant group's wishes) and defining them as the 'national' language, literature and history (,accordingly).
- Diffusion of the dominant group's language and culture in particular through national, cultural institutions, including state-run media and public museums.
- Adoption of state symbols celebrating the dominant group's history, heroes and culture; reflected through preferential treatment on such things as choice of national holidays or the naming of streets, buildings and geographic characteristics.
- Seizure of lands, forests and fisheries from minority groups and indigenous people and declaring them 'national' resources.
- Adoption of settlement policies encouraging members of the dominant national group to settle in areas where minority groups historically resided.
- Adoption of immigration/emigration/ policies that give preference to immigrants/emigrants/ who share the same language, religion or ethnicity as the dominant group.

The strategies of assimilation and integration sometimes worked to ensure political stability, while, at times, could be accomplished by putting at risk a great amount of human cost and denying of human choice. At worst, coercive simulation might be employed that ultimately could lead to genocidal assaults or expulsion of some groups.

In today's world of increasing democratization and global networking, policies that deny cultural freedoms are less and less acceptable. People are increasingly assertive in protesting assimilation without choice. Assimilation policies were easier to pursue with illiterate peasant populations, as with Turkey's language and script. But with the rapid spread of a culture of universal human rights these conditions are fast disappearing.

Efforts to allege today in any case the historical evidence suggests that there need be no contradiction between a commitment to one national identity and recognition of diverse ethnic, religious and linguistic identities.

If a country's Constitution insists on the notion of a single people, as, to a certain degree, in Israel and Slovakia, it becomes difficult to find the political space to articulate the demands of other ethnic, religious or linguistic minorities and indigenous people. Constitution that recognizes multiple and complementary identities, as in South Africa, enable political, cultural and socio-economic recognition of distinct groups.

A cursory lock around the globe shows that national identity need not imply a single homogeneous cultural identity. Efforts to impose one can lead to social tensions and conflicts. A state can be multi-ethnic, multilingual and multi-religious (here, it is presumed that such is the state of condition in reality, initially). It can be explicitly bi-national (Belgium) or multi-ethnic (India). Citizens can have a solid commitment both to their state identity and to their own cultural (or distinct ethnic) identity.

Belgium and Spain show how appropriate policies can foster multiple and complementary identities (figure 1). Appropriate policies (undertaken by Belgium since the 1830s and in Spain since its 1978 Constitution) can diminish polarization between groups of the same society; as, for example the majority of citizens of the mentioned countries now do assert have multiple and complementary identities.

Obviously, if people felt loyalty and affection only for their own group, the larger state could fall apart – consider the former Yugoslavia. Countries such as Iceland, the Republic of Korea and Portugal are close to the ideal of a culturally homogeneous nation-state. But over time, even states known for their homogeneity, can be challenged by waves of immigration, as has happened in the Netherlands and Sweden.

The solution could be to create institutions and polices that allow for both: self-rule that creates a sense of group-right and pride in one's ethnic group and shared rule that creates belongingness, attachment to a set of shared common values, institutions and symbols. An alternative to the nation state, then, is the "State nation", where various "nations" –be they indigenous ethnic-groups, religious, linguistic identities can coexist peacefully and cooperatively in a single state polity.

Redressing the cultural exclusion of minorities and other marginalized groups requires more than providing for their civil and political freedoms through instruments of majoritarian democracy and equitable socio-economic policies. It requires explicit multi-cultural policies to ensure cultural recognition.

This part explores the fact how states are integrating cultural recognition into their human development strategies in five areas:

- Policies for ensuring the political participation of diverse cultural groups.
- Policies on religion and religious practices.
- Polcies on Customary Law and legal pluralism.
- Policies on the use of Multiple Languages
- Policies for redressing socio-economic exclusion.

3.1 Proposition: Policies for Ensuring the Political Participation of Diverse Cultural Groups

Article 46- States of the Federation

1. *The Federal Democratic Republic shall comprise of States.*

2. *States shall be delimited on the basis of the settlement patterns, language, identity and consent of the people concerned.*

Many minorities and other historically marginalized groups are excluded from real political power, and so feel alienated from the state. In some cases, the exclusion is due to lack of democracy or a denial of their political rights. If so, moving to democracy will help. But some thing more is required, because even when members of such groups have equal political rights in a democracy, they may consistently be underrepresented or outvoted, which leads them to view the central government as alien and oppressive. Not surprisingly, many minorities resist alien or oppressive rule and seek more political power. That is why a multi-cultural conception of democracy is often required. Several models of multicultural democracies have developed in recent years that provide effective mechanisms of power sharing between culturally divers groups, thereby ensuring the rights of diverse cultural groups and preventing violations of their rights through imposition of simplified model of majoritatian rule or unnecessary political dominance of the ruling elite.

Considered here are two broad categories of democratic arrangements in which culturally diverse groups and minorities can share power within political processes and state institutions. The first involves sharing power territorially through federalism and its various forms. Federal arrangements involve establishing territorial subunits within a state for minorities to exercise considerable autonomy. This form of power-sharing arrangement is relevant where minorities are territorially concentrated and where they have/are capable to/ a tradition of self-government that they are unwilling to surrender.

Federalism is a system of political organization based on a constitutionally guaranteed balance between shared-rule and self-rule. It involves at least two levels of government, namely a central authority and its constituent regional units. The Constituent units enjoy autonomy and power over constitutionally defined subject-matters; they can also play a role in shaping the policies of the central government. The degree and scope of autonomy varies widely. Some countries, such as Brazil, grant considerable power to their regions. Others, such as Argentina, retain overriding control to the centre.

Some other important distinctions:

Coming together or Bonding together:- In "coming together" federal arrangements, as in Australia or Switzerland, is when the regions choose to form a single federal polity. In "holding together" arrangements, such as in Belgium, Canada and Spain, the central government devolved political authority to the regions to maintain a single unified state.

One identity or many:- "Mono-national" or "national" federations assert a single national identity, as in Australia, Austria and Germany, "Multi-national" federation, such as Malaysia and Switzerland, constitutionally recognize multiple identities. Other states combine the two. India and Spain assert a single national identity but recognize plural aspects of their heterogeneous polity; say, by accommodating diverse linguistic groups.

Symmetric or Asymmetric:- In symmetric federalism the constituent units have identical, that is symmetric, powers, relations and obligations relative to the central authority and each other; example, as in Australia. In asymmetric federalism some provinces enjoy different powers. In Canada, fore example, asymmetric federal powers provided a way of reconciling Quebec to the federal system by awarding it specific powers connected to the protection and promotion of French-Canadian language and culture.

The second category of arrangement involves power sharing through consociations; i.e. using a series of instruments to ensure the participation of culturally diverse groups dispersed throughout the country. These arrangements address claims made by groups that are not territorially concentrated or do not demand autonomy or self-rule. Consociations are based on the principle of proportionality: the ethnic or cultural composition of the state. Achieving proportionality requires specific mechanisms and polices. Electoral arrangements such as proportional representation can better reflect group composition, as can the use of reserved seats and quotas in the executive and legislature.

Both federal type and consociation type of powers-sharing arrangements are common around the World. Neither is a panacea, but there are many successful examples of both. This Chapter looks at particular kinds of federal arrangements and some specific mechanisms of

consociation that are particularly suited in enabling the political participation of diverse cultural groups.

Power Sharing through Federal Arrangements: Asymmetric Federalism

Federalism provides practical ways of managing conflict in multi-cultural societies through democratic and representative institutions, and of enabling people to live together even as they maintain their diversity. Sometimes, the political demands of culturally diverse groups can be accommodated by explicitly recognizing group diversity and treating particular regions differently from others on specific issues. In such "asymmetric" federal systems, the powers granted to subunits are not identical. Some regions have different areas of autonomy from the others. Federal States can thus accommodate some sub-unity by recognizing specific distinctions in their political, administrative and economic structures; example, as Malaysia did when the Borneo States of Sabah and Sarawak joined the federation in 1963. This allows greater flexibility to respond to distinct demands and to accommodate diversity. These special measures enable territorially concentrated group distinctions to politically coexist with the central authority, thereby reducing violent clashes and demands for secession.

There are several flourishing examples of such entities. Almost every peaceful, longstanding democracy that is ethnically diverse is not only federal but asymmetrically so. For instance, Belgium is divided into three regions (the Walloon, Flemish, and Brussels-Capital regions); two established according to linguistic criteria (the Walloon region for French-and German-speaking people, and the Flemish region for Dutch-speaking people). The Swiss Federation also encompasses different linguistic and cultural identities.

In Spain the status of "communicates' autonomies" has been accorded to the Basque county, to Catalonia, to Galicia and 14 other entities. These communities have been granted a broad, and widely varying, range of autonomous powers in such areas as culture, education, language and economy. The three historic regions were given distinct areas of autonomy and self-rule. The Basque communities and Navarra have been granted explicit tax and expenditure powers beyond those of other autonomous communities. Spain's willingness to accommodate the distinct demands of its regions, it is supposed, has helped to mitigate

conflicts and separatist movements. Such proactive interventions have helped to foster acceptance of multiple identities and to marginalize the exclusive ones; identities as solely Basque, Galician, Catalan or Spanish.

However, many federations have failed to keep their unity, too. Federal arrangements that attempted to create ethnically "pure" mono-national sub-territories have broken down in many parts of the world. Yugoslavia is a prominent example. The federal arrangements were not democratic. The units in the federation had been "put together" and were ruled with highly unequal shares of political and economic powers among the key groups; an arrangement that fostered ethnic conflict that eventually became territorial conflict and the federation fell apart. This collapse is sometimes attributed to a flawed federal design that failed to establish free and democratic processes and institution through which ethnic groups could articulate multiple identities and build complementarily. Instead it reinforced demands for separation, ending in political disintegration.

The success of federal arrangements depends on careful design and the political will to enhance the system's democratic functioning. What matters is whether the arrangements accommodate important differences, yet buttress national loyalty. For example, federal structures that merely respond to demands for the designation of "exclusive" or "mono-national" home republics for ethnic groups may go against the republics; for ethnic groups may go against the idea of multiple and complementary identities. Such political deals, and communal concessions that do not foster loyalty to common institutions, can introduce divisive tendencies in the polity, which present ongoing challenges, as in the case of Nigeria.
In addition, history shows that asymmetric federalism introduced early enough can help reduce the likelihood of violent secessionist movements to sprout. The avoidance of violent conflict through various federal arrangements introduced in the early stages to emerging secessionist movement is often worth much more than the administrative costs that such arrangements incur.

Many states fear that self-rule or "home rule" could undermine their unity and integrity. Yet many states have granted territorial autonomy without negative consequences. These efforts to enhance group representation and participation have sometimes staved off political violence and secessionist movements. For example, after decades-long struggle, the fist

Nations' People of northern Canada negotiated a political agreement with the federal government to create the self-governing territory of Nunavut in 1999. In Panama several indigenous people – the Bri Bri, Bugle, Embers, Kuna, Naso, Ngoble and Wounaan – have constituted semi-autonomous regions governed by local councils.

Article of the International Covenant on Civil and Political Rights expresses the world agreement that *"[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."* The application of this principle to people within independent states and to indigenous people remains controversial. The Constitutions of such countries as Mexico and the Philippines have taken some steps to recognize the rights of indigenous people to self determination, but others avoid it.

One of the legal instruments indigenous people have used to mobilize around these issues is the International Labor Organization's Convention (169) concerning Indigenous and Tribal Peoples in Independent Countries, passed in 1989 and open for ratification since 1990. As of 2003 it had only 17 signatories – Argentina, Bolivia, Brazil, Colombia, Costa Rica, Denmark, Dominica, Ecuador, Fiji, Guatemala, Honduras, Mexico, the Netherlands, Norway, Paraguay, Peru and Venezuela. Chile's Congress has voted against several initiatives in this direction. The Organization of African Unity approved the African Charter on Human and People's Rights, but nowhere is the term "Peoples" defined.

Another sign that these struggles for cultural recognition have entered the global debate is the recent meetings of the Permanent Forum on Indigenous Issues at the United Nations. Political developments seem to be concentrated in regions of the world that have explicitly recognized claims of indigenous people, who have mobilized to contest their exclusion. Some see such mobilizations as politically disruptive – as their violent and reactionary versions can be – but these movements also reflect greater awareness of cultural liberty. States can no longer afford to ignore or suppress these claims.

There have been some imaginative initiatives to grant autonomy and self-rule, especially when groups extend across national boundaries. An example is the Council for Cooperation on Sami issues set up jointly by Finland, Norway and Sweden.

Power Sharing through Consociation: Proportionality and Representative Electoral Arrangements

Consociation applies the principle of proportionality in four key areas: through executive power sharing, proportional representation in electoral systems, provisions for cultural autonomy, and safeguards in the form of mutual vetoes. These instruments can help to prevent one segment of society from imposing its views on another. In their most effective form, they can help to reflect the diverse cultural composition of a society in its state institutions. Consociation arrangements are sometimes criticized as undemocratic because they are seen as an instrument of elite dominance, through the co-option of opposition or vulnerable groups. But they need not involve a "grand coalition" of parties: they enquire only cross-community representation in the executive and legislature. The challenge is to ensure that neither self-rule (for minorities), nor shared-rule (of the state as a whole) outweighs the other. These arrangements also have to be addressed through prudent and responsible politics.

Here focus should be made on the two mechanisms of consociations, namely, executive power sharing and proportional representation, which prevent the dominance of a majority community. From a constitutional point of view, measures that privilege minorities in election procedures raise questions of equal treatment. But small and scattered minorities do not stand a chance of being represented in majoritarian democracies without assistance. Executive power sharing can protect their interests. Proportionality in such political and executive arrangements mirrors the diverse composition of society in its state institutions.

Belize, Guyana, Suriname, and Trinidad and Tobago have long used power-sharing mechanisms to address racial and ethnic divisions, with varying success. The mechanisms involve elements of autonomy (self-government for each community) and integration (joint government of all the communities). Political power is shared by the executive, by the legislature and (in principle) in judiciary bodies.

Proportional representation, another instrument of consociation, allows each significant community to be represented politically in rough accordance to its share of the population – particularly when parties are ethnically based. Even when they are not, proportional

representation provides greater incentives for political parties to seek votes from dispersed groups who do not form majorities in any particular geographical constituency, which also boosts minority representation. Proportional representation does not always guarantee accommodation, successfully; in such instances, the winner-takes-all approach seems to be compatible in multinational and multilingual federations, as Canada and India have demonstrated. But both Countries use other measures to ensure fair political representation of the various groups, so as winner-takes–all approach solely does not lead to tyranny of the majority.

Though none of the many electoral rules of proportional representation provide perfect proportionality, nonetheless can address the problem of winner-takes-all systems and enable greater representation of minorities and other groups, as the impact assessment of recent reforms in New Zealand has shown. Though proportional representation is not the sole solution in all circumstances and is most effective in stable democracies, it can remedy some of the major deficiencies of majoritarian electoral systems by strengthening the electoral voice of minorities.

Other approaches for ensuring representation of cultural minorities include reserving seats for certain groups, as New Zealand does for the Maoris, India, for scheduled tribes, Germans and others. Reserved seats and quotas are sometimes criticized because they "fix" peoples' identities and preferences in the electoral mechanism. And negotiating quotas and reservations can lead to conflict and grievances. In Lebanon, Muslim grievances over a quota of 6.5 seats in the Parliament between Christians and Muslims, fixed on the basis of the 1932 census, became an important source of tension and led to civil war when the demographic weight of the two communities changed. This approach can be more problematic than the proportional electoral systems, which leaves the people free to choose their identifications.

3.2 Policies on Religion and Religious Practices

Article 11-Separation of State and Religion

1. *State and Religion are separate.*
2. *There shall be no state religion.*

3. *The state shall not interfere in religious matters and religion shall not interfere in state affairs.*

Many religious minorities around the World suffer various forms of exclusion. In some cases this is due to explicit discrimination against a religious minority – a problem particularly common in non-secular countries where the state has the task of upholding and promotion an established religion. But in other cases the exclusion may be less direct and perhaps even unintended, as when the public calendar does not recognize a minority's religious holidays, or the dress codes in public institutions conflict with a minority's religious dress, or state rules on marriage and inheritance differ from those of a minority religion, or zoning regulations conflict with a minority's burial practices. These sorts of conflicts can arise even in secular states. Given the profound importance of religion to people's identities, it is not surprising that religious minorities often mobilize to contest these exclusions. If not managed properly, these mobilizations can become violent. So it is vital for states to learn how to manage these claims.

The state is responsible for ensuring policies and mechanisms that protect individual choice. This is best achieved when public institutions do not discriminate between believers and non-believers; not just among followers of different religions. Secular principles have been proven to work best towards these goals, but no one single model for secularism is demonstrably better than others in all circumstances. Various links between state and religious authorities have evolved over time. Similarly, states that profess to be secular do so differently both in principle and in practice. And these differences have implication for the state's ability to protect individual choice and religious freedoms (box 3.4).

Sometimes problems arise because of too many formal links between regions and the state, or too much influence by religious authorities in matters of state. This can happen when, say, small clerical elite controls the institution of the state in accord with what it considers divinely commissioned laws, as in Afghanistan under the Taliban. These politically dominant religious elites are unlikely to tolerate internal differences, let alone dissent, and unlikely to extend freedoms even to their own members outside the small religious groups. Such states do not accommodate other religious groups or dissenters or treat them equally.

In other instances the state may profess neutrality and purportedly exclude itself from matters of religion and exclude religion from matters of state – a policy of "mutual exclusion". But in reality this stance may become distorted through policies that are blind to actual violations of religious freedoms or through ad hoc interventions motivated by political expedience.
States have treated religion in different ways.

A non-secular state extends official recognition to specific religions and can assume different forms depending on its formal and substantive links with religious authority.

- A state governed by divine law – that is, a theocracy, such as the Islamic Republic of Iran, run by Ayatollahs, or Afghanistan as during the Taliban.
- As when one religion benefits from a formal alliance with the government – that is, having an "established" religion. Examples include Islam in Bangladesh, Libya and Malaysia; Hinduism in Nepal; Catholicism in Argentina, Bolivia and Costa Rica; and Buddhism in Bhutan, Burma and Thailand.
- A state that has an established church or religion, but that nonetheless respects more than one religion, that recognizes and perhaps attempts to nurture all religions without any preferences of one over the other. Such states may levy a religious tax on all citizens and yet grant them the freedom to remit the tax money to religious organizations of their choice. They may financially asset schools run by religious institutions through a non-discriminatory way. Examples of such states include Sweden and the United Kingdom. Both are virtually secular and have established religions only in name. Other examples of this pattern of non-secular states are Denmark, Iceland and Norway.

Anti-Religious, Secular States

The state excludes religion from its own affairs without excluding itself from the affairs of religion. In such a state the right to religious freedom is very limited, and often the state intervenes to restrict religious freedoms and practice. Communist regimes in China and former communist governments of the former Soviet Union and Eastern Europe were examples.

Neutral or Disengaged States

There are two ways of expressing this kind of neutrality. The state may profess policy of "mutual exclusion", or the "Strict separation of religion and state". This means that not only does the state prevent religious authorities from intervening in the affairs of state, but the state also avoids interfering in the internal affairs of religious groups. One consequence of this mutual exclusion is that the state may be unable or unwilling to interfere in practices designated as "religious", even when they threaten individual rights and democratic values. Or the sate may have a policy of neutrality towards all religions. The clearest examples are the state of Virginia (after the disestablishment of the Anglican Church in 1786), the United States (particularly after the First Amendment of its Constitution in 1791) and France, especially after the Separation Law of 1905.

Secular States Asserting Equal Respect and Principled Distance

The state is secular, in the sense that it does not have an established Church and does not promote one religion over others, but rather accords equal respect to all religions (and to non-believers).

However, it is willing to defend universal principles of Human Rights and equal citizenship and is able to intervene in the internal affairs of religious groups in what can be called "principled distance". This engagement may take the form of even-handed support for religions (such as public funding of religious schools or state recognition of religious personal law) or even of intervention to monitor and reform religious practices that contradict Human Rights (such as regulating religious schools or reforming personal laws to ensure gender equality). With principled distance, whether the state intervenes or refrains from interfering depends on what measure really strengthens religious liberty and equality of citizenship. The state may not relate every religion in exactly the same way or intervene to the same degree or in the same manner. But it ensures that the relations between religions and political institution are guided by consistent, sectarian principles of liberty and human rights.

Whatever the historical links with religion, states have a responsibility to protect rights and secure freedoms for all their members and not discriminate (for or against) on grounds of religion. It is difficult to propose an optimal design for the relations between state institutions and religious authority. But non-discriminatory states should protect three dimensions of religious freedom and individual choice:

- Every individual or sect within a religious group should have the right to criticize, revise or challenge the dominance of a particular interpretation of core beliefs. All religions have numerous interpretations and practices – they are multifocal – and no single interpretation should be sponsored by the state. Clergy or other religious hierarchies should have the same status as other citizens and should not claim greater political or societal privilege.
- States must give space to all religions for interfaith discussion and, within limits, for critiques. People of one religion must be allowed to be responsibly critical of the practices and beliefs of other religions.
- Individuals must be free not only to criticize the religion into which they are born, but to reject it for another or to remain without one.

Sometimes the arguments for women's rights and principles of equality get entangled with concerns for minority rights and cultural recognition.

The debate over Personal Laws (in India, for example) often comes down to the following:

- *Gender Equality – how patriarchal customs and laws, be they Hindu or Muslim, treat men and women differently in terms of their legal entitlements.*
- *Cultural Freedoms and Minority Rights – whether the sate should reserve the right to intervene in matters of religious practice to assert natural rights while at the same time protecting the right of groups to practice their religion.*

What is needed is internal reform of all Customary Laws; upholding gender equality rather than imposing identical gender-biased, prejudicial laws across all communities. Crucial in this, is genuine effort to establish consensus on the code. Legislation imposing uniformity will only widen the majority-minority divide, which will be detrimental, both for communal harmony as well as for gender equality. Building consensus on these issues to advance

universal principles of Human Rights, gender equality and human development has to be the guiding principle for resolving them.

3.3 Policies on Customary Law and Legal Pluralism

Article 91(Sub 1)-Cultural objectives

> *Government shall have the duty to support, on the basis of equality, the growth and enrichment of cultures and traditions that are compatible with fundamental rights, human dignity, democratic norms and ideas and the provisions of the Constitution.*
>
> *Article 34(Sub 4 & 5)- Marital, Personal and Family Rights*
>
> *4.In accordance with provisions to be specified by law, a law giving recognition to marriage concluded under systems of religious or customary laws mat be enacted.*
>
> *5.this Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute. Particulars shall be determined by law.*

Certain religious and ethnic minorities and indigenous groups feel alienated from the large legal system for a number of reasons. In some countries judges and other court officials have historically been prejudiced against them, or ignorant of their conditions, resulting in the unfair and biased application of the law. In many countries indigenous people are almost entirely unrepresented in the judiciary. This reality of bias and exclusion is exacerbated by the inaccessibility of the legal system to these groups for additional reasons including geographical distance, financial cost and language or other cultural barriers.

Plural legal systems can counter this exclusion. But some critics argue that plural legal systems can legitimize traditional practices that are inconsistent with expansion of freedoms. Many traditional practices reject the equality of women; for example, in property rights, inheritance, family law and other realms. But legal pluralism does not require the wholesale and adoption of all practices claimed to be "traditional". The accommodation of Customary Law cannot be seen as an entitlement to maintain practices that violate Human Rights no matter how "traditional" or "authentic" they may claim to be.

From a human development perspective all legal systems – whether unitary or plural – must conform to international standards of Human Right, including gender equality. Some critics, therefore, argue that if the legal system of the larger society respects Human Rights norms, there is no need to maintain legal pluralism. However, even where there is a consensus on Human Rights norms, there may still be a valuable role for legal pluralism.

Plural legal systems existed in almost all societies; evolving as local traditions, these were historically accommodated, also with other formal systems of jurisprudence. Customary practices, which acquired the force of law over time, coexisted alongside introduced systems of jurisprudence. Such legal pluralism often had roots in the colonial logic of protection of minority rights, which allowed certain customary systems to continue while imposing the colonizer's own laws.

Accommodating Customary Law can help protect the rights of indigenous people and ensure a fairer application of the rule of law. Efforts to accord public recognition to Customary Law can help create a sense of inclusion in the wider society. Often the most pragmatic case for Customary Law, especially in parts of failed states, is that the choice is between Customary Law and no law. Recognizing the ability of indigenous people to adopt and administer their own laws is also a repudiation of historic prejudice – and can be an important part of self-government for indigenous people.

Countries from Australia to Canada to Guatemala to South Africa have recognized legal pluralism. In Australia there has been a renewed focus on recognizing Aboriginal and Torres Strait Islander's Customary Laws, which has opened the way to indigenous community mechanisms of providing justice by means of aboriginal courts, providing greater regional autonomy and indigenous governance. In Canada most local criminal matters are dealt with by the indigenous community so that the accused can be judged by jurors of peers who share cultural norms. In Guatemala the 1996 Peace Accords acknowledged the need to recognize Mayan Law as an important part of genuine reform.

3.4 Policies on the use of Multiple Languages

Article 5- Languages

1. *All Ethiopian languages shall enjoy equal state recognition.*
2. *Amharic shall be the working language of the federal Government.*
3. *Members of the federation may by law determine their respective working languages.*

By choosing one or a few languages over others, a state often signals the dominance of those for whom the official language is their mother tongue. This choice can limit the freedom of many non-dominant groups – feeding intergroup tensions. It becomes a way of excluding people from politics, education, access to justice and many other aspects of civil life. It can entrench socio-economic inequalities between groups.

While it is possible and even desirable for a state to remain "neutral" on ethnicity and religion, this is impractical for language. The citizenry needs a common language to promote mutual understanding and effective communication. And no state can afford to provide services and official documents in every language spoken in its territory. The difficulty, however, is that most states, especially in the developing world and Eastern Europe, are multilingual – and they are the focus of much of the discussion here. Once again, multi-cultural policies are needed.

In multilingual societies, plural language policies provide recognition to distinct linguistic groups. Plural language policies safeguard the parallel use of two or more languages by stating *"Let us each retain our own language in certain spheres, such as schools and universities, but let us also have a common language for joint activities, especially in civil life."* Language conflicts can be managed by providing some spheres in which minority languages are used freely and by giving incentives to learn other languages, especially a national or official language. This can be promoted by an appropriate social reward structure, such as by making facility in a national language a criterion for professional qualification and promotion.

There is no universal "right to language". But there are Human Rights with an implicit linguistic content that multilingual states must acknowledge in order to comply with their international obligations under such instruments as the International Covenant on Civil and Political Rights. Especially important are the rights to Freedom of Expression and Equality. Freedom of Expression and the use of a language are inseparable.

Experience around the world shows that plural language policies can expand opportunities for people in many ways, if there is a deliberate effort to teach all citizens some of the country's major languages. Very often what multilingual countries need is a three language formula that gives public recognition to the use of three languages:

- One international language – in former colonial countries this is often the official language of administration. In this era of globalization all countries need to be proficient in an international language to participate in the global economy and networks.
- One lingua franca – a local link language facilitates communication between different linguistic groups such as Swahili in East African countries, where many other languages are also spoken.
- Mother tongue – people want and need to be able to use their mother tongue when it is neither the lingua franca nor the international language.

Countries need to recognize all three as official languages or at lest recognize their use and relevance in different circumstances, such as in courts or schools. There are many versions of such three-language formulas, depending on the country.
The main questions that states face on language policy are those relate to the language of instruction in schools and the language used in government institutions.

In multilingual societies a multiple language policy is the only way to ensure full democratic participation.
In addition to issues of language use in national institutions, there is also a risk that national information media could be monopolized by speakers of one (or two) dominant languages.

3.5 Polices for Redressing Socio-Economic Exclusion

Article 35(Sub 3)-Rights of Woman

"…woman in Ethiopia … are entitled to affirmative measures. The purpose of such measures shall be to provide special attention to woman so as to enable them compete and participate on the basis of equality with men in political, social and economical life as well as in public and private institutions.

Article 89(Sub 4)- Economic Objectives

Government shall provide special assistance to Nations, Nationalities and Peoples least advantaged in economic and social development. (Emphasis added)

Ethnic minorities and indigenous people are often the poorest groups in most parts of the world. They have shorter life expectancies and lower education attainments and other social indicators. They also are most likely to suffer socio economic exclusion. Redressing that exclusion requires a combination of policies, including:

- Addressing unequal social investments to achieve equality of opportunity;
- Recognizing legitimate collective claims to land and livelihoods and
- Taking affirmative action in favor of disadvantaged groups

But minorities are not always disadvantaged in access to social and economic opportunities. In fact, perhaps the most politically dangerous exclusion occurs when an ethnic minority holds a large part of the wealth (agricultural land, key industries and services).

Addressing Unequal Social Investments to Achieve Equality of Opportunity

Policies that promote growth of equity are necessary to achieve socio- economic inclusion for all groups. For most developing contrives this would include investing in the agricultural and other labor intensive sectors and broadening access to assets, especially agricultural land. But too often, development policies become a source of inter-group tension. In other words, development itself can create, sustain and often intensify inequalities between groups and between individuals.

In many African countries state based control and distribution of mineral resources became a key source of ethno-regional wealth differentials. Thus, for example, in Sudan the discovery and exploitation of oil up to the signing of the 2003 Agreement became the major source of post independence conflict, as the government controlled all oil bearing territories and not royalty payment was assigned for the South. Likewise, Nigeria's oil resources of the south-east heightened ethnic tensions, primarily because revenues for development works to the indigenous communities were evaded, though "publish what you pay" campaigns demonstrated that payments were made. Botswana, by contrast, used its mineral wealth to invest in social infrastructure and human development; perhaps precisely because it is almost entirely made up of a single ethnic group, the Batswana.

As noted earlier, colonial governance entrenched ethnic identities in Africa, promoting ethnic dominance through structures of state power favoring some ethnic identities over the others. This coupled with external factors such as interventions by neighboring/developed states or multinational companies as in the Democratic Republic of Congo, Liberia, Mozambique and Nigeria for mineral resources can as well be causes for tension. Setting transparent and accountable mechanisms such as "publish what you pay" campaigns that explicitly show taxes and royalties collected and fees paid can substantially alleviate the problem, but proper utilization of the collected revenues and appropriate allocation of dividends among the concerned unit and the federal state is crucial.

In many countries public spending in basic social services systematically discriminates against the minorities and the indigenous people. The low provision of services can be a result of lower financial allocations or of distance and isolation. Indigenous people often receive fewer health care inputs and have worse health outcomes than the average population.

It is not easy to universalize access to basic services where there is ethnic fragmentation and identities have been politicized.

Recognizing Legitimate Claims to Land and Livelihoods

Right to traditional lands, as an important political trend, has been cause to the rise of powerful indigenous movements around the world over the last decade – from Bolivia to Cambodia and to Ecuador. At the core of these movements is the demand to protect indigenous people's rights to historic lands and mineral wealth. These claims have to be recognized for what they are: claims for who owns the land should have the right to get benefit from its soil and resources (water, minerals, plants, forests). Only then can policy instruments appropriately address the claims. Indigenous people often have a special relationship with the land they lived; for many it is still their source of livelihood and sustenance and the basis of their existence as communities. The right to own, occupy and use land collectively is inherent in the self-conception of indigenous people. And this right is generally vested not in the individual but in the local community, the tribe or the indigenous nation.

Convention 169 of the International Labour Organization, adopted in 1989, calls on states to respect indigenous lands and territories and proclaims the right of indigenous people to control their natural resources. But only 17 Countries have ratified it (mostly in Latin America). Many of the current conflicts over land and territory relate to the possession, control, exploitation and use of natural resources. In many countries the state claims the right to control such resources. And in many instances multi national corporations assert their own economic interests, unleashing conflicts. In Chile one law recognizes the rights of indigenous people over their lands, but other laws allow any private party to claim possession of subsoil and water resources on those lands, making it hard for indigenous communities to defend their ancestral claims.

Some countries protect such claims through legislation, but in many places indigenous people lack private ownership title. Powerful economic interests often turn communal possession into private property.

The claims of indigenous people over land and natural resources are collective and therefore complex. The idea of collective rights is troubling in a democracy because it seems to

contradict individual rights. But lack of legal recognition of collective rights should not violate individual rights.

In Africa the problem is similar, but with different roots. Despite movements towards democracy over the last decade, in many cases authoritarian regimes have broadly retained control over security forces, economic resources and funding from industrialized countries and multilateral institutions. Economic austerity programmes have often been used to advantage the ruling elites. And the dismantling of significant parts of the public sector, which market-oriented reforms usually require, without first creating a true market, has recentralized power in many cases. In that sense the structural adjustments of the 1980s and 1990s might be said to have had similar outcomes to nationalizations of the 1960s and 1970s.

Taking Affirmative Action in Favour of Disadvantaged Groups

Affirmative action policies allocate jobs, promotions, public contracts, business loans, admissions to higher education and legislative seats on the basis of membership in a disadvantaged group. Such policies are needed when the disadvantage is under cultural exclusion. Relying only on general policies of economic growth with equity for removing such group inequalities would take an insupportably long time, leading to resentment or even civil conflict.

Some affirmative action policies allocate numerical quotas; others set more flexibly defined goals. Affirmative action can be voluntary or legislatively mandated. In some countries, such as Malaysia, affirmative action has been used as a policy to address participation (non-exclusion); to remove group distinctions so that racial, ethnic or linguistic identification is not identical to low socio-economic status. In other countries, such as South Africa, it is part of a policy of redressing past wrongs and reducing inequalities between groups.

Despite a number of concerns, affirmative action policies have been quite successful in achieving their goals, and political considerations will probably prevent their retirement. And without them, group inequalities and socio-economic exclusions would likely be worse than they are today. Hence, there is no question that affirmative action has been necessary in the countries examined here.

Questions

1. Should Ethiopia adopt market centered economy with full-fledged multi party system or government stirred market-economy paradigm, with an enduring, single party operating in a multi party system?

   Discuss this question in light of:

   1.1. The number of enterprises (excluding essential utilities): means of production and distribution yet under state ownership;
   1.2. That land is under the State's ownership;
   1.3. The insignificant position of the private sector, particularly, the social structure it generally represents.

2. Proposition

   2.1. Of the following models, the first represent a typology of social structure of U.S.A, the second that of Scandinavian countries, the third that of the developing countries, particularly countries like Ethiopia.
   2.2. A tip of the ice-berg is the elite i.e. urban, at least with low access to education, and economically and socially well off. The third layer of the social-structure represents by and large rural, with no more than elementary education and leading subsistent livelihood with a very narrow middle class.

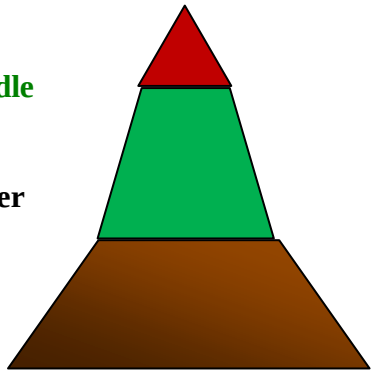
What kind of political and constitutional culture do you think that would likely emerge from this scenario (consensual, nonconsensual and dissensus)?

Diagram I

Upper

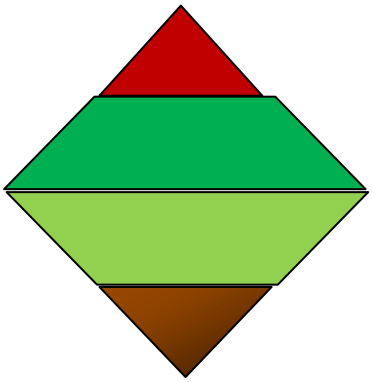
Middle

Lower



(U.S.A.)

Diagram II



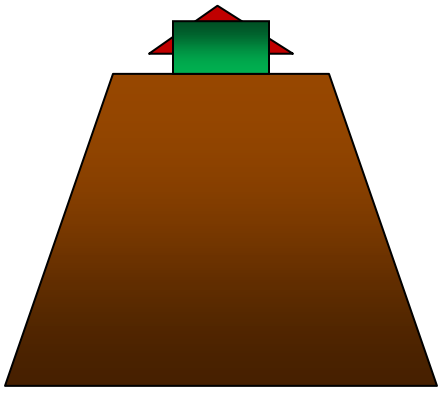
(Scandinavian Cs.)

Diagram III

Higher

Middle

Lower



(The Ethiopian Socio-, Economic and Political Structure)

3. Preposition: the inner dynamism of Ethiopian constitutional development was supplied by the desire to create a single nation state. This was reversed twice: one in 1974, which culminated in 1987constitution and in 1991, which culminated in FDRE Constitution: the former was for economic equality and the later was for ethnic equality. Discus?

Don't you think that the most plausible solution was to re-arrange the state in federal form?

Chapter III

Typologies of Federations

Section I: Theoretical Foundation of Federalism[56]

The term *"federal"* was coined in 1685 by a group of theologians who revived the study of the holy and everlasting covenant which, from time to time made between god and people. They derived the term from the Latin word *foedus* (covenant) using it as the basis for their own philosophy of life.

The real meaning of *"federalism"* can be deduced from this. Derived from the Latin word, it refers to an alliance, a treaty, or an oath of allegiance and, by implication, emphasizes the right of those who share in the covenant to make their own decisions. The Latin origin of the term of the same time indicates that federal forms of association are ancient. The earliest known example occurred in Biblical times when the twelve tribes were united in one or another federal form. Many centuries later it was the feudal system that revealed federal characteristics; insofar as various contradicting parties co-operated permanently with one another.

In more modern times, it took permanent shape in Switzerland. Then North American Confederation (1776 to 1787) took place, which later on was changed in to the United States of America, its.

The theory of the federal concept has also developed. Up to the end of the 18th century, the components of a federal system, and how they could be safeguarded against conquest or impairment. Consequently the contractual nature of federal arrangements was emphasized during this period. Later a more practical phase dawned in which theoreticians had to provide answers to the question of how unity could be achieved between the various parts and how a state could eventually be formed from these parts. During the convention at Philadelphia this

[56] Taken by and large from D.J. Kriek, "The theory and practice of Federalism", in D.J. Kriek, Federalism: The Solution? (HSRC Publishers, Pretoria , (S.A.), 1992): pp. 11-34.

problem was prominent in the discussions; since then, federalism has always been associated with *Constitutionalism*.

The theory of federalism currently revolves to a great extent around the question as to whether its parts should be associated with one another in symmetrical or asymmetrical relationship. In other words, there are people who maintain that federations have a greater chance of success if the parts correspond with one another in institutional form and population composition, and vice versa. However, no finality has been achieved about this yet, but judging by the support which *consociational theory* has been enjoying and its similarity with federalism, it would appear that the asymmetrical model is supported at the moment.

The nature of the federal state concept can be illustrated by some definitions and descriptions. Carl Friedrich describes federalism *as a union of group-selves, united by one or more common objectives but retaining their distinctive group being for other purpose*. Federalism on the intergroup level is what association is on the interpersonal level. It unites without destroying the selves that are uniting and is meant to strengthen them in their mutual relations. It organizes co-operation. Dicey's definition is that a federal state is a political invention which is intended to reconcile national unity and power with the maintenance of the rights of the *"member states*".

From some of these definitions it is clear, and from others it can be deduced that the communities or states which form a federation are striving towards unity rather than uniformity. This characteristic is emphasized by Werner Kagi. He writes:

> *"The inculcation of the federal concept is an education which teaches respect for the multifarious structures of society and tolerance towards those of different out look. In the face of the mighty wale of egalitarianism that threatens to engulf the world, to awaken and preserve a sense of individuality, of the value of certain individual prerogatives, is no easy task. But the one conviction which must be kept alive at all costs is the conviction that sum*

> *clique (to every one his due) and not universal equality is the fundament principle of the federal concept."*[57]

To give expression to this striving towards unity within diversity, those matters which are of common importance to all the federal parts are entrusted to the central government , while matters that are vital to the preservation of a separate identity are left to the authorities of the individual units. Accordingly, in a federation sovereignty is to all intents and purpose partitioned. The central authority is sovereign in regard to the matters entrusted to it while the states, or communities, or cultural groups, are supreme in their own terrains. This division of function and powers can be regarded as an express characteristic of federal systems in that the authorities on the two levels enjoy equal status, and are in no way subjected to each other. Despite the above, the supreme authority in a federation is not divided. The constitution, which divides the powers and functions between the central and group authorities, is in reality the legal sovereign, and the units which join the federation all undertake to subject themselves to it. The constitution, therefore, is in reality a "contract" which is entered into by the federating units and can only be altered by a prescribed procedure. This "contract" makes provision for the exercise of all governmental functions, either by the central authorities or the group authorities. Internal as well as external sovereignty is maintained and, taken as a whole; the association is thus a fully-blown state in which the supreme authority rests upon the constitution.

In cases where the constitution or "contract" is broken, an impartial arbiter, usually the courts, interlines to settle the difference. It is the function of the courts to interpret the constitution, to apply it and thus to ensure that the agreement that was concluded between the federating states or communities is honored. In federations, therefore, the courts can put decisions by both the central government and the domestic authorities to a constitutional test and it he worst comes to worst them null and void.

[57] Id., p. 5, quoted from Werner Kaji, Federalism and Freedom. In: Hunold, A. Freedom and serfdom. An anthology of Western thought. Dordrecht, Reidel.

Prerequisites for Federal Associations[58]

When separate states or communities want to unit on a federal bases, there are two basic considerations, apart from the particular circumstance which prompt this desire, which must be present. Firstly there must be a strong need and desire to shoulder common interests jointly. Secondly there must be an equally strong need and desire to shoulder domestic interests separately. These two factors are so basic that if the first does not exist, an association will not arise, and if the second does not exist, something other than a federation (most probably a centralized union) will come about. A second group of factors is less generic in kind, but also of great importance to the origins and continued existence of the form of association already mentioned.

Section II: Different types of Federations

One can differentiate one form of federalism from another on two bases: the first is based on is origin the second is based on its foundation.

Centripetal and Centrifugal Linking Units

a. Centripetal linking is where independent states move closer together to create a federal state. Most federations have this type of origin, for example the USA and Switzerland.
b. Centrifugal linking is where decentralized unitary units are converted into a federation. Usually unilateral action is initiated by the central authority. At the moment Belgium is in the process of changing over to a federal system in this way.

Federal Units[59]

Federal states can be created on different foundations. They usually have a territorial basis, but can also have other bases.

[58] Id., pp. 6ff.

[59] Ibid.

a. Territorial Units

Here, it is territorial area that serves as unit of the federation. These areas can again be subdivided into two kinds, namely city-states on the one hand and states on the other hand. Examples of city-states that serve as units of federations are Hamburg, Bremen and West Berlin which are units of Germany; Vienna which forms a unit of Austria, and Basle to a certain extent and Geneva which constitute cantons of the Swiss Federation. In cases where city-states serve as units of a federation, the municipal and middle-tier authorities usually combine, which amounts to both typically municipal and certain other broader functions being carried out by these authorities. However the more general phenomenon is that states constitute the basic units of a federation Examples of this can be cited from all over the world. Includes USA, Canada, and Germany. Other than in cases where city-states constitute the units of the federation in the above instances, a clear distinction is drawn between municipal and middle-tier authorities and governmental systems consisting of at least three in which the tiers are usually encountered (e.g. the Austrian, Swiss and Germany constitution)
Regarding the composition of the population within these regions, various other sub-divisions can also be made:

- The population of the whole country can be homogeneous and the federal arrangements merely reflect that the country is so large that the decentralization authority provides obvious local advantages. e.g. Australia.
- The population of the country can be heterogeneous, but each (or most) territorial area accommodates a separate ethnic or linguistic group. Consequently the variety of ethnicities each figure, as such, in the central authority; e.g. India.
- The population of the country can be heterogeneous; although the language and cultural heterogeneity is acknowledged officially. The composition of the central authority, as such, takes no account of ethnic plurality; e.g. Canada.
- The population of the country can be heterogeneous, but both in the state and on the level of the central authority, the premise is that, in reality the various communities form a common society; e.g. U.S.A.

b. Corporate Units

In this case the federal units are not territorially bound so that what is at issue is a type of federalism in which various groups or communities inhabit the same region and attend to their own domestic interests in accordance with the subsidiary principle, but naturally co-operate with each other on matters of common concern. As far as the composition of the central legislative body is concerned, the various communities themselves compose the constituent parts or corporations. The departure point is that a state such as this does not consist merely to a collection of individuals but of whole which consists of various collectivities. Theoretically this idea originated in the old Austro-Hungarian Empire where absolutism had to enable varying cultural groups such as the Czechs, Germans, Hungarians and Slovaks to live together.

Altogether the most important argument for corporate federalism is that it does do away with the entire problem of territorial districting, which can then be tackled as a strictly administrative problem without attention having to be given to the complicating issues of population distribution and its cultural and linguistic requirements and aspirations. On the other hand, however, it becomes a problem of municipalization, that is, how to decentralize the administration of the country to such a degree that in each local community or at least in many of them, a particular nationality could be given predominance.

From this it is clear that a society in which each cultural group has its own municipalities and local authorities, is the manifestation of this sort of federalism; and in reality, conforms with the principle that a federation is set up on a territorial basis, where each nationality has its own participating state within the association. Such a pure expression of the corporative principle would naturally be difficult to put into practice without force being associated with it. As Friedrich correctly points out, such a concentration of population groups in specific municipalities would have to take place around economic factors, which implies that each municipality should serve as an economic growth point for members of such groups. This, in turn presupposes an even or just distribution of production factors between the different cultural groups of the same society; which is not easily attainable in practice.

c. Person Oriented Units

The principle of person oriented units is closely related to the principle of corporatism; both relate to various communities which inhabit one and the same country. In the latter case (corporate units) the various communities live in separate regions (or municipalities) of the same country while in the former case, they are completely mixed. Consequently the only method of achieving a degree of differentiation in a society such as this is to base the functions of the authorities on the particular needs (or characteristics) of the people. This situation is encountered in Belgium.

d. Associated Units

A development in federal theory and practice that has recently come to the fore is that of associated membership. This applies to members, which according to international law are independent (of the federation) but according to constitutional law are never the less members of a federal state. The best known example is west Berlin which had a special international status in terms of the peace agreement after the second world war but which other wise formed part of the Federal Republic of west Germany.

Other Modalities [60]

a. Nation Centered Federalism: the foundation of the nation centered federalism was laid by Alexander Hamilton in "The Federalist". His belief in a strong national government was later reinforced by judicial decisions. John Marshall as Chief Justice of the Supreme Court constantly emphasized national power, and during the major part of the first quarter of the 19th Century, judicial review was often used as a weapon for, *"keeping the states within bounds"*. Marshall's views found expression in the famous case of Mcculloen vs Maryland, in 1819. He said, *"the national government is the government of all, its powers are delegated by all, it represents all and acts for all"*. It was the court's decision in this case that became the source of the "doctrine of implied powers"; under which all supplementary powers required for the exercise of the powers expressly delegated to the Congress by the

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Constitution were to be considered or treated as vested in the federal government. This doctrine stresses that the nation is superior to its component parts. With the passage of time, it was demonstrated time and again that it would be impossible to face crisis situations without a strong united centre. The trend towards centralization gained ground particularly during the decade of the 1030's when America together with the rest of the world was in the grip of the Great Depression. The scope of activities of the US Federal Government expanded, and as it fitted into its new rule, the states started receding in terms of role expectations.

b. State Centered Federalism: This concept was first articulated in the Virginia and Kentucky Resolutions, of 1798. The theory asserts that the Constitution was a result of state action. It was after all, they said, the states which had sent their delegates to Philadelphia and it was when they ratified it did the Constitution become applicable. Proponents of this theory said that the states should vigilantly guard themselves against the national power. Jefferson had once declared that the: *"jealously of the subordinate government is a precious reliance"*. James Madison, expounding his sentiments in fovour of this theory of federalism said:

> *"The powers delegated by the proposed constitution to the federal government are few and defined (article 1). Those which are to remain with the state governments are numerous and indefinite. The former will be exercised principally on eternal objects…… the powers reserved to the several states will extend to all the objects, which in the ordinary course of affairs, concern the lives, liberties and properties of the people and the internal order, improvement and prosperity of the state."*

c. ***Dual Federalism*** This is also called the separatist theory of federalism. This called for the carving out of separate fields of authority, for the federal and the state governments. John Taylor said that, *"the federal constitution, so far from intending to make its political spheres morally unequal in powers or to invest the greatest (union/center) with any species of:sovereignty over the least (states), intended the very reverse"*.

Put simply, its intention was to distribute power equally between the national and state governments. The reason why great spheres drive no authority from magnitude, to transgress

upon small spheres is, that both are donations from the same source; i.e. the people and that the donor did not intend that one donation should pilfer another because it was smaller.
According to this view, the national and state governments form two separate centers of power from each of which the other is barred and between which is something like a jurisdictional "no man's land", into which both are barred from entering.

d. ***Cooperative Federalism:*** The American federal system doest not comprise of independent layers of government but is cooperative in nature, a blend of governments resembling: A vain bow or marble cake, characterized by inseparable mingling of differently colored ingredients - the colures appearing in vertical and diagonal strands and unexpected swirls. As colures are mixed in a marble cake, so functions are mixed in the American federal system.

Under this scheme, both collaborate to meet certain ends. Rather than remaining as aloof as possible, they consider the possibilities of mutual aid. The most important device of cooperative federalism is that of providing grants-in-aid to the states, used extensively since 1933. The Federal Government can attach stipulations while granting funds and finally is free to withdraw the grant whenever it discovers that the state is not complying with the stipulated conditions.

e. Creative Federalism: This has all the features of cooperative federalism, yet has some unique elements of its own. It lays emphasis on cooperation, not only between the federal and state governments but between them and the local units, private organizations and the public at large. All are regarded as a working team, dedicated to positive action in solving the problem facing the nation, with perhaps a different combination of forces at work in each different problem area and with the national government, not always the senior partner.

f. New Federalism /of Richard Nixon/: This, in content, is much similar to creative federalism, A new label was given to it by Richard Nixon, he believed in responsible decentralization, whereby the states and local authorities would receive a larger share of powers. He said; Washington will no longer try to go it alone and Washington will retrain from telling states and localities how to conduct their affairs and will seek to transfer ever greater responsibilities to the state level. They must both get together solve the broader

problem areas. The thrust of 'new federalism' is to de-emphasize the national government's role in the partnership of governments and to strengthen that of the state and local governments.

Nixon meant that the US Federal Government would not dictate terms. It would only toss the ball and the state governments and localities would then take over. President Eisenhower too had remarked earlier that, the tasks of administration should be performed by the government nearest to the people and not by the: *"far off reputedly rich uncle in Washington DC."*

To conclude this segment, it can safely be said that these theories are not standing in competition with one another. American federalism is at best a combination of several theories, chiefly those of cooperative and creative federalism with a strong bias towards the nation centered federalism. There is nothing static about it. It is a dynamic process involving trial, error and continuous experimentation.

Section III: Division of Functions between Levels of Authority[61]

With regard to the division of functions and powers between the various levels of authority in a federation, one should distinguish between the principle on the basis of which the division takes place and the technique according to which the division takes place.

As far as the principle of division is concerned, it should be pointed out that there was a time when the definition of functions was very general. For example, mention was made of the aims of these functions (peace, order, and good government) or of the clients of these functions (Indians, Blacks, etc ..) or of the instrument of these function (measures and weights) or even of the objectives of these functions (education, immigration and agriculture).

Some times the functions were defined very broadly (for examples with reference to trade, property and rights of citizenship), while others again were defined very specifically (for example in relation to beacons and light-houses).

[61] Kirek , op.cit, note no. 56.

At the same time the idea developed of classifying functions according to general domains of authority activities. The following broad domains can be identified: foreign, defense, economic affairs, transport and communication, natural resources, administration of justice and law enforcement, the status and rights of citizens, culture health and welfare, habitat and environment; within these broad framework, more detail can be worked out.

A few domains in particular can be described: economic affairs include trade and commerce (distinguishing between foreign, interstate and intrastate trade), monetary affairs (including foreign exchange, the monetary system, coinage, financial institutions, taxation, public loans), corporations and education (schools universities, archives, research), copyright (include books, films, arts, recreation), marriages and diverse property under civil rights, habitat and the environment can be addressed along with other related aspects such as land and soil use, national parks, whereas under urban affairs, housing, urban-land use, green areas recreation spots.

When functional authorities are described in this way, it should be possible to bestow responsibilities to particular domain, i.e. federal/state; either exclusively at one level, or jointly on several levels of authority, depending, which level is best equipped for the particular function. In their turn, the Courts can be empowered to rule on certain doubtful cases, seeing that the general rationale concerning the division of the functions will be clear. Going still further, the cost aspects and the susceptibilities of the authorities concerned regarding the handling of specific functions can be more readily calculated.

This brings one to the techniques according to which function can be divided between levels of authority. Three possibilities exist. The fist is to define the functions of the central authority and to leave the rest (whatever this may include) to the middle-tier authorities as in the USA, Australia and Switzerland.

The second is to define the functions of the middle-tier authorities and to leave the rest to the central authority, as in Canada.

The third is to define the functions of both the central and the middle-tier authority and then to compile still another list of functions which both authorities decided about as in India.

The first method is used to limit the powers of the central authority, to give the individual states or communities more freedom and to bring about a localized federal state. The second method is used to limit the states or communities, to strengthen the central authority and to set up a centralized federal State. The third method places the State in either category and even brings an end to its federal character, if the list of matters over which both levels have authority is extended to such an extent that there is no terrain over which a single level remains autonomous.

After having seen the above preliminary enquires and with the help of them let as proceed into the salient features of FDRE Constitution.

Part II: FDRE Constitution: Vertical and Horizontal Division of Power (HPR)

Chapter I
Form and Scope of Distribution of Powers[62]

Basic Features

By forms of division of legislative power we are referring to the ways in which these powers are constitutionally allocated between the federal government and the states, while the scope of legislative powers refers to the areas and amount of jurisdiction assigned to each order of government. In other words, with the latter we refer to the substance of power allocated, while with the former we refer to the technique of allocation.

Despite specific variations among the federations, there are some common features one observes in the forms of distribution of legislative powers between the federal government and the state. The constitutional allocation of legislative power is defined on the basis of three categories; namely, exclusive powers (of the federal government and/or of the states), concurrent powers and reserve power.

Section I: Exclusive Powers

In general, this refers to the powers to be distributed in federal systems falling to one of two main categories: exclusive powers and non-exclusive powers. Traditionally the use of exclusive powers refers to the powers for which the federal constitution has created a monopoly, which either is in the hands of the federation or of the states. In theory the exercise of such an exclusive power as described in the federal constitution is left entirely to the entity to which it has been attributed. Looking at federal level, there are certain functions of government, which in a federation are and ought to be exclusively with in the power of the

[62] Abridge from Assefa, op.cit, note no. 42, pp. 283-339.

federal government; such functions by their very nature cover the entire territory of the federation and apply equally to all member states and citizens.

According to K.C. Wheare,[63] the existence of exclusive power is crucial to a federation. *"There must be some matter, even if only one matter, which comes under the exclusive control of the federation and likewise under the state because shared power can in the end be absorbed, at least potentially, into the exclusive list to the extent that the federal government chooses to regulate it."* Generally speaking, defense powers, foreign trade and foreign affairs have been the domains of the federal government.

According to American federal tradition and the interpretation given by the Supreme Court, the federal government cannot claim power not allocated to it by the Constitution. According to Laurence Tribe[64] "*an act of congress is invalid unless it is affirmatively authorized under the Constitution while states' actions in contrast are valid as a matter of federal Constitutional Law, unless prohibited explicitly or implicitly by the Constitution. This is what is known as the doctrine of enumerated powers".*

The Ethiopian Constitution in general follows the United States' and Swiss' forms of distribution of powers. According to Article 50(2) the federal government and the states shall have legislative, executive and judicial powers. We have earlier noted the point that the Ethiopian federal system appears to reflect some aspects of coming together as well as holding together. Although it is a fact that none of the constituent states existed as autonomous entity, owing to the aggregate nature of the federation, the federal government appears to be one with enumerated and limited powers and the federation is based on the accommodation of diversity within the various Ethiopian Nations, Nationalities and Peoples existent at the time of ratification by the Constituent Assembly.

It is the states that hold residual powers as per Article 52(1), excepting the power of taxation, for undesignated powers of taxation are as per Article 99 left to the determination of HPR and HoF. Thus Article 99 should logically be treated as an exception to Article 52(1). The

[63] Id., as cited by Assefa, K.C. Wheare, Modern Constitutions, (Oxford Univ. Press, London 1956)., p.

[64] Id., as cited by Assefa, p.

Constitution also comprises a brief account of some state powers under Article 52(2) in addition to reserve power, which should only be understood as illustrations of the powers bestowed to states in general terms, as referred to above; i.e. Article 51(1).

It is worth noting that the powers granted to the federal government are not limited to the list under Article 51. It might appear that by virtue of the reserve clause, any power not mentioned under article 51 belongs to the states, but other provisions of the Constitution also indicate additional powers entrusted to the federal government .as can be gathered from the Minutes of the Constitutional Assembly. In general it appears that Article 51 was intended to cover a whole list of powers conferred on the federal government, while others were meant to allocate these lists of power to each federal departments of the federal government and other bodies akin to it like that of the Office of the President. Yet, what appeared as final product did not reflect this intention, for we find powers seem to be additional; i.e. under Article 55, 74 and 77, for instance. Some of the exclusive federal powers not mentioned under Article 51 but indicated elsewhere, include the power to enact labor, commercial, penal code, approval of federal appointments submitted by the executive, and the establishment of federal institutions. Article 51 has therefore failed short of incorporating all powers that the Constitutional Assembly sought to have endowed to the federal government. So the reserve power of the states only applies after discounting all power of the federal government distributed throughout the Constitution.

It is also worth noting that the Ethiopian Constitution provides neither for the 'necessary and proper' clause nor for any express comprehensive list of shared powers.

The Constitution empowers the federal government to *"formulate and implement the country's policies, strategies and plans in respect of overall economic, social and development matters. .. Establish and implement national standards and basic policy criteria for public health, education, science and technology.."*. One may state that this is perhaps more than the 'necessary and proper' clause for it grants the federal government with wide powers on economic, social, health and education aspects. This express coverage looks as those economic and social issues that were federalized during the 1930's in the United States. There is no doubt that these powers cover the bulk of concurrent power on a vast field of social and economic affairs as stated in other federations. However it is also possible to argue

with equal force that if one follows the terms closely, the powers of the federal government even in these vital areas do not seem exhaustive. The same Constitution also empowers the states, among other things, *"to formulate and execute economic, social and development policies, strategies and plans for the state.*" The big question is to draw the borderline between the two, but certainly there is no doubt that this makes most of the policy-making areas concurrent.

Despite the whole range of variation among the federations, a common pattern of sorts emerges. The general principle, on which allocation of responsibilities has usually been based is the vague concept that matters of national importance should be reserved to the federal government, while matters of regional importance should devolve to the states. But the principle does not tell us much about the specifics of what powers should go to the federal government and which one to the states. Besides, it has not been possible to avoid the provision of a wide range of shared powers. What is of national or of local importance cannot be decided on any *priori* basis and federal Constitutions show variations in this regard.

Broadly speaking, the exclusive federal power includes: defense, foreign affairs, immigration, major taxation powers, currency and foreign exchange, foreign and interstate trade, maritime shipping, inter-regional communication, postage and matters physically transcending state boundaries such as high-way transport services and key aspects of economic activities, for which uniform regulation is deemed important. Some of these powers are justified on the ground that it would mean unnecessary multiplication of authority, creation of inconsistent directives and creating chances of friction.

The field of defense is considered mostly an exclusively federal power. It is the essence of federalism to accommodate diversity but war-like circumstances require centralized power to discharge effectively. Besides, the history of older federations indicates that one of the reasons to join the federations was to have a common defense. Furthermore, the centralization of defense is supposed to back foreign relations. For these reasons the control of armed forces, control of land, naval and air forces, were not only believed to reinforce political influence in international politic but also to minimize armed conflicts Yet while maintaining the basic principle that defense remains federal, the states have in many cases

been involved one way or another with at least the police force of their own for maintaining law and order within their respective territories.

Traditionally it is the need for centralization of foreign powers in the hands of the federal government that among other things was the driving force among older federation in their bid to transform themselves from a confederation to a federal polity. In fact, one of the reasons for establishing a federation was the need for a unified foreign policy. As a result, in many cases foreign relations are the exclusive domains of the federal government. In some federations, however, the states have obtained formal representation in international forum, particularly when the matter concerns the interest of the states.

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The other two aspects of power distribution in federal systems are shared powers and concurrent powers, of which the most important aspect of power allocation is that of shared legislative power. The following tries to shed light to this kind of power allocation.

Section II: Shared Legislative Powers[65]

Although the constitutional division of power between the federal government and the state is the central point in federations, we find, however, that the dividing line between the two powers is never clear. There are deliberate and some unintentional overlaps in the division of power. Shared powers represent the meeting point of the two levels of governments, otherwise considered exercising exclusive shares of federal and state powers. These powers refer to that category of powers in which both the federation and the states exercise at some point at least part of the power. Experience has shown that there are certain matters which cannot be allocated exclusively either to the federal government or the states. It may be desirable that the states should legislate on some matters but it is also necessary that the federal government should also legislate to enable it in some cases to secure uniformity across the nation. Another reason for having shared powers is the fact that the federal government may need to guide and encourage state efforts and more importantly some measure taken by the states may have spill-over effects and for this reason the federal government may need to intervene.

Shared powers as well avoid the necessity of enumerating complicated minute subdivisions of individual functions to be assigned exclusively to one area of government or the other, thus serving as a flexible channel for adjustment to new circumstances. They are introduced in recognition of the inevitability of overlaps of jurisdiction between the federal government and the states. Because the regime of shared powers is unavoidable, federal constitutions often provide mechanisms of handling conflict situations between the federal government and states. Because shared powers assume an overlap of legislative functions, in case of conflict it is often stated federal law whether passed before or after wards should to the extent of the inconsistency prevail.

[65] Id., pp. 301ff.

In terms of the field of coverage it can be stated broadly that for the most part the social and economic spheres fall into this category. Economic affairs (that include regulation of trade and commerce, industries and labor and economic planning) raise issues because both levels of government have a lot of vested interest in these spheres of activities. It is for instance rarely possible to demarcate the line between trade and commerce which is interstate and that which is intra-state. On the one hand there are bound to be conflicts of economics interests between states specializing in different products and the fear that measures taken by the federal government integrating the national economy might undermine the cultural distinctiveness of the diverse societies. Besides, in the economic sphere states are often concerned to ensure the economic interests. These reasons call for state control of these spheres. On the other hand there is the need for guarantee to free trade and economic development and in developing countries there is the urge for rapid economic growth through active federal participation. These provide the reasons for federal government's involvement in these fields.

Social services cover education, health protection and welfare of citizens, insurance, and assistance for old age, unemployment, accident, and worker's compensation. There are a number of arguments in favor of state governments' involvement. Regional governments often have the primary constitutional responsibility. The personal nature of the service, the need to adapt them to local circumstances and their close relation to other aspects of local government urge for state power. However, extensive federal financial assistance has often been necessary because of program costs and because of the pressure for federal wide standards of service to the citizen. Besides, greater scale of research and specialization is possible at federal level.

As a result these two fields (economic policy and social affairs) show extensive activity at both levels of government. Experience so far indicates that one can distinguish at least two types of shared powers: concurrent power and frame work powers.

Framework of Power[66]

When framework legislation has been prescribed for the exercise of a power, a special type of shared power exists that, in principle, grants the federal government the competence to issue general legislation in a specific policy field. This federal legislation is subject to strict conditions because it has to leave substantial room for the states to issue their own legislation within the limits set by the federation.

The federal government may use framework legislation to regulate federation wide standards while leaving the states room to legislate the details and to deliver the services in a manner adaptable to local situations. The states under this category of powers are allowed to fill in the gaps with more detailed laws. Unlike the concurrent powers in which the federal government has the potential competence to absorb, federal frame-work legislation indicates an interesting compromise that requires significant decentralization of policy-making authority without sacrificing uniformity where it is needs. Especially in the social services the federal government may legislate to secure a basic national uniformity and to guide regional legislation while leaving the states with the initiative for details and for adaptation to local circumstance.

Framework powers not only preserve the right of the states to legislate but also positively presuppose future state legislation. Federal government may not in principle exhaust the subject.

Although it has traditionally been argued that the Ethiopian Constitution has no shared powers except in the area of taxation, it is clear that it provides some provisions dealing with frame work powers. By virtue of Article 55(6) the HPR is empowered to enact Civil Laws, which the HoF deems *"necessary to establish and sustain one economic community"* In principle by virtue of Article 52, Civil Law is a matter reserved to the states. However, as a matter of exception the federal government may enact civil laws when the HoF states that it is necessary to enact such laws to establish and sustain one economic community. This is a clear departure from the general clause under Article 52(1). The last clause states that

[66] Id., pp. 303ff.

whatever is not expressly given to the federal government alone or concurrently with states remains with the states. But here the approach is whatever is not expressly given from the Civil Law to the federal government is not necessarily with the state. It points out that federal government may legislate even in areas of Civil Law.

It appears that like its German counterpart, if the federal government through the HoF decides that uniformity in some fields of Civil Law should be achieved in light of the potential and actual variation among states in terms of culture, religion and tradition, which may have a bearing on the rights of children, women or even inheritance, then the HPR may be compelled to enact such laws. According to the Basic Law in German the conditions for enacting concurrent and framework powers are *"to establish equal living conditions throughout the federal territory or the maintenance of legal or economic unity"*, There is no doubt that a comparison of the two hints at the Basic Law provision granting wider powers to the federal government. The responsibility of establishing equal living conditions or the maintenance of legal unity taken in light of the fact that under Article 74 of the Basic Law most parts of Civil Law, Criminal Law and the procedures is concurrent ones leaves wide powers to the federal government.

On the other hand, in Ethiopia Civil Law is the residual power of the states and in the context of the ethno-linguistic and religious diversity within which the federation operates, the reasons for some level of uniformity remains compelling. However, this attempt has to be considered in light of the sensitivity to accommodate the diverse nationalities in Ethiopia. Yet this clause is potentially a key provision for guaranteeing uniformity in some fields of Civil Law. The above view has been expressly expounded by the Justice and Legal System Research Institute in its bid to convince the HoF to direct HPR to enact a nationwide Notaries Act, which, among others, aimed at regulating agency, authentication, registration of contracts concerting immovable, some movables, sale of share certificates, registration of contracts of marriage, lease contracts, registration of Memoranda of Association and authentication of documents made by embassies abroad, argued that these are vital instruments that may affect freedom of trade and commerce if states are allowed to issue different laws. Consequently the federal government issued the law.

The situation on education[67] is illustrative here, in theory, higher education is a federal matter, while elementary and high school education falls within the federal government. However, one has to look into policy documents issued by the federal government. In one of these documents the federal government has issued a very detailed policy directive covering the whole range of education from elementary to university level. How is one then to reconcile the formal dichotomy of powers that appears in the different Proclamations on the one hand and the federal policies on the other? One should note that these policy documents originate from the party leadership, they are then discussed and approved by party meetings and issued as official documents through the Federal Minister of Information. In theory the policies are issued with a view to creating uniformity and building consensus and the states are allowed to adapt these policies taking into account their own specific circumstances. It remains to be seen whether practice leaves the states enough room for adoption.

The provision that empowers the states to legislate on state civil servants is also far from being exclusively a state matter. At first sight, it appears there are two entirely separate laws: a federal law governing the federal employees and state law regulation for the state civil servants. Yet the federal Constitution does not leave it there. In the implementation of state laws concerning the state's civil service, the state is required to approximate national/federal standards. Besides, if one looks at the policies issued by the federal government, the formal distinction and duality of authority stipulated in the Constitution becomes blurred. In the document there are standards that the federal government clearly spelt out as applicable to civil servants nationwide

Another area of relevance in the field of framework legislation refers to land law. Articles 52(2d), 55(2a), and 52(5) stipulate in theory parallel powers between the federal government and the states. Both entities are given different aspects of the same subject matter. Federal government, by virtue of Article 51(5) is empowered to enact laws for the utilization and conservation of land, while the states are empowered to administer land and other natural resources in accordance with federal laws 52(2). In theory, it appears legislation is a federal matter while the administration of land and natural resources belongs to the states. However, constitutional practice differs from theory.

[67] Ibid.

In the case of Biyadglegn Meles[68] and et al vs the Amhara Regional State, the applicants requested the CCI to declare that the state's land law and regulations issued subsequently to implement the laws contravene the Federal Constitution on the ground that it is the power of the federal government, not the state's government, to enact comprehensive land legislation, and as a result, the state law is unconstitutional. However, through another development, the HPR has enacted Proclamation 89/1997128 that stipulates that the regional government may proclaim laws on rural land and lays the general framework for them. Furthermore, this means that the federal law retroactively endorses state laws that were enacted before its promulgation as the law in question was enacted prior to the Federal Proclamation. The CCI ruled that the law is constitutional by stating the following two grounds: as it is part of the residual power of the states and also because it has been retroactively endorsed by the Federal Proclamation.

One may raise interesting issues here. Can the Federal Parliament confer this kind of power on itself? Why should the Federal Parliament retroactively endorse the state law if it falls within the power of the states? More interestingly, if the HPR finds out that the states lack such power; could such law be saved by retroactive endorsement? Because such an arrangement can easily be manipulated to disturb the formal division without going through the amendment process.

A similar issue in India has been addressed as follows[69]: *"when the states lack legislative competence with respect to a subject matter, Parliament will have such competence. At times when a state law is declared invalid because of legislative incompetence, Parliament comes to the rescue of the state law by way of validating the same."*
Here the principle is that Parliament cannot merely pass an act saying that such a state act is hereby declared valid. This amounts to delegation of legislative power to the state legislature on a topic which the Constitution has kept outside state jurisdiction and this Parliament is not competent to do that. It is for the Constitution and not Parliament to confer competence on state legislature.

[68] Ibid.

[69] Ibid.

It seems that when the HPR decided to retroactively endorse the state law, it had doubts on its constitutionality. Yet in line with the definition of concurrent power it became possible to somehow construe that the state law is valid even if it were enacted prior to the federal law. After all it is usually the case that federal law comes at a later stage when there is a need for securing uniformity among diverse state practices.

Section III: Concurrent Powers[70]

As one category of shared powers, concurrent powers refer to powers attributed to both entities. However, one of the entities – often a times, the states – are allowed to exercise this power until the federal government steps in to legislate on such powers. The states continue to regulate in some fields until the former occupies the field and the part of the concurrent power which has not yet been occupied by the federal government, may still remain confined within the states. Concurrent powers provide an element of flexibility in the distribution of power enabling the federal government to postpone the exercise of potential authority in a particular field until it becomes a matter of federal importance. They enable both governments to exercise their respective powers depending on whether the matter remains of regional or of national importance.

In Ethiopia, the general thinking about shared powers has been that Article 52(1), which, among other things, states *"all powers not given expressly to the federal government alone or concurrently to the federal government and the state…."* is without much significance, as the Constitution nowhere indicates such concurrent powers, excepting tax-matters.

However, it is still possible to argue that even in other non-tax-matters there are concurrent powers. The Constitution has in one way or another made mention of concurrent powers, albeit not explicitly. Nonetheless, it is only that the framers have not expressly made it so as suggested by Article 52(1). Yet, one may arrive at a number of concurrent powers if on follows the following approaches, for instance.

[70] Ibid.

Illustrations:

> Article 51(1) provides that *"[t]he Federal Government] shall protect and defend the Constitution."*
>
> From this proposition one may arrive at the following conclusions, namely:
>
> a) Each and every state shall protect and defend its own, respective Constitution.
> b) Jointly and severally, states shall protect and defend the FDRE Constitution.
> c) The Federal Government shall also be responsible for protecting and defending the respective Constitutions of each and every state.

Here, aren't (b) and (c) concurrent powers?

As already noted, federal practice indicates that a clear demarcation of powers between the federal government and states is difficult. One can find some examples of such powers. First it is stated, *"it [HoPR] shall enact a penal code"*. But, here also, the states may enact penal laws too on matters that are not specifically covered by the federal penal legislation. It appears that this is more of a concurrent than parallel or framework power; because a state may enact only if the Federal Criminal Code does not exhaust the list of offences. Potentially the Federal Parliament may, by virtue of Article 55(5), exhaust the field leaving no room for the states. But states do often include specific offences not covered by the Federal Penal Code in every piece of legislation; which shall not be an actual exercise of power.

Section IV: Residual Powers[71]

Residual powers represent those powers not listed or partly listed by the Constitution and assigned to either unit of government. Federal Constitutions must provide rules on how to deal with changes in the distribution of powers between the federal government and the states and must govern whom to entrust with new responsibilities that have come about because of changes in new circumstances. This is crucial because such an approach settles tensions between those who urge for greater centralization and those who may urge for greater state power.

[71] Ibid.

The United States, Switzerland, Germany, and Ethiopian Constitutions have preferred to leave residual powers with the states while in India such powers belong to the center. The importance of residual powers is very much related to the scope of exclusive powers conferred upon the other units of government. The point is that the greater the list of enumerated powers, the less significant the residual powers will be.

In drafting a Constitution the best technique one can advise is that depending on the policy, to leave residual powers to either the states, or the federal, to start from one of them and then keep quite. To go any further will create room for overlapping, loopholes, areas of conflict.
To illustrate, take a coin. If one tries to characterize the coin by explaining both sides of the coin, the sedge of the coin remains unexplained. In the same manner, the matters falling between the federal and the states lists will remain areas of contention. Against this proposition some might argue that it would be better to make these abundantly clear. In the eyes of the Developer, it rather would mean to make matters abundantly vague. That is the problem with Articles 52(1) and (2). It would have been better to leave Article 52 with what Sub-article (1) states. The enumeration made under the same Article that is Sub-article (2), has taken matters from better to bad, if not from bad to worse. To save the apparent or real inconsistencies, it would be better to see the enumerations under Sub-article (2) as being a mere illustration of principle stated under Sub-article (1) of the same Article.

Question that matter

1. Of interest in the Ethiopian federal system is the fact that some state governments have chosen to follow the Latin alphabet in education as well as in printed media while other states have continued to use the *Sabian* alphabets. The question then is how far can the states differ in this crucial area in light of the fact that the federal government has the power to *"establish uniform standards of measurement and calendar."*?

Proposition

Except in these and in the amendment of the Constitution, which can hardly be considered to be of legislative function, the HPR is the sole and highest law-making authority of the federal government; and as such it has the following powers in the law making area. According to Article 55(2),

> *"[c]onsistent with the provision of sub-Article 1 of this Article, the House of Peoples Representatives shall enact specific laws on the following matters:*
>
> *(a) Utilization of land and other natural resources, of rivers and lakes crossing the boundaries of the national territorial jurisdiction or linking two or more States;*
>
> *(b) Inter-State commerce and foreign trade;*
>
> *(c) Air, rail, water and sea transport, major roads linking two or more States, postal and telecommunication services;*
>
> *(d) Enforcement of the political rights established by the Constitution and electoral laws and procedures;*
>
> *(e) Nationality, immigration, passport, exit from and entry into the country, the rights of refugees and asylum;*
>
> *(f) Uniform standards of measurement and calendar;*
>
> *(g) Patents and copyrights;*
>
> *(h) The possession and bearing of arms."*

One other problem that has to be raised in relation to fair representation. Here, some argue that fairness can be achieved by taking into account regional interests in the composition of the federal cabinet, by effecting executive level cooperation and/or by introduction of proportionality in elections. But, these are neither constitutionally guaranteed, nor are reliable.

As King states,

> *"..[t]he conventional reason for diminishing the degree of unequal legislative representation between regions is, of course, to render the votes of the citizens across regions more equal. But in the end there is simply a conflict between making regions more equal, or making all citizens more equal. In any event,*

> *inequality of regional representation in the upper houses of federal legislature is only a compromise. … In a federation, viewed as a particular type of democracy, it is distinctive that representation of regions is in some manner entrenched. Federations incorporate necessarily and unavoidably some degree of inequality between the citizens of the different regions."*

Section V: Fiscal Federalism: A General Description[72]

The design and implementation of an effective system of fiscal federalism is vital to the success of a federal system, of course, in a federal system, when several layers of government are established to exercise their powers and functions in the same territory, there is logically a question concerning the allocation among them of public tasks and their financing. This requires a constitutional distribution of tasks (expenditure responsibilities) and revenue sources. But the constitutional distribution of revenue sources normally results in a different financial capacity between the regions. In short, some regions could be richer than others. However, federalism should not function to wards making rich regions richer and poor regions poorer. Therefore, it should provide a mechanism that can adjust the fiscal imbalances between the individual regional governments and between the federal and regional governments. On the whole the distribution of tasks and revenue sources between the central and regional governments with the concomitant financial adjustment through revenue transfers is the major concern of fiscal federalism.

In brief, the literature on fiscal federalism encompasses: principles of fiscal relations between central and sub national levels of government that is the command over resources by the various levels of government and the direction and size of inter governmental fiscal flows. This includes the divisions of tax powers and the means through which resources are adjusted to match expenditure responsibilities for central and sub national levels of government.

[72] Solomon Nigussie, Fiscal Federalism in the Ethiopian Ethnic based Federalism, Utrecht Institute, Netherlands, (Wolf Legal Publishers, 2008).

Generally, the study of fiscal federalism focuses on the allocation of expenditure responsibilities, revenue raising powers and adjusting vertical and horizontal imbalances through intergovernmental fiscal transfers.

The first one, allocation of expenditure responsibilities, deals with the issue as to which functions should be carried out and by which level of government. From the economic point of view, sever economists strongly argued for fiscal decentralization on the grounds of efficiency, of manageability, of autonomy and of accountability. But Wallace Oat's[73] decentralization theorem seems to have set a standard. According to this theorem,

> *"each public service should be provided by the jurisdiction having control over the minimum geographic area that would internalize the benefits and cost of such provision. Those public services that provide benefits over a wide area, e.g. national defense and international affairs, should be the responsibilities of the national government, while those that provide very localized benefits, e.g. schools, waste disposal, fire protection, road maintenance to be provided by local governments."*

In any case, the expenditure requirement of each level of government is dependent on the responsibilities devolved. Legally speaking, this can be determined by the constitutional structure which deals with the legislative and administrative jurisdictions of each order of government. The analysis of expenditure responsibilities may go beyond economic considerations and might revolve on political, social and historical considerations that are entwined with manifestations of diversities in a federation. This analysis focuses, on the one hand, on how the allocation of expenditure responsibility secures states' autonomy, and, on the other hand, on how it ensures the freer movement of goods, labour and services between and among the states of the federation. The extent of intergovernmental collaboration and the administration of federal laws in the states, if there are any, also come into consideration, here.

The second issue is the allocation of revenue raising power. It is concomitant to basis for desiring devolved expenditure responsibilities. As Ronald Watts puts it, it constrains

[73] Ibid.

governments in exercising their constitutionally assigned legislative and expenditure responsibilities. As with the case of distribution of expenditure responsibilities, there is also a need for serious consideration of the reasons for which revenue sources are retained by the centre and which should be assigned to the states. Thus, there are a number of considerations for arguing for centralizing or decentralizing revenue sources by considering criteria of economic efficiency, equity, need and administrative feasibility.

However, as a result of varying degrees of revenue raising powers of the federal and state governments, vertical and horizontal fiscal imbalances call in turn for corrective mechanisms. Thus, the third important issue is the process of intergovernmental revenue transfers, which embraces financial flows between the federal and regional governments as a whole (vertical transfer) and the horizontal distribution – between the states. The instruments used to correct the imbalances should, in general, have the objective of increasing the financial capacity of the states to match their expenditure needs and to narrow down the revenue capacity disparity of the respective states. The magnitude and direction of revenue transfer depends on the method of measuring the financial disparity between the regions, the mechanism employed to address national, local interests in the various states of the federation; including addressing income disparity between different levels of society.

Through division of expenditure and revenue-raising responsibilities, and fiscal transfer mechanisms, fiscal federalism addresses two kinds of conflicts between territorially recognized units: conflict of interest might arise between the central and the regional governments for securing reliable revenue sources within their respective domain.

Division of Revenue-Raising Powers and Responsibilities[74]

In a federal system, powers allocated to governments could be of two general kinds: functions and responsibilities to be discharged by each government, and means for affecting these responsibilities. This includes the expenditure (in a wider sense) and the revenue soliciting aspects of the governments. The revenue soliciting aspect, essential, follows the responsibilities assigned to each level of governments by the Constitution.

[74] Ibid.

As mentioned, division of revenue also influences the operational dynamics of any federal system. This is because the value of revenue solicited from internal sources determines the capacity of government. It, as well as, illustrates the amount of revenue imbalance existing between regional state governments. These, in turn, can influence the adjustment mechanisms by which imbalances are to be addressed through intergovernmental transfers and beyond. That is why the study of the financial aspect is one of the most challenging and an important one in defining their relationship; i.e. relationship between federal and state governments and between states.

In addressing the issue of allocation of revenue-raising powers the main question is how the taxation power is distributed between the states' government and the federal government. A good system of taxation is an essential prerequisite for democracy and good governance. Its effect on good governance is apparent when seen in light of allocation of expenditure responsibility, which cannot, apparently, be undertaken without the necessary means, appropriate facilities and conditions. Finance, as an instrument to ensure the effective performance of powers and respective responsibilities allocated to each levels of government, can be of use if these whole conditions can be properly met.

So, speaking in general terms, democracy and good governance in any federal system to function properly must have scientific, consistent, formidable taxation system applicable to all tiers of government; i.e. central, regional state and local levels.

General Remarks about Taxation[75]

As the major financial resource of any government to achieve its desired objectives can be accomplished by soliciting tax, devising and effectively implementing a proper system is crucial.

Revenue, as an internal source of financing, can be implemented by the instrumentalities of taxation. There are also other sources of non-tax revenues such as fees and changes that may

[75] Ibid.

have implications for the financial autonomy of a government and are likewise treated as taxation powers. These do not create administrative difficulties in their application seen from the point of view of federalism..

Tax is a burden or charge which is only imposed by the legislative power on persons or property to raise money for public purposes. Tax is exacted not on the basis of direct *quid proquo* relations. Moreover, the payment of tax cannot be imposed except by law. Therefore, developing tax legislation requires proper consideration; i.e. evaluate whether the newly devised legislation is in line with the Constitution and ensures the achievement of set objectives.

As a major source of raising government revenue, tax in planned, mixed or liberal market-economic systems plays several additional roles. Tax serves as an income distribution mechanism, which actually is one of the functions of a government. The government performs this function by devising fiscal policy and setting taxation mechanisms.

Tax also plays an important role in stabilizing the economy. As an essential component of fiscal policy, tax aims to bring about high employment and acceptable price levels. Usually, tax bases are classified into direct and indirect, or tax *in persona* (individual) and tax *in rem* (property). In any tax legislation, defining the tax base of each together with its appropriate rate, is emphasized.

In developing tax legislation, tax jurisdictions must be established. There are two principles in establishing tax jurisdiction. The first is in line with the "territoriality principle" (source method); i.e. has taxing power on activities carried out within a country and that produce tax base. A state which employs the second, "personality principle" (also called the "world wide income method"), enables it to have the legal right to tax its nationals or permanent residents of other citizenship, irrespective of the place where the income is derived. In international transactions, adopting either of these two principles may not suffice, since a conflict may arise resulting in double taxation. So, international agreements may be called for.

Some Economists' Theories Concerning Division of Taxes[76]

Much of discussions on the principles of allocation of taxation powers have been carried out by economists in deciding which type of tax can be assigned to which type of government. The traditional normative view set out by Musgrave enumerates the principles which, according to him, can secure independent autonomy and efficient vitalization of resources by the levels of governments. Thus he proposes:

- Taxes suitable for economic stabilization should be central; lower level taxes should be cyclically stable,
- Progressive redistribution of taxes should be central,
- Personal taxes with progress rates should be levied by the jurisdictions which are most capable of implementing that tax on a global basis;
- Lower-level governments should tax bases with low mobility between jurisdictions;
- Tax bases distributed very unequally between jurisdictions should be centralized, and
- Benefit taxes and urban charges might be appropriately used at all levels.

  Some others, such as Roger Gordon, have analyzed the principle of tax assignment based on the theory of "optional taxation' by trying to address the problems that may arise from decentralizing taxation powers. According to him the assignment should be seen in the light of, the so called, "externalities effect" that may occur as regards non-residents when a federal government exercises its expenditure and taxation autonomy. Von Hagen further explained the cases of inter-jurisdictional tax spillovers.

According to him, this may occur when tax is exported to other jurisdictions as a result of buying a product produced and taxed in another locality. In order to reduce these externalities effect, Gordon proposed to identify those taxes, e.g. company tax, which cause such an effect and assign them to the centre, while addressing the financial costs (revenue which could have been collected from these taxes) through revenue-sharing mechanisms with the units. By doing so, the objective of decentralizing taxation power can as well be attained.

The different perspectives appear to have arrived at similar conclusions with respect to the assignment of specific taxes. As a whole, the general approach is to give the central

[76] Ibid.

government power over sources that can help to redistribute income and to stabilize the economy, whereas those immobile taxes which primarily provide a benefit to the local government are to be left to the respective state governments. To be more specific, they proposed taxes such as corporation income taxes and VAT to be assigned to centre, whereas those taxes such as personal income taxes and retail sales are to be left to the states. This classification mainly fits the mobility/immobility factors of tax bases. The theories also proposed that although some are immobile, they might be assigned to the centre because they are unevenly distributed between the various states of the federation and may substantially result in horizontal inequities (such as tax on natural resources).

The above theoretical guidance seems to focus on the perspectives of the "economic efficiency criterion", but there are also additional considerations. Anwar Shah summarizes the arguments by stating that: National equity considerations warrant that progressive redistribution of taxes should be assigned to the national government. This assignment limits the possibility to attract high-income people and to repel low-income ones. The "administrative feasibility criterion" (lowering compliance and administration costs), on the other hand, suggests that taxes should be assigned to the jurisdiction with the best ability to monitor relevant assessments. The fiscal need or "revenue adequacy criterion" suggests that, to ensure accountability, (defines revenue as to mean the ability to raise revenues from own sources) should be matched as closely as possible to expenditure needs.

The main question that follows is whether the practices of federations do correspond to the norms propounded by economists. In general, the assignment of each and every tax may not conform to the normative theories as suggested above. Although federations do demonstrate some general principles, some may fit within the suggestion and others may not. This is because the actual system of constitutionally dividing taxation powers is country-specific due to evolution of taxation, experiences and political cultures.

General Constitutional Methods in Division of Tax Powers[77]

As mentioned earlier, the entire revenue sources can be given either to the centre or to the states, or can be divided between them, theoretically speaking.

If a Constitution prescribes complete authority over all aspects of taxation power to the states (constituent states), they will be required to transfer part of their revenue to the central government through the 'upward revenue sharing' (others call it 'reverse revenue sharing') system. This option is challenged since it does not facilitate the principal functions of the central government, such as income redistribution through the tax system, its stabilizing role and tax harmonization policies. Furthermore, it may create reluctance on the part of regional states to participate in accordance with the federal government, particularly where there is considerable economic disparity between the states. If a country opts for this approach, it will be forced to embark on extensive negotiation between the centre and the states concerning revenue sharing. Generally, this kind of tax soliciting approach is compatible to a country having confederal type of organization, rather than federal.

If, on the other hand, the entire revenue sources are retained by the centre, state governments become fully dependent on revenue transfer mechanisms. This option challenges the very principle of devolution of powers and responsibilities to regional state governments; one of the prerequisites of federalism.

Therefore, the usual trend followed by most federal systems is to divide the revenue sources between the federal and states governments. But this option is not as simple as it appears. As a general principle, there should be a framework by which each state of a country can levy or generate its own finance without, thereby, being in conflict with it. In practice, however, the degree of tax autonomy enjoyed by the state governments demonstrates wide variations. This can be attributed to the allocation of powers as envisaged by varying Constitutions. Accordingly, three methods can be distinguished.

[77] Ibid.

If the federal or state governments have an independent power of taxation on particular thing, business or category of persons, there is said to be an exclusive taxation power. The exclusive taxation power may simply follow the general division of legislative powers. That is, in principle, each level of government can impose all types of taxes upon all revenue sources the subject-matter of which falls within the boundary of its legislative power. It can also exist where the right to impose a particular type of tax is constitutionally assigned to the federal government or to the states only, or to both levels of government. The exclusive taxation power can exist in cases where each level of government is constitutionally authorized to impose the same type of tax, but upon different subjects.

A concurrent power of taxation in general exists where the federal government and the state governments have equal constitutional authority to levy the same kind of tax with respect to the same category of persons, businesses or particular things. Although, in principle, each level of government is entitled to exercise the power of taxation independently of the others, federal Constitutions vary in authorizing concurrent taxes to one or the other level of government. A concurrent tax power is a dominant feature of Constitutions of such countries as the USA, Canada and Switzerland. In principle, it is a characteristic of the federal principle that gives utmost regional autonomy over tax legislation, administration and the execution of revenue that accrues from several tax sources. However, in some federal cases, concurrent power may apply to specified types of taxes.

Besides, the division of exclusive and concurrent powers of taxation in a number of countries demonstrates share-taxes where the taxing powers of the centre and the states have been specified on the basis of divisions made on powers and functions inherent in the taxation power. The power of taxation can be envisaged as a bundle of law-making power, the administration of tax laws and the right to appropriate the levied tax (irrespective of who administers the law). Thus, one level of government may enact laws, the other may administer the law of collecting the levied taxes, and still others may be entitled to the proceeds arising from the tax. The Constitutions of several federal systems exhibit instances which have been worked out on the basis of this, above principle.

The aim of any federal taxation principle is to enable each level of government to be autonomous on matters assigned to each by the Constitution; i.e. enable federal and state

governments become financially secure and each level undertake functions assigned to it by the Constitution. This being the fact, in practice there can be serious problem in balancing revenue sources and expenditure needs of the respective state governments of a federation. This is because distribution of tax powers between federal and state governments feature, or considered to demonstrate competing political interests of centralization and decentralization; i.e. centripetal and centrifugal trends. Accordingly, those who promote diversity advocate a greater devolution of tax powers to the state governments as a reflection of regional autonomy and local self-rule. On the other hand, those who argue in favour of proportional development and lesser diversities recommend the concentration of tax powers at the federation.

There are several reasons for the latter argument, some of which are: the problem of tax administration, tax duplications, macroeconomic considerations, the uneven distribution of tax resources and disparity in expenditure performance capacity. For a country like Ethiopia, which is marked by the asymmetry that exists in tax soliciting ability between the regional states in light of the existence of heterogeneous community groups, appropriate care should be taken so as division of tax powers should not increase the disparity that exists between the regions. This may be achieved by carefully sorting out the types of taxes that are local in character and, thus can be raised by local governments, and by allocating sufficient revenue for the constituent units, while leaving the rest to the centre. This adjustment seeks to balance the revenue sources and the expenditure needs of each level of government.

Structure of Allocation of Taxation Power in Ethiopia

Division of taxation powers is a principal aspect of Ethiopia's Constitution as it is provided in the legal foundation. The FDRE Constitution divides taxation power into three categories, namely:- a) federal power of taxation, b)state power of taxation, and c) concurrent power of taxation.

The Exclusive Power of Taxation of Federal and Regional State Governments[78]

The most important question in the discussion of the exclusive power of taxation is whether each level of government can determine its own tax basis and tax rates. This raises the question whether a specific tax assigned to the state also signifies the power to change tax rates and to set the tax base? Can the states individually determine the tax rate, exempt taxpayers or determine tax relief?

The general approach in revenue assignment does not stop at assigning a specific tax to either of the levels of government. It ranges from complete autonomy to determine both tax rates and tax bases to short of discretion as regards the administration and collection of taxes. In most cases, it is argued that states should have the power to determine the tax rate if the power of taxation is exclusively given to the states.

In Ethiopia, the FDRE Constitution declares that the Federal Government shall levy taxes and collect duties on sources reserved to it, and the states, likewise, exercise the same power with respect to sources that fall under their jurisdiction. Thus, the two levels of government exercise their legislative and administrative powers within their respective spheres of taxation. As a result, the revenue generated from the respective sources belongs exclusively to each level of government. Each level of government is bound to respect the powers of the other.

Thus, the FDRE Constitution does not explicitly limit the power of the states to alter tax rates or to influence the tax bases. In Article 100 it only provides general "directives on taxation"; i.e. conditions they must consider prior to exercising their powers taxation. Both the states and the federal governments have the obligation to ensure that any tax is related to those revenue sources specified to them by law. They should also ensure that the tax is determined with proper consideration and that the tax imposed by them does not adversely affect their relationships. If any tax imposed by a state affects interstate commerce, the central government intervenes, as this power is reserved for central government. This being the case, in practice, however, tax legislation is uniform throughout the country.

[78] Ibid.

The FDRE Constitution provides exclusive revenue sources under the title "federal power of taxation" and "state power of taxation". In general, the division of revenue-raising power in Ethiopia is mainly structured according to the categories of taxpayers or particular things considered as sources of revenue. The exclusive domain of each level of government is not the tax base but the tax source. Thus, both levels of government do and should not levy tax on the same income, transaction or thing. Customs duties including import/export taxes are exclusively reserved for the centre. The revenue sources assigned by Constitution to the Federal Government, thus, are import/export taxes, income tax, sales and excise tax, property taxes and charges and fees.

Concurrent Power of Taxation[79]

It is appropriate to begin by elucidating the concept of "concurrent power". Conventionally, concurrency of power signifies that the centre as well as each state has the right to enact laws concerning the subject-matter under its jurisdiction. This occurs when a general power of taxation is conferred on each jurisdiction, while the actual assignment of particular taxes is left to each jurisdiction to be sorted out in practice. This system follows the general division of legislative power including the division of broad and general tax powers between the federal government and the states.

When the FDRE Constitution came into force, several issues arose regarding the exercise of the concurrent power of taxation. Article 98 of the Constitution states that regional states shall jointly levy and collect revenue. The main issue raised was: How can both the centre and states jointly levy and collect taxes at the same time? Is it similar to the concept of concurrent power of legislation? Would it enable each state to enact its own tax law on sources listed under concurrent taxation? Do all states benefit from these taxes irrespective of the place where the sources of the tax are located?

The power of taxation comprises of two specific powers: the power to set a tax rate and the power to collect the tax paid. The Federal Government and the states exercise independent

[79] Iid.

powers to determine the rate and to collect the tax paid in areas exclusively assigned to each level of government. If we pursue this principle, a concurrent power of taxation likewise presupposes the determination of the rate and collection of taxes to be decided independently by the Federal Government and the state concerned. This could have led to tax competition between the two; the main issue is which law prevails? As the Constitution does not explicitly express that the federal law is supreme over that of the regional states, even in the case of concurrent legislation, it should be raised as an issue for constitutional adjudication.
On the other hand, the literal interpretation of the provision (Article 98) *"the federal government and the states shall jointly levy and collect"* would mean that legislation would be enacted by a joint meeting/agreement of the federal and state legislatures. Meaning, agreements would be reached with each regional state according to the specific circumstance of the regional state concerned. For instance, a specific type of mining operation may be found in one region, if the case falls within the concurrent power of federal and state governments. Wouldn't such a case by case negotiation, agreement ... approach lead to adoption of different tax rates on identical business practices? Likewise, as long as the same tax source is subject of both levels of government, close cooperation and adequate information exchange should be in place so as to avoid tax evasion.

Taxes imposed upon mobile companies working in several regions, diverse economic activities ... all can involve a multitude of factors from different jurisdictions. That is, factors of production (capital, labour, land) may be used from several states and products and sales are going back to these and other regional states. In such cases, power of taxation seems appropriate if assigned to the centre. [80]

According to Article 98(2) of the Ethiopian Constitution *"the profits of companies and dividends due to shareholders' are sources of concurrent taxes."* The English version of this Article only specifically refers to revenue from company profit tax and tax on dividends due to shareholders. The Amharic version, however, includes sales tax; as the latter prevails over the former version it is consistent with the practice. Excise tax is not mentioned in both versions, but is actually levied on products or the sale of companies. The exclusion of excise

[80] Ibid.

taxes seems to be "a slip of pen" as there can not be any reason to exclude the imposition of excise taxes on some products locally produced or sold by private companies.

The allocation of company tax is basically seen from the mobility factor of the economic activities of the companies. Usually they operate in more than one state. But in Ethiopia, it is not mobility that primarily distinguishes this issue. Rather it is the type of the enterprise that matters, irrespective of its mobility. Except for sole proprietorship, private enterprises such as a partnership and private limited companies are taxed by the Federal Government. However, if these companies are not engaged in businesses, in several regions (say in the case of a laundry or a beauty salon), allocating them to the Federal Government serves little or no purpose. Thus, it is prudent to assign such kinds of businesses to the regional states although they might be registered as a PLC seen from the perspective of augmenting states' tax capacity.

In most federal systems disparities concerning the fiscal capacities of states can arise from their wealth in natural resources. Tax on natural resources is therefore not exclusively reserved to the states, because it may aggravate the gap between resource-rich and poor states. Thus, Federal Governments deal unequal distribution of natural resources through mechanisms of transfer of revenue. In Ethiopia, too, issues concerning equitable distribution of revenue mechanisms of transfer of revenue generated from natural resources might become a challenging factor when it plays a significant role in the national economy, if not properly clarified and addressed.

In Ethiopia, revenue from incomes generated from large-scale mining such as gold, petroleum, gas, etc.., and the mechanisms by which royalties collected from these operations are transferred from the coffer of the Federal Government to that of the corresponding regional state. Thus, the administration of these incomes and royalties generated from such operations in useful, accountable and transparent manners could be a challenging task. Mining operations of these kinds are qualified as large-scale, while small-scale, low-income generating operations are left to the regional states; i.e. land rentals and income taxes of the latter ones are left to the states, as these have been designated as mining activities of small-scale by the Minister of Mines and Energy, who is entitled to do so.

Residual Taxes[81]

Article 99 of the Ethiopian Constitution reads: *"the house of Federation and the House of Peoples' Representatives shall, in a joint session, determine by a two-thirds majority vote on the exercise of powers of taxation which have not been specifically provided for in the Constitution".* An interesting aspect of this provision is the distinction it creates with residual power of legislation. As per Article 52 of the Constitution, all powers not exclusively given to the Federal Government alone or concurrently with the states are reserved for the states. The former provision is specific to taxation while the latter refers to all powers and functions of both levels of governments. Therefore, it implies that states necessarily have a residual power concerning matters other than taxation. With regard to exercising residual tax, either level of government can only acquire the power of taxation after a decision is reached by the joint meeting of the two Houses of Federation.

It has to be noted that the joint session of both Houses is to determine which level of government can exercise the power of taxation. The Constitution allocates independent powers of taxation to the states and the centre, and taxes shared by both levels of governments. The joint session, therefore, determines the residual tax to be shared by both levels of governments or to be assigned to either of them. Therefore, one can argue that the power over residual taxes is not linked to residual powers of legislation.

But the most significant factor concerning the scope of residual power of taxation is the system which the Constitution follows in dividing taxation powers. It does not only allocate the type of taxes. The type of taxes is allocated in relation to the taxpayer or in relation to the object upon which a tax is to be imposed. For example, it is not income tax in general that is given to the centre, rather income from employees of the Federal Government or from enterprises owned by the same. Income from business profits of rail and air transport goes to the centre, while profit from state enterprises goes to the states. Thus, if the sources of income or the payer of income tax is not found in the taxation powers of either government, an issue of residual tax could arise.

[81] Ibid.

Sometimes the issue of residual taxes may arise with regard to the problem in demarcating the precise scope of the constitutionally assigned tax powers. For example, Article 97(6) mentions the power of a state *"to levy and collect taxes on income derived from private houses and other properties within a state"*.

The concurrent power of taxation, as it originally has appeared in the Constitution, could lead to inter-jurisdictional competition (centre-state, or state-state) or conflicts concerning a better control of taxes. It might as well create a serious inconvenience to taxpayers, a greater possibility of tax evasion and inefficient administration which may have dire consequence upon the limited revenue source of the country. In fear of ensuing controversies, some countries that do not have a well developed tax administration system avoid complicated approaches and rather prefer to leave the subject to the central government.

Questions that matter

1. Do you differentiate between and among
    a) Concurrent,
    b) Joint, and
    c) Shared taxation powers.
2. Wouldn't concurrent power create conflict between federal and state administration/jurisdiction?
3. Tax legislatures have at least three pillars: the power to levy legislation, determining the tax base, the rate. The power of assessing and the power of collecting. Collection can be done directly or indirectly (by delegation) but levying and assessing are crucial powers of the state or federal governments, as well for individual tax paying persons. Then in concurrent taxing power
    a) Where does the levying power lie? And/or the assessing power?
4. What does federal subsidy mean? What are the criteria? Can you conceive a state subsidizing the Federal Government?
5. What does "transfer" mean in respect of state to state, federal to state and state to federal?
6. Can a state raise fund from external sources under the federal arrangement on its own?

7. What does it mean for the state or the federal government to enter into agreement with foreign NGO? What if it's partially owned by a foreign NGO? How about private international persons, physical or juridical?
8. Double taxation on international level is avoided by treaties. How would you deal with double taxation and/or tax cascading?

Section VI: Federal and State Relation

Dual versus Executive or Functional Federalism

The notion of intergovernmental relations, executive federalism and co-operative federalism defines the conditions under which a federal system functions; i.e. whether it is dual versus executive or it is a functional kind of federalism. Intergovernmental relation refers to a broad concept by which the federal and state governments interact on common programs. Executive co-operative-federalisms also refers to the two levels of governments, but differ from one another in that executive federalism is restricted to cooperation between and among the executives, while co-operative federalism encompasses both presidential and parliamentary federations.

Similar to the Constitution of US America, the FDRE Constitution states that *"[t]he federal government and the states shall have legislative, executive and judicial powers."* , it seems that both levels of executive organs will have two parallel (not overlapping) functions; i.e. each implementing that which it is entitled to perform by law. Partly because of this and partly because the FDRE Constitution assigns residual powers to the states without making any reference that states are obliged to execute federal laws and administer accordingly in their respective territories, there is an apparent gap in enforcing federal laws in the respective states, this automatically leads the two levels of government to organize and set-up their respective executive organs, institutions and assign to the other level of government. But experiences of other federal countries such as Swiss, which heavily depend on the federal government for execution of federal laws, have managed to devise and implement another

simple mechanism by which state executive organs perform duties referred to the federal government together with theirs.[82]

Whether the federalism under consideration is a dual or executive (functional) type, intergovernmental relations (vertical and horizontal) become either 'competitive' or 'co-operative'. Either model might intermittently be witnessed in federal systems, which might signify overwhelming state of condition in the particular state. Generally speaking, competitive federalism is an indicator of the fact that it is inherent in the development of constitutional governance and the federal and constituent states compete for one can only gain power at the expense of the other. Yet, this can easily be remedied by lubricating the cog and wheels of each joint of power linkages by employing such as delegation of power, co-operating through executive organs, cooperating through party channels, cooperating through policy making.

In order to make co-operative federalism functional efforts at all three, executive (policy-making), law-making and adjudication (interpretation included), should be directed, in particular towards the following points of discussion.

Nexus [83]

Territorial Nexus

In India the power to make a law having extra-territorial operation is conferred only on Parliament and not on the state legislatures; in the Ethiopian case – by the Federal State Council. Hence an Act of the state legislature, if it gives extra-territorial operation to its provisions, can successfully be challenged in the Court, unless the extra-territorial operation can be sustained on grounds of territorial nexus.

[82] Fesseha, Ob.cit., note no. 42, pp. 342-355.

[83] Abridged from Mahendra P. Singh, V.N. Shukla's Constitution of India, 9th Ed., (Eastern Book Company Lucknow, India, 1995), pp. 632- 686.

This means that a state law is not invalid so long as there is a sufficient nexus or connection between the state making a law and the subject-matter of legislation. Broadly speaking and in other words: although the object to which the law applies may not physically be located within the territorial limits of the state, yet the state law will be valid if there exist a commotion or nexus between the state and that object. Does this situation work in Ethiopian case? How, when, under which circumstan-ces?

Well, state tax legislations have frequently been challenged on the ground of their extra-territoriality and the Courts have – in determining the validity of such legislation – applied "the doctrine of nexus": If there is a territorial nexus or connection between the person sought to be charged, and the state seeking to tax him, the taxing statute is upheld. But the connection must be sufficient. Sufficiency of the territorial connection involves a consideration of two elements, namely:

i) Connection must be real and not illusory , and
ii) The liability sought to be imposed must be pertinent to that connection.

For example, in a sale of goods, the goods must of necessity play an important part; for it is the goods in which as a result of the sale the property will pass. The presence of the goods at the date of the agreement for sale in the taxing state or the production or manufacture of that state of goods, a property which is eventually passed as a result of sale, wherever that might have taken place/might take place, constitutes a sufficient nexus between the taxing state and the sale.

Sufficiency of nexus:- the most important consideration for invoking the doctrine is that the connection between the state and the subject-matter of the law must be real and not illusory. Thus, if you are allowed to tax a dog, it must be within the territorial limits of your taxable jurisdiction. You cannot tax it if it is born elsewhere and remains there simply because its mother was with you at some point of time during the period of gestation. Equally, after birth you cannot tax it simply because its tail is cut off and sent back to the fond owner. These illustrations bring out very clearly the distinction between what is real as opposed to what is only an illusory connection.

Secondly, the territorial nexus is not sufficient unless the law selects some formidable fact which provides some relation or connection with the state and adopts that as the ground for its interference. If the connection is not the reason for applying the law to persons or things outside the state, there is no sufficiency of territorial connection.

A validity element of the state law, therefore, must have a sufficient territorial nexus with the legislating state, although one cannot lay down the precise circumstances or fact situations at the time when the nexus will be considered sufficient. It will be fore the court to determine in each case if the test of sufficiency of nexus is no satisfied.
What is the practice in Ethiopia? Do the Ethiopian states take into consideration this doctrine in practice?

Though tax statutes are typical examples in the above case, the doctrine of territorial nexus is not confined to these statutes alone. The doctrine can be raised in other areas with respect to which the state has the power to legislate.

Delegated legislation:- A great deal of legislation takes place outside the legislature in government departments, bearing varied nomenclature: rules, regulations, bye-laws, schemes, orders, notification ,etc. There is but little power with the executive to supplement the laws made by the legislature. Whatever power the executive has in this behalf is derived from delegation made under specific enactments. This type of activity, namely, the power to supplement legislations, has been described as delegated or subordinate legislation. In one sense, delegated legislation means the exercise of power of rule-making delegated to the executive by the legislature. In the other sense, it means the output of the exercise of that power; viz, rules, regulations, orders etc... The expression is used here in both the sense: where the emphasis is on the limits or constitutionality of the exercise of such power, the term is used in the first sense; where the emphasis is on the out put of concrete rules, the term is employed in the second sense.

It is a matter of common observation that in recent years there has been an enormous increase in delegated legislation. The development is to an isolated fact rather a concomitant to the increased functions of the state.

The circumstances particularly favouring delegated legislation are as follows;

A) Parliament is too busy a body. If it devotes its time in entering into minor and subsidiary details and attempts to lay down all rules, all its time will be taken over by only a few Acts. The pressure of time prevents Parliament from providing all the details and, therefore, has to confer on the executive rule-making powers to supplement the Act.
B) Many rules which have to be made to effectuate the policy of the act are of technical nature and require the consultation of experts.
C) The need for amplifying the main provisions of social legislation to meet unforeseen contingencies or to facilitate adjustments to new circumstances arise all too frequently: and while the parliamentary process involves delays, delegated legislation offers rapid machinery for amendment.
D) In some cases, such as changes in rationing schemes or imposition of import duty or exchange control, public interest requires that the provisions of the law should not be known until it comes into operation.
E) An emergency may arise on account of war, insurrection floods, epidemics, economic depression and the like, against which the executive must have power that may be used instantly.

It is usual with the American writers to classify delegated legislation as contingent and subordinate. The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law intends to make its own action depend. Contingent legislation is defined as *"a statute that provides control but specifies that they are to come into effect only when a given administrative authority finds the existence of conditions defined in the statute."* In subordinate legislation, on the other hand, the process consists of a discretionary elaboration of rules and regulations. The distinction between the two types is said to be based on the point of discretion. In contingent or conditional legislation the delegation is of fact finding and in subordinate legislation it is of discretion; i.e. the delegate completes the legislation by supplying details with in the limits prescribed by the statute.

Limits:- is that, essential powers of legislation cannot be delegated. The essential legislative power consists of the determination or choice of the legislative policy and of formally

enacting that policy into a binding rule of conduct. The legislature, therefore, may not delegate its function of laying down legislative policy to an outside authority in respect of a measure and its formulation as a rule of conduct. So long as a policy is laid down and a standard or limit established by statute no unconstitutional delegation of legislative power is involved in leaving to the executive the making of subordinator rules within the prescribed limits and the determination of facts to which the legislation is to apply. Does the delegation in Ethiopia give emphasis to these limits?

It is a fundamental principle of constitutional law that every thing necessary to the exercise of a power is included in the grant of power. A legislature cannot certainly strip itself of its essential legislative functions, and vest the same in an extraneous authority. The primary duty of law-making has to be discharged by the legislature itself, but delegation may be resorted to as a subsidiary or an ancillary measure.

How do you see the delegation under Art 50(9) of the Ethiopian Constitution in light of this justification of delegation?

When we see the Ethiopian Constitution, there is a delegation of power at the federal level under Art 77(13), which stipulates that the Council of Ministers shall enact regulations pursuant to powers vested in it by the House of Peoples' Representatives. But, what about the case at state level? Does the state council, for example, in the Amhara Region., delegate its legislative power to the state administration the highest organ of executive power?

In India, of example, in view of the multifarious activities of welfare state, the legislature cannot presumably work out all the details to suit the varying aspects of a complex situation. The legislature must necessarily delegate by working out the details to the executive or any other agency.

Chapter II

HoF and the Office of the President

Section I: - Federations and Second Chambers: HoF[84]

Dicey explains: "the condition absolutely essential to the founding of a federal system is the existence of a very peculiar state of sentiment among the inhabitants of the countries which it is proposed to unite".[85] In order to enhance the sentiment to unite, constitutions guarantee states participation ion the law making function entrusted to the federal government. As explained earlier, states participation at the center will be more effective not in the purely majoritarian lower house but a second chambers more representative of the federal units.

The power of second chambers

In assessing the legislative power of upper houses in Federal countries, two trends are prominent. The first category of upper houses is equally share the power of law making with lower houses. The consent of both houses is a unconditional for a bill to obtain a legal force. The two houses in this regard are co-equal as no law can be enacted unless both houses agree on the same text. The second category of upper houses plays a subsidiary role. Each piece of legislation does not need the approval of both the lower and upper houses, but the latter make sure that the interests of the states are taken into account. The United States and Switzerland upper houses fall under the first category while German and Indian follow the second approach.

Co-equal legislators: Us and Swiss

Article 1 Section 1 of the United States Constitution clearly provides: "All legislative powers shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives". All legislative powers are vested in both houses. Furthermore, additional

[84] Abridged and adjusted, Tatek Eshetu, Powers and duties of the FDRE House of federation: Comparative analysis, (unpublished, Unity University), 2008.

important function such as impeachment of the president and approval of international treaties made by the president is a power specially enjoyed by the Senate and excluded from the house of Representative's

The Swiss Constitution confers legislative power to Federal Assembly. The Federal Assembly is composed of two Houses: the National Assembly representing the entire nation (lower house) and the Council of States (upper house) represents the cantons (states). Both houses have co-equal powers in all spheres. The Swiss constitution clearly provides that federal laws and federal decrees must be approved by both Councils. Both house have the power to initiate legislations[12] and deliberate separately. The legislation will only take effect if the majority of all members of each of the two Councils approved it.

Subsidiary Legislators

The German legislature and the Indian legislature differ from the US and Swiss as the upper house do not equally share power. The German upper house, the Bunderstat, initiate legislation, it has the right to examine and comment on all bills by the executive before they are submitted to the Bundestag (lower house). The type of bill proposed determined the power exercised by the upper house. Some legislation, the Bunderstat participate with only a suspensive veto, if the objection of the Bunderstat could be overridden by an equivalent majority in the Bunderstag. However, the bunderstat has absolute veto in legislation that have financial implications or affects the duties of the Lander (states). In such legislations, not even a unanimous vote of the Bundestage could pass the law so long as it has not been approved by the Bunderstat.

The Indian parliament has two chambers: the house of the people is the lower chamber and the Council of State the upper chamber. The council of State revise legislations with only a suspense veto as its concurrence is not required to pass all new laws. More specifically, money bills (e.g. imposition/ abolition of tax) are only introduce in the lower house and the upper house is simply expected to forward recommendations, the last say reserved to the House of the people. However, there are legislations where the upper house has absolute veto similarly to the German Bunderstat. The Indian constitution provides that the Council of

State is the sole house that can pass binding decision calling parliament to enact law-covering matters included in the state list.

The HF: A non legislative second chamber

The FDRE constitution fulfills the minimum requirement of having a second chamber but with a totally different function. Article 53 states that there shall be two federal house named the house of people's Representative (HPR) and the House of Federation (HF). In contrast with the principles explained earlier and experience of well-functioning federal countries, the upper house or House of Federation has no legislative power. In this case, we might ask ourselves if there is a concept of upper or lower house in Ethiopia.

The power and responsibilities of the House of Federation according the constitution and the proclamation consolidation the powers and responsibilities of the House of Federation are to:

- Interpret the Constitution;
- Organize the Council of Constitutional Inquiry;
- Decide, in accordance with the Constitution, on issues relating to the rights of Nations, Nationalities and peoples to self-detennination, including the right to secession;
- Promote the equality of the peoples of Ethiopia enshrined in the Constitution, and promote and consolidate their unity based on their mutual consent.
- Strive to find solutions to disputes or misunderstandings that may arise between states;
- Determine the division of revenues derived from joint federal and State tax sources, and the subsidies that the Federal government may provide to the States;
- Determine civil matters which require the enactment of laws by the house of peoples' Representatives.
- Order the federal Government to intervene if any state threatens the Constitutional order in violation of the Constitution;
- Determine on the draft proposal of electoral constituencies submitted by the National Election board based on Article 103/5/ of the Constitution;

- Determine jointly with the house of peoples' Representatives the power of taxation on revenue sources, in accordance with Article 99 of the Constitution, of which neither the Federal nor the State governments have responsibility
- Elect the president of the country in a joint session with the House of peoples' Representatives in accordance with Article 70/2/ of the constitution.
- Participate in the process of the Constitutional amendment as stipulated in sub-Article (I) and (2) of Article 105 of the Constitution:
- In collaboration with others, offer education and training, and whenever necessary, carry out research in matters pertaining to its responsibilities
- Establish permanent and ad hoc committees of the House;
- Elect the speaker and Deputy Speaker of the house

In this long list of the house of Federations powers and responsibilities, the only provisions we can trace legislative functions are Article 99, 62(7) and 105.

- To determine undesignated power of taxation (concurrently with the House of People's Representative)
- To determine the division of revenues derived from joint Federal and State tax sources, and the subsidies that the Federal government may provide to the States;
- To amend the constitution.

All the remaining powers are not related to the law making process and it is possible to conclude that the law making process of the FDRE is monopolized by the lower house the House of People's Representative. In the strict sense, the Ethiopian parliament is unicameral as the HPR is the only law making organs. Article 55(1) of the constitution, in black and white, stipulates the exclusive control of the House of people's Representative in the law making process. The accumulation of law making power in a lower house where the basic principle is majority rule, seriously endanger the concept of federalism. Asefa, explaining this defect, argues; the constitution fails to ensure the constituent unit's proper place in the institutions of power sharing as well as in the process of policy making at the federal level and by doing so betrays the federal idea significantly.

The constitution seems to overemphasize the right of Nations, nationalities and people's. all sovereign power resides in the nations, nationalities and people's the building blocks of the Ethiopian federal arrangement.[21] Moreover, Article 39(3) of the constitution underlines nation, nationality, people's right to self government and equitable

Representation in the federal government. However, the non inclusion of states in the law making process question the legitimacy of the federal government and is in sharp contradiction to the general principle.

As we can understand from the preamble of the constitution, the "Great Compromise" in the Ethiopian context is among the different nations and nationalities and the constitution aims to end the perennial tensions and rectify historically unjust relations. Although the constitution has more or less addressed the issue of self rule, a clear deviation from the principle of share rule is visible in the Ethiopian federal arrangement. As the power to legislate is exclusively given to the House of people's Representative (HPR) organized on a proportionality principle (majority rule), there is no mechanism for smaller states to check the House of people's Representative.

This is a self contradiction in the constitution itself as it creates a room to entertain the tyranny of the majority. We can illustrate the danger created by the HPR monopolizing the federal law making power. From the 550 seats of the HPR, the most populous nations (the Oromo and Amhara) occupy 304 seats[22] Therefore, the Oromo's and Amhara's will form a quorum and their combined vote will suffice to pass legislations to the prejudice of other nations and nationalities. As stated earlier, it is such fear that many federal constitution avoided by setting a non majoriatrian second chamber where the rights of minorities will be exercised and counterbalance the majority rule.

Composition

Counter Majoritarian Upper House

As it is exposed in the historical development of bicameral parliament in the United States, states are equally represented notwithstanding the disparities in the population. Besides the

clear provision of The United States Constitution that the senate shall be composed of two senator from each state, the principle of equal representation of states in the senate is reinforced in Article 5 stating "No state without its consent shall be deprived of its equal suffrage in the senate" it was a price that larger states had to pay as the senate was meant to check the potential of majority tyranny coming from lower houses (House of Representatives). The same principle holds true for the Swiss upper house, the council of State. Each full canton sends two delegates and each half canton sends one delegate to the Council of States[25] no matter how big or small the size of the cantons, the number of senators each canton sends is equal.

The German *Bundrstat* and the Indian Council of State, Constitutions differ form the US and Swiss. As there is a need to balance the interests of the most populous states on the one hand and those of less populous on the other hand, each unit of the federations are not equally represented in their upper house. In German each Lander has at least three votes; Lander with a population between two and six million have four, Lander with more than six has five and *Lander* with more that seven has six vote. The Bunderstat is a non-majoritarian House where smaller Lander are well represented despite the unequal representation. Similarly, in India's second house, the Council of States, the less populous are favored but not to the point of guaranteeing equality among them. The constitution of India provides a list of states and the Corresponding seats allocated in the Council of State for each state.

In a democracy citizens enjoy a right to vote on an equal basis. However, in a federation, representation of regions in upper chambers is equally important and might contravene equality principle. Bicameralism requires a second chamber that is dissimilar in terms of its composition compared to the first chamber. Is the overrepresentation to certain minorities or smaller states is a basic characteristic of upper houses in federations. It is a guarantee against the tyranny of the majority in the lower houses.

Majoritarian House of Federation

The Ethiopian House of Federation, seems to ignore this basic principle of upper chambers applicable in worldwide federations. The constitution states that "Each Nation, Nationality and people shall be represented in the House of the Federation by at least one member. Each

Nation or Nationality shall be represented by one additional representative for each one million of its population. The first part of this provision seems in lime with the principle discussed earlier. As each nation nationality is a building block of the federation, they need to be represented in the HF. The representation of one million persons by one person is undermining the chance of the minorities to influence the upper house and they are submitted to the majority as in lower houses. The House of Federation composition is closer to the proportionality principle which is a main characteristic of lower houses. The organizational principle of the HF is almost the same as HPR except that there is a significant difference in the number of constitutiencies, 100.000 for the HPR and 1 million for the HF.

Table 1.1 Composition of the House of federation

Regions	Total number of representative	Represented ethnic diversities	No. Of representatives for the major ethnic groups in the region
Tigray	6	3	Tigre 4
Afar	2	2	Afar 2
Amhara	17	5	Amhara 13
Oromia	16	1	Oromia
Somali	4	1	Somali
Benishnagul gumuz	4	4	
Snnpr	54	46	
Gambela	4	4	
Harari	1	1	Harari
Addis Ababa	-	-	
Dire Dawa	-	-	

Although each nation nationality or people shall be represented in the HF by at least one member, the total number of representatives is determined by the population size. For instance, we can observe fro the above table, 17 seats are allotted for the Oromos while a

single member represent and the Hararis. Such kind of disparity between the different regions is acceptable in the lower house where population size is the determining factor.

The Composition of the House and hence its decision are characterized by the rule of majority. The House of Federation, though expected to be a house of the nations, nationalities is more a majoritatian house just like the lower house HPR. The population with the largest size will have as many seats as its size may allow in the HF as in the HPR and this may defeat the very rational for setting up a second house in a federation.

Although the HF pretends to be the House for nations and nationalities, it is in fact representing the majority. A majority in the HPR is also a majority in the HF and hence the very principle of sovereignty of Nations, Nationalities and peoples which it claims to enforce is in jeopardy. This is rather the sovereignty of the population that is reflected in the end, as in the HPR.

If it might be difficult to come up with equal representation of states like in the US Senate, providing some kind of upper ceiling would be essential so that the gap is not as wide as in the case of Oromia and Harari. The population with the largest size has as many seats as its size may allow in the HF as in the in the HPR, and this contradict the very rational for setting up a second house in a federation.

Additional members are incorporated in second chambers. Men of exceptional talent who contributed a lot to their country are given special privilege and few seats are allotted to them in the upper house. They are generally members of the upper house not of the popularly elected lower house. These elites or ‘aristocrats of success’, will be available to offer their wise counsel and throw valuable light on matters which have relevance to the country. In UK, Life peers chosen by the king are members of the House of Lords. Article 80(3) of the Indian constitution provides that the president of the republic appoint twelve members qualified in science, art, literature and social services. The Italian Constitution, on the other had, give the privilege to ex-presidents of the Republic to be senators for life unless they expressly waived this right.

The Ethiopian house of federation didn't accommodate such persons of exceptional talent. Despite the representative of nation's nationalities and peoples, these distinguished personalities are well informed and more mature; the debates may bring to light defects in the legislations. Moreover, since the residents of the capital city Addis Ababa and free city Dire Dawa have no representative in the House, the researcher suggests few seats should be allocated to these men on behalf of them. As the British, Italian and Indian experience, the president should be given the discretion to nominate the "brain stores" of the country.

Tenure

Unlike members of lower houses who are under constant check by the electorate. The Us Senate is a permanent body. A senator serves for six years, one third of its members retire every two years. The term of six years is the longest for any US elected official. These methods, under which the terms of a Senator overlap, prevent sudden change in the membership of the Senate and also ensure continuity of the house. Only one third of the seats of the senate are at stake every two years.

The Indian Constitution clearly provides that the Council of States shall not be subject to dissolution unlike the house of the People which shall dissolve every five year or sooner for election. One third members of the Indian upper house as in the case of the US retire every two years. We can infer that the main reason behind setting the House of States not to be dissolvable is to ensure continuity.

If we examine the Ethiopian constitution, the House of Federation as the house of people's Representative is dissolved every five years. Furthermore, the election year for both the HPR and HF is congruent. As type of government is parliamentary democracy, the executive will also leave office and the ceremonial president is the only individual holding office between parliamentary elections. This clearly creates a power vacuum which could be a bodied if the terms of the HF and HPR are separated and the HF made a permanent institution which is not subject to total dissolution.

Section II: Constitutional Interpreter

The need for constitutional interpretation

In order to safeguard the supremacy of the constitution, a special organ checking the constitutionality of laws is indispensable. Every Constitution needs an organ interpreting the constitution and giving a final decision on disputes arising on the constitution. The assertion that the constitution is a supreme law would have no meaning unless there is some authority to safeguard the constitution against violation.

Generality is one of the distinctive characteristics of constitution. Constitutional provisions are intended to stay long period and accommodate changing circumstances of the country. Constitutions by their nature are stated vaguely so that they will serve for generations. Due to their generality, constitutions have loopholes or may be over vague; constitutional is the solution to this problem. Bodenheimer explains that interpretation of constitution cannot be avoided as follows:

> *".....a generation of men intent upon setting up a durable framework of government and societal organization are necessarily handicapped by certain limitations of experience and short comings of vision which will be made manifest by long-range operation and functioning of the constitutional system created by them"*

Constitutions have adopted different mechanisms for reviewing the constitutionality of laws. Whose should be empowered to adjusted constitutional issues is a source of controversy among politicians and constitutional lawyers. Should this power be granted to the Courts? If so, should it be any court or a special constitutional court? Should be left to the legislature, a political body? Or should the people be directly empowered to interpret the Constitution?

There are four different scenarios:

- US, India, Australia….. the ordinary courts
- European countries….. a special court

- China …….. the legislature national people congress
- Switzerland …… referendum.

The FDRE constitution is peculiar to this four trends as it has empowered the House a Federation, a non legislative but yet a political chamber, to resolve constitutional dispute and to interpret the constitution.

Judicial review by ordinary judiciary

Principle

Judicial review is the power of courts to pass judgment upon the constitutionality of the legislative acts which fall within their normal jurisdiction. Courts can refuse to enforce a legislative which are unconstitutional and hence void. Judicial review was first introduced in the US. There is no express provision empowering the court to adjuster constitutional issues in the US constitution. The judiciary was the weakest of the three branch of government before the principle of judicial review was first introduce in 1800. It was in the famous case Marburg Vs Madison that the federal Supreme Court asserted its power to review the conformity of legislation with the constitution and disregard a law held to be unconstitutional. The principle of separation of power is supplemented by an equally important concept of 'check and balance', the constitutionality of the legislative acts are supervised by the judicial branch of government.

In Marbury vs Madison case, chief justice Marshall set the precedence of judicial review and explained the logical justification of judicial interpretation of constitution and court's power to annul legislative acts in contradiction with the constitution as follows:

> *The constitution is either a superior, paramount, unchangeable by ordinary means, or it is on a level of ordinary legislative acts, and like other acts, is alterable when the legislature shall Pease to alter it. Between the alternatives there is no middle ground. If the former part of the alternative be true, then a legislative act contrary to the constitution is not a law; if the latter part to be true, then written constitution are absurd attempts, on the part of*

> *the people to limit a power in its own nature illimitable. Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law the nation, and consequently the theory of every such government must be that an act of the legislature, repugnant to the constitution, is void. [….] If a law is in opposition to the constitution; if both the law and the constitution apply to a particular case, the Court must decide conformable to the constitution disregarding the law. This is of the very essence of duty. It is emphatically the province and duty of the judicial department to say what the law is.*

The underlying principle of judicial review is that a constitution is part of the law and it therefore falls within the power of the judge to interpret it. It is the duty of the judges to apply and interpret the law and in doing so if a judge finds contradiction and inconsistency between two laws of different hierarchies, it is the duty of the judge to apply the higher law. Judges decide the meaning not only of the rule of ordinary law by t also of the law of the constitution.

Judges, who given the security of life tenure, are neutral officials who will simply interpret and enforce the constriction according to its spirit. Their decision will carry the weight of public respect. Political bodies, the executive and the legislative, face reelection and are likely to be sensitive from the electorate. We can obtain a well ordered interpretation of the constitution from the courts as judges are better qualified in terms of technical training. As judges don't take part in the political process, they are in a better position to determine the meaning of constitution free from political bias. Judges tenure and independence gives a better opportunity to state what the law is more objectively than other bodies.

Wheare clarifying the substance of judicial review stated that "it is the duty of very institution established under the authority of a constitution and exercising powers granted by a constitution, to keep with in the limits of those powers, it is the duty of the Courts, form the nature of their function, to say what the limits are.

Similarly, dicey praise the American system and explained the Federalism means legalism, the predominance of the judiciary in the constitution, the prevalence of legality among the people. He added that *"In a federation like the United States, the courts become the pivot on which the constitutional arrangements of the country turn."*

Synopsis

In respect of allocation of power three patterns can be identified:

1. Symmetrical Houses, the German type and the Indian. The first pattern is revealed in the US and Swiss Constitutions. In that of the US:
    a) all legislative powers are vested in both House excepting those introduced in the House of Representatives.
    b) Two-third support is required for approval of treatise concluded by the President.
    c) The same role is seen in respect of assigning Ambassadors, Ministers, Consuls, Judges of the Supreme Court. The Swiss pattern is similar to the US.
2. The second is that of the German pattern which combines both, participatory and functional roles; i.e. it is composed of representatives of the executive of the *Länder*, usually ministers of the *Länder* cabinet.
    a) Have absolute power of veto over all federal legislations that are executed by the *Länder*.
    b) It also has the power to initiate bills as well as to examine and comment on matters of law prior these are submitted to the Lower House – the *Bundestag*.
1. The third pattern is that of India.
    a) Playing a precepitative function with a power of only 'suspensive veto';
    b) many Bills are introduced to the Lower House, where final say actually remains.
    c) In matters involving joint meeting, on simple majority basis the Upper House poses no threat to the Lower House for the former is half of the latter.

2. The other is that of Ethiopia, for which it has been labeled "autochthonous" (unique and contradictory). For:
   a) It has no legislative function excepting few situations.
   b) It acts as a Court, assisted by CCI, in interpreting laws.[86]
   c) It is symbol of sovereignty, for it represents Nations, Nationalities and People's of Ethiopia.[87]
   d) In fiscal matters, it has power to determine the division of revenue derived from joint federal and states' tax sources, and set-up the *'Qemer'* criteria of allocation and as to which state should benefit out of it.[88]
   e) Other than these, it has the power to decide issues to self-determination[89]; promote equality of the peoples[90]; decide on disputes arising among states[91]; exercise concurrent powers with HPR[92], i.e. residue power on tax, election of Federal President[93], constitutional amendment[94], determination of civil matters which require federal law enactment[95], order the Federal Government to intervene where states threaten the constitutional order.[96]

Of all these powers, the most prominent one to the Developer is the power to interpret the Constitution, which, in the eyes of the Developer would compensate the power

[86] FDRE Constitution, ob. Cit., Note No. - ??, Article 61(1) and Article 8(1).

[87] FDRE Constitution, ob. Cit., Note No ??, Article 62(1)

[88] Id., Article 62(7) and Article 99.

[89] Id., Article 62(3).

88 Id., Article 62(2).

[91] Id., Article 62(6).

[92] Id., Article 62(5).

[93] Id., Article 70(2).

[94] Id., Article 104(5).

[95] Id., Article 62(8).

[96] Id., Article 62(9).

lost in legislating. Appreciating it from this vantage point, on what basis and how should it made worth the following discussion.

HoF: Its Role in the Interpretation of Constitution

1. Law of Constitution is partly substantive and procedural public law (remember) what a constitution attempts to give answer to –i.e. "the what and the how", law of constitution. It is a bridge between political which forum –i.e. the regular courts, constitutional courts that would be appropriate for Ethiopia.
2. FDRE Constitution embodies three groups of provisions –i.e. (a) provisions with juridical effects, (b) declaratory provisions; and (c) policies, objectives and principles. Principles of interpretation that are appropriate may not be appropriate to one or to the other category. Then select the mode of interpretation applicable to each category.
3. Although a Preamble, normally and usually is a political declaration, it is generally a useful aid for constitutional interpretation. Comment.
4. Some parts of Constitutional Law guarantee subjective rights and freedoms to the individual; i.e. gives them a standing. This standing can be the guarantee of human right or a citizen's right or just a simple constitutional guarantee. For the CIC member, it is, however, of importance to note that, to which category this standing belongs, for the mode of Constitutional interpretation that has to be adopted that of. Fundamental Rights and Freedoms are different from the mode of interpretation that should be applied to, other constitutional guarantees for the interpretation of Human Rights and Freedoms, it is the principle of broad interpretation that is generally accepted; and on top of this they have to be appreciated in light of International Human Right Instruments, as per Article 13(2). How should limitations put upon the exercise of Human Rights be interpreted in a strict (narrow) way or in relaxed manner?
5. What circumstances would justify the exercise of "judicial activism" and "judicial restraint". Is the latter a kind of restraint expected in journalism?
6. If the act of interpretation allows different ways of interpretation to be put in place, CCI and HoF should choose the interpretation which is in conformity with

the Constitution? Conversely, other which are not in conformity with the Constitution shouldn't they be ruled out? Give your opinion.

7. If only one article or one part of a provision violates the Constitution, only that particular article or that void, while the rest of the law or proclamation remains in force (Art. 12 proc. 251/2001). How can one?
8. The principle of the supremacy of the Constitution: this means that the Constitution is the paramount law and overrides all other laws or regulations. Article 13(2) an exception to this principle and what is stipulated under Article 9(4) of FDRE Constitution.
9. Principle of proportionality: this principle means that the limitation of a right guaranteed by the Constitution must be placed on a plane compatible with the values that the limitations are meant to protect; and also the Principle of the priority of freedoms over equality rights: or natural rights over group and collective rights. How do you appreciate Article 91(1) of FDRE Constitution? This principle holds that rights guaranteeing freedoms are "more Equal" than rights guaranteeing the FDRE Constitution 1995 has very outspoken guarantees of equality, for instance Art. 25, 35, sub. 1-4, 6-8, 36, 41 sub. 3, 5 and 8, 42 sub. 1(d), but the priority of freedom rights is not so evident. Especially where this is seen vis-à-vis Ethiopians recognition of affirmative action especially with regard to women this issue becomes difficult to resolve.
10. Principle of Practical Concordance:

    This principle explains how to proceed in cases in which two values are found conflicting, as for instance the interest of property and the interest of labour (workers). A good example for practical concordance is given by our Constitution itself is the one provided by Article 41(8) -i.e. that "fair price" is none other than the result of a harmonization between labour, property and market.
11. Unity of the Constitution: This principle means that – in general – provisions of the Constitution have the same value and legal quality. By this guarantee of religion on the one side and the protection of family, on the other, and particularly the right of women need to harmonization, so that different forms of religious and non-religious marriages have the same effect and quality. If harmonization is not established by the Constitution itself, as in this last example, it must be done by CCI and the HoF. But the five fundamental principles of

chapter II of the Constitution vis-à-vis the non-fundamentals (the rest of the provisions; and provisions of ICCPRS vis-à-vis ICESCR; and derrogable vis-à-vis non-derrogable rights –i.e. Article 93). Some general remarks be made on the organs entrusted to interpret constitution in different systems and then see the Ethiopian case from that angle. So far, we only deal with techniques of interrelation (how can a Constitution or part thereof be given a meaning. thus, we are left with the second major prong on the area: who shall we entrust this task to)

Remarks: The subject constitutional interpretation emerged for the first time in the history of adjudication in 1803 when the American Supreme Court in Marbury vs Madison[97] nullified the judiciary Act of 1789, which bestowed the US Supreme Court with original jurisdiction over writ of Mandamus. Chief Justice John Marshal emphasized on the necessity of Constitutional interpretation (or more particularly on the necessity of judicial review) as ultimately meant upholding the will of the people that has been formulated into the Constitution. He argued that if the limitations laid down by the Constitution are not respected by the legislature, the distinction between government with limited powers and without limited powers would disappear.

The reasoning articulated by Chief Justice Marshal in Marbury vs Madison is relevant to our times, and, needless to say, it is very much alive. The development of the idea of constitutional interpretation has taken various modalities and phases of development since its inception in the American Supreme Court. Apart from what is known as the American Model which empowers all ordinary courts to interpret the Constitution, there has emerged what is known as the European Model which opted for the establishment of a separate court, normally under the name 'Constitutional Court' to deal with matters connected with the interpretation of Constitutions.

Constitutional interpretation is made necessary for many reasons, one of which is the very nature of constitutional texts itself, which is of very general nature dealing with fundamental blocs of interests and values of a given society. It deals with such grand tasks as creation of government, division and allocation of powers between government branches, entrenching

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fundamental rights and freedoms of individuals, thereby limiting the powers of the government authorities, etc ... A Constitution also is a reflection of the aspirations of the people. Through the institutions it creates, the Constitution would definitely try to reflect and shape people's values and visions of good and achievable life. For example, the Preamble of the FDRE Constitution states the desirable goals of the Nations, Nationalities and Peoples of Ethiopia, *inter alia*, as:

> *"....building political community founded on the rule of law and capable of ensuring a lasting peace, guaranteeing a democratic order, and advancing our economic and social development. ...full respect of individual and people's fundamental freedoms and rights, to live together on the basis of equality and without any sexual, religious and cultural discrimination."*[98]

Thus, the achievements of such lofty purposes as stated in the Preamble of the Ethiopian Constitution, demands reading between the lines; i.e., interpreting the Constitution in a holistic way and in a way that takes into account political theory, among other things constitutionally, legally. It is very interestingly stated that:

> *"By explaining what the document means in the context of particular problems, an interpreter can shape what that text and even the larger constitution will mean in the future – what fundamental values they will enshrine, what aspirations they will encourage, and what concrete policies their rules, principles, and aspirations will nourish or strive."*[99]

Stated otherwise, a Constitution – due largely to its generality and subject matter – invites interpretation. Want of clarity, resolution of conflicts, either within the clauses of the Constitution itself or with other legislations, omission of principles that would resolve questions that arise in reality or deter unforeseen developments after the Constitution is made through reaffirmation of commitments to the Constitution, some of the reasons identifiable that make interpretation of a Constitution is a necessity.

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[98] FDRE Constitution, ob. Cit., Note No. -, Preamble para. 2nd

[99] Abridged and re-formulated from Heinrich Scholler, A paper presented on tinterpretation of Constitution, (Unpublished, at Ghion Hotel, Addis Ababa, ??).

One tends to argue that thee reasons are relevant to the Ethiopian reality of constitutional interpretation, as we have come to see this from the few cases that appeared before the CCI. There is no doubt that cases will arise in the future on various issues. For example there are certain omissions in the Constitution. The law making competent of the two levels of government on certain issues is not yet clear. The bottom line is that these limitations, divisions, allocations and aspirations as are stipulated in Constitutions often times do not present themselves in a self-evident manner. The desirable and favorable ways of understanding and applying the constitutional text must come out of series of exercises of constitutional interpretation.

Now that we have discussed about the need for constitutional interpretation, the next equally important and logical issue is to deal with the interpreter is.

Regarding as to who can authoritatively interpret, it seems to be there are various indications in some of the articles of the Constitution. To cite, but one example, Article 13 of the Constitution states that *"[a]ll 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 III of the Constitution) It seems too clear that the very obligation of enforcing the rights and freedoms in the Constitution is imposed upon all the three government branches, at both, State and Federal levels.

On the other hand we observe that it is the CCI which is empowered to develop and implement principles of constitutional interpretation that it believes to be helpful to investigate and decide on constitutional matters submitted to it. The Developer believes that this power will allow the CCI to make research and develop state-of-the-art interpretation techniques that will enable it to give definitive recommendations to the HoF. In so doing, CCI will certainly look at years of accumulated experiences.

On the issue of what exactly comes before the CCI, and hence the HoF for interpretation, I can not say that we have a clear vision yet. Even after reading all the three laws now available in the area: The Constitution, Proclamations No. 250/2001/ and 251/2001. The Constitution uses different terms to address this problem. Under Article 62 of the Constitution it is provided that *"[t]he House has the power to interpret the Constitution,"*

while under Article 83 it is prescribed that *"[a]ll constitutional disputes shall be decided by the House of the Federation."* And further still, under 84(2) it reads *"[w]here any Federal or State law is contested as being unconstitutional …"*.

So, from these three provisions of the Constitution, we have two different concepts; i.e. constitutional disputes and constitutional interpretation. Concerning this issue, Article 84(2) seems to be pinpointing at what exactly can be the subject matter of constitutional adjudication, namely, the Federal Laws and the States' Laws. It is interesting to note in this connection that the Amharic version (which is a controlling version) of Article 84(2) of the Constitution holds that it is only the laws of the legislature of both the Federal and State governments that can be subject matters of constitutional adjudication. (Probably Article 9(1) of the same may be employed to counter this) This specification in the Constitution has resulted in the line of interpretation by some scholars who are trying to understand the issues of constitutional interpretation in Ethiopia than other cases of constitutional interpretation, like laws by both Federal and State executive organs, can be settled by Courts of Federal and Regional States.

When we look at Proclamation No. 250/2001, we encounter a different situation. The Proclamation has taken a very different approach to the scope of issues upon which the HoF has competence in terms of interpretation. There are two relevant articles of the Proclamation in this regard. The first one is Article 6, which, more or less, is a reproduction of the contents of the Article 84 of the Constitution. On the other hand, Article 18 of the same Proclamation stipulates a time frame for lodging of appeal. Article 6 of Proclamation No. 250/2001 and Article 84 of the Constitution are essentially the same in talking about reviewable subject matters; i.e., laws of Federal and State governments.

The other article in the Proclamation that deals with the role of the CCI in the interpretation of the Constitution is Article 17. Here, as well, we have much of the contents of Article 84 of the Constitution reproduced. But, at the same time, what Article 17 of the Proclamation does is much more than reproduction in the sense that it adds quite a new set of reviewable issues. Sub-Article (2) of the foregoing reads: "*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 Federation for a final decision."

Note that the phrase 'decision given by any government organ or official' is included. Positively looked at, it might be said that this addition will clear the doubts that one might have as to who has the power to interpret the decision of Government officials and organs. As articulated elsewhere above, the absence of these provisions from the Constitution has led to the speculation by some commentators that the decisions of organs or officials are reviewable as to their constitutionality by Courts of Law.

Likewise, the term *"any law"* in Article 17(2) of the Proclamation in question would depart from especially the Amharic version of Article 84 of the Constitution which states that *"where any law enacted either by the Federal or States legislatures are contested as being unconstitutional and such matter [case] is submitted to it by any court or interested party, the Council shall consider the matter [case] and submit it to the House of the Federation for final decision."* And as it is clear from the translation above, the Amharic version of the same Article states that laws enacted by the Federal and State legislatures are those that could be contested for their unconstitutionality before the CCI and HoF. *A contrario* read, this can be taken to mean that laws by the executive organs of Federal and Regional Governments would not be brought before the HoF for adjudication of their constitutionality; rather they would fall in the competence of regular Courts, be State or Federal.

Finally, the controversies surrounding these issues seem to have been settled when one looks at:

- "Law" is defined by the said Proclamation to mean *".. the Proclamations and Regulations issued by the Federal Government or the states as well as international agreements which Ethiopia has endorsed and accepted."*
- Decisions made by the executive organs of the federal or that of the states other than those of delegated legislations, whose constitutionality is being questioned are also within the competence of CCI and HoF as articulated by Article 17(2) of the said Proclamation. (Developers proposition.)

In respect of the issue of parties with standing before the CC one should see it from two perspectives: a) the justiciability, and b) non-justiciability of the matter involved. Regarding this matter the Proclamation holds that it is "..any interested party..", or any person who alleges that his fundamental rights and freedoms have been violated by the final decision of any government institution or official are the ones that can be parties to a case on constitutional interpretation before the CCI.

The inclusion as a party with standing in the Proclamation of the victims of violations of fundamental rights and freedoms is a very good innovation. The government institutions that can be implicated as violators can only be administrative agencies of the Federal and Regional States. As to how the members of the judiciary can be brought before the CCI and Hof is beyond the letters and spirit of the Constitution.

The requirement of exhaustion of local remedies that is mandatorily required of the person who alleges violation of his or her fundamental rights and freedoms is likely to frustrate the entire scheme of remedy made available, concerning which some questions are in order; i.e.

- what if the violator (government institution or official) refuses to allow the victim to proceed in any meaningful way to exhaust the local remedies?
- what if the hostility between the victim and the violator is such that it is practically impossible for the victim to deal with the officials?

The other thing one should look at in this respect is the remedies made available by institutions of Human Rights Commission and Ombudsman which will be treated separately in this text. As regards civil societies or religious groups, that may claim to be directly implicated or concerned in the outcome of a given case, these entities can rightly fit into becoming parties with interest in most justifiable matters pursuant to Article 37(2) of the Constitution.

Cases of non-justiciable matter are known in the jurisprudence of the American Supreme Court as political questions. The American Supreme Court exercises utmost self-restraint not to entertain political questions. Chief justice John Marshal in Marbury vs Madison said, *"[q]uestions in their nature political, or which are by the constitution and laws, submitted to the executive, can never be made in this court."* The Supreme Court of USA, as said earlier,

exercises maximum self restraint in political questions as well as in some other cases pressed upon it for decisions. Though exceptions are abound as in the case of G.W. Bush vs Al-Gore during the 1999 US presidential elections, which happened to blur the already well drawn boundary between law and politics.

Coming to the issue of parties with standing in the case of non-justifiable matters, Article 23(4) provides that a third of members of the federal or state councils, or the federal or state executive bodies can submit a case which may not be handled by Courts to the CCI if any one of these organs believe that a constitutional interpretation is required in the matter. Therefore, the House of Peoples' Representatives and the HoF, where a third of their members of either House elect to do so, can bring non-justifiable matter for constitutional interpretation to the CCI. When we think of the members of the HoF to be parties to a case of constitutional interpretation, one might think that the former are going to be both a party and the latter judge on the same matter.

Justice Frankfurter in the case of Cooper vs Aaron (1958) said *"... no one, no matter how exalted his public officer or how righteous his private motive, can be judge in his own case."* The same sort of criticism might go to the house of Peoples' Representatives in its being the potential party contesting the law of its own making.

The preceding discussion begs the question as to what non-justifiable matters may consist in the Ethiopian context. Even if it seems to be very difficult to list all kinds of non-justiciable matters, a hint can be fetched from the Provisions of the Constitutional Proclamation.

The fact that a question for constitutional interpretation would be presented to the HoF by any Court is stated both in the Constitution and in Proclamation No 250/2001. The Court that presents or refers a case for constitutional interpretation of course is the Court that is entertaining the case, as regards which Article 21 provides as follows:

1) When issues of constitutional interpretation arise [in] cases handled by Courts, such issues may be submitted to the Council of Inquiry, by the Court or interested party.
2) The court handling the case shall submit it to the Council of Inquiry only if it believes that there is a need for constitutional interpretation in deciding the cases. (Emphasis added).

This means that the Court that handles the case which is thought of involving issues of constitutional interpretation, to refer it to the CCI, must be convinced that the case is of justirciable nature. Otherwise it won't submit it, if it does not believe that there is a need for constitutional interpretation.

Art, 21(3) makes it clear also that the court has quite a great role to play in the process of interpreting the constitution. According to this provision, only the legal issues necessary for constitutional interpretation is to be forwarded to the CCI. Thus, even when the Court concerned is convinced that there is a need for constitutional interpretation, it has to frame the legal issues disposable for the CCI.

A question that might arise in this connection is as to what happens if there is a difference in opinion between the Court and a party or both parties to the case on whether a case has to be referred to the CCI or not. Article 22 addresses cases of this nature. According to Article 22 of the Proclamation, any party to the case pending who believes that there is a need for constitutional interpretation can submit the same to the CCI. The same Article also makes in mandatory that the party presents the request first to the court handling the case, and that it is only after such a court refuses to entertain the claims of the disputant that the latter submits the case to the CCI. Once the disputant party chooses to pursue the last option, the CCI no doubt would order the Court seeing the case to halt its consideration.

The powers and responsibilities of HoF has been consolidated and articulated by Proclamation No.250/2000.[100] Whose relevant provisions are reproduced here?

The Proclamation states:-

1. ***General***
    1) The House shall have the power to interpret the Constitution.
    2) Notwithstanding with sub-Article (1) of this Article the House shall not be obliged to render a consultancy service on Constitutional interpretation.
2. ***Constitutional Interpretation***

[100] ??

1) The house shall make the final decision upon draft proposal of constitutional interpretation submitted to it by the Council of Constitutional Inquiry.
2) A party dissatisfied with the decision of the Council of constitutional inquiry of rejection of case relating to review of constitutional interpretation may appeal to the House.

3. Forwarding cases of Constitutional Interpretation

The house shall forward new cases of Constitutional interpretation, submitted to it directly, to the Council of Constitutional Inquiry.

4. Principles for Executing Constitutional interpretation

1) The House shall identify and implement principles of Constitutional interpretation which it believes help to examine and decide Constitutional cases submitted to it.
2) Where the Constitutional case submitted to the house pertains to the fundamental rights and freedoms enshrined in the Constitution, the interpretation shall be made in a manner conforming to the principles of the Universal Declaration of human Rights, International Covenants on human Rights, and International instruments adopted by Ethiopia.

5. Additional Information and Evidence

The house shall collect additional information or order the pertinent body to produce evidence as may be necessary before it makes a final decision upon Constitutional interpretations.

6. Explanation and Confirmation of Constitutionality

1) Unless otherwise proved to the contrary, the enacted law is presumed to be constitutional while the House starts to review its constitutional.
2) Without prejudice to sub-article (1) of this Article. If the constitutionality of the law is found to be controversial, a government body which has the duty to consult the Federal or State government, depending on Conditions, shall have the obligation to explain.
3) A pertinent Federal or State government institution may be ordered to appear before the House and explain, in accordance with sub-article /2/ of this Article, the constitutionality of a controversial law o a date fixed by the House.
4) In addition to the provisions of sub-Article (2) and (3) of this Article, before a decision is made on the constitutionality of a law, it may seek further explanation from the court handling the case and the parties involved in the case.

7. Gathering Opinions

The House may, before it passes a final decision on constitutional interpretations, call up on pertinent institutions, professionals, and contending parties to give their opinions.

8. Results of Decisions on constitutional Cases

1) The final decision of the house on constitutional interpretation shall have general effect which therefore shall have applicability on similar constitutional matters that may arise in the future.
2) The House shall publicize the decision in a special publication to be issued for this purpose.

9. Unconstitutional Law

If part of a given law is decided that it is unconstitutional, unless otherwise found necessary, the effect of the final decision shall remain limited to only that very law.

10. Resolving constitutional cases in a short time

1) The house shall have the obligation to pass prompt decisions after investigating constitutional issues.
2) Notwithstanding to sub-article (1) of this Article the house shall pass decisions, within thirty days, over the recommendation submitted to it by the Council of Constitutional Inquiry.

11. Rule of Decision Making

1) Without prejudice to sub-article (3) of Article 46 of this proclamation, the house may pass a decision on cases of constitutional interpretation with a unanimous vote.
2) An issue is said to have been decided with a unanimous vote when no opposition is raised from the members of the House attending the meeting.
3) The final decision of the house on Constitutional interpretation shall be communicated to parties and the concerned institutions.

12. The Content of the Decision

The decision of the House shall consist of details of the constitutional issue, justification for whether constitutional interpretation was necessary or not, and the decision it has finally made.

13. Effective Date of the Decision on constitutional issue

1) 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.
2) Notwithstanding to sub-article (1) of this Article, the Federal of the State government legislative body may be communicated within six months so that it may amends, changes, or repeals the law in question before a final decision of its unconstitutionality is made.

14. Service Charge

1) Application for constitutional interpretation submitted to the house shall be exempt, from a service charge.
2) Notwithstanding with sub-article (1) of this Article, the applicant may be asked to effect a payment in accordance with the regulations to be issued by the House as may be necessary.

15. Process of Decision Making

1) The house may establish a committee, drawn from its members, which shall investigate the draft proposal submitted to it by the council of the Constitutional Inquiry and an appeal lodged against the decisions of the Council of the Constitutional Inquiry.
2) The Committee may be mandated by the house to make a decision whether an appeal made against decisions of the Council of the Constitutional Inquiry should be presented to the general meeting of the House or not, particulars shall be determined by the regulation to be issued by the House.

It's Role in Fiscal Matters

Fiscal federalism is a concept derived from Economics. It refers to the collection, allocation and disbursement of revenues at regional and federal levels. It also attempts to deal with systems of transferring revenues from the federal government to the regional states as well as between regional states.

Although this economic theory might provide scientific basis for sorting out federal, state and local roles, it is hindered in practice by such values of federalism as accommodation of diversity, conflict management and partisanship.

The Ethiopian Constitution provides a separate regime of allocation of powers on matters concerning taxation (see above). The Ethiopian federal system insists on the allocation of separate legislative, executive, financial and judicial powers to each and every level of government.

Like in many federal systems, '*revenue concentration and expenditure decentralization'* seems to explain fiscal conditions in Ethiopia, as reliable revenue-sources are kept under federal jurisdiction, while other, costly services such as education, health care, etc.. are left within the domain of the regional states. Besides, regional state governments often shoulder the financial burden of administering federal laws. As a result, regional states at lower stage of development and/or lack of natural resources become increasingly unable to cover their expenditure responsibilities, requiring some form of fiscal transfer from the federal government; i.e. creating financial dependency and thereby effectively limiting the constitutional autonomy of these regional states.
Though, here, the role of HoF is a) determine the criteria for the allocation of concurrent tax (Art.98), and b) determine the subsidies that the regional states receive from the federal government is of crucial importance, the fact that its composition is more or less similar with the HoPR creates a problem in the decision-making process.

Other powers of the HoF include:-

a) Deciding issues related to self-determination;
b) Promoting the equality of the peoples;
c) Exercising concurrent powers together with the HoPR like residual power on tax, election of the federal president and the constitutional amendment under Articles 104 and 105;
d) Determining the division of revenues derived from joint federal and state tax sources and the subsidies that the federal government may provide to the regional states;
e) Determining civil matters which require the enactment of laws by the HoPR;
f) Ordering the federal government to intervene if any state threatens the constitutional order in violation of the constitution.

The powers – responsibilities and the correlative liabilities of the HoF and CIC can clearly been seen from the following to proclamations.

Miscellaneous Powers

16. Questions of Self-Determination

1) The House shall have the power to decide on issues relating to the rights of Nations, Nationalities, and Peoples to self-determination. Any Nation, Nationality, or People, which believes that its self identities are denied, its right of self-administration is infringed, promotion of its culture, language and history re not respected, in general its rights enshrined in the constitution are not respected or, violated for any reason, may present its application to the House through the proper channel.
2) Question of the Right to Secession

   Where the house is confirms, that the question of secession submitted to it has been supported by the two-thirds majority vote of the Legislative Council of the concerned Nation, Nationality, or People in accordance with Article 39(4) and (1) of the Constitution, the house shall:

   a) Arrange a referendum to the Nation, Nationality, or People in question within 3 years of receipt of the decision of the legislative council of the Nation, Nationality, or people;
   b) Transfer power to the council of the Nation, Nationality, or people after the confirmation of the support of the question to secession by the majority vote;
   c) Execute the division of assets in accordance with particulars to be determined by law.
3) *The Question of State Formation*
   1) The question of any Nation, Nationality, or People to form its own state is carried out:
      a) When the question for statehood has been approved by a two-thirds majority vote of the members of the Council of the Nation, Nationality, or People in question, and the request thereof is presented in writing to the State Council;

b) When the Council that received that claim has organized, a referendum to the Nation, Nationality, or People that presented the request, within on year;
c) When it is supported by majority vote in referendum of Nation, Nationalities or People on the question of State formation
d) When the State Council have transferred its powers to the Nation, Nationality or People that claimed the statehood;
e) A new State which is formed by the referendum shall directly be a member of the Federal Democratic Republic of Ethiopia without any need for application.

2) Any party claiming that the question of state formation has not been executed within the time specified in 3(1b) of this Article or alleges to have dissatisfaction with the decision, may appeal to the House.
3) The right prescribed in (2) of this Article shall be presented to the House in writing by the Council of the Nation, Nationality, or People that claimed for the formation of state.
4) The House shall make a final decision within two years on issues presented to it in such a procedure.

17. Essentiality of Exhaustion of State-level Procedures

1) The question specified in sub-article 1 of Article 19 shall be submitted to the house only under conditions that the question has not been given due solution by the various organs in the administrative hierarchy of the state concerned.
2) The States shall make decisions within two years up on questions specified in sub-article 1 of Article 19, particulars shall be determined by the law issued by the states.
3) The question may be referred directly to the House if it has not been decided within two years, or if the decision made dissatisfied the concerned party.

18. Procedures

1) A question of the right to self-determination must be presented in writing. The application must consist of the details of the question supported with names, addresses and signatures of at least five percent of the inhabitants of the Nation, Nationality or people, and whenever necessary, the official seal and signature of the administration that presented the question for the right to self-determination.

2) The individual or individuals who are delegated to present a petition to the house pursuant to (1) of this Article shall produce a reliable evidence of their delegation from the Nation, Nationality, or people, particulars shall be determined by the regulations to be issued by the House.

19. Times set for Decision Making

The House shall make decision over the case, submitted to it, in not later than two years time from the day of receipt.

Resolving Disputes and Misunderstandings

20. General

The House of the Federation shall strive to resolve inter state of Federal-State government disputes and misunderstandings.

21. Duty of Readiness discussions

1) Any party claiming to have a dispute with the Federal Government or a state must make a call in writing for a discussion.
2) The party called for must be ready for a genuine discussion within a maximum of forty-five days.
3) Following the two parties' willingness to resolve their dispute by discussions the House shall strive to the fruition of their discussions. It shall also follow up the progress of the discussion.

22. Presenting the case to the House of the Federation

1) If one of the parties is unwilling to take part in a discussion initiated by the other, or that the discussion, held between the two has ended in disagreement, the case may be submitted to the House by the one or both of the parties.
2) The Hose may, when a case is submitted to it seek for a temporary solution or cause others to seek a solution in consultation with pertinent bodies.

23. Measures to be undertaken by the House

The House shall, before giving a final decision, create conducive condition wherein the concerned parties could continue their discussion or cause the parties to give issues of their differences in writing within a specific period of time. It may also cause the parties to produce all evidences in their possession.

24. Resoling Border disputes

The House shall decide issue of border disputes based on the Peoples' interest and settlement patterns

25. Peoples' interest and Settlement patterns

1) The House shall pass a decision based on sufficient information it may have, on redefining disputable borders taking into consideration the peoples' settlement patterns.
2) The House shall seek for the peoples' interest and consent as to redefining the disputable border, if it can not decide to which side the disputable land belongs.

26. Ensuring Peoples' interest in Resolving Border disputes

1) Peoples' interest shall be ensured in a secret ballot referendum;
2) The referendum to ensure peoples' interest shall be conducted in accordance with the basic principles of the law of election.
3) The referendum to ensure peoples' interest on border disputes shall take place at Qebele level. If the disputants cannot reach it and agreement as to the size or boundary of the Qebele, it shall be determined by the House;
4) The House may delegate the National Electoral Board to execute the referendum;
5) Based on the result of the referendum, the disputed border area shall be part of the state of which the majority of the people voted. If, however, the result of the referendum excludes some areas of pocket lands, the people in those areas shall reside there with their rights and freedoms ensured.

27. The Right to Vote

1) Without prejudice to the provisions of the relevant law of election, any Ethiopian whose age is 18 and above, and registered and lived for five or more years in the disputable area shall have the right to vote. Particulars shall be determined by the regulation to be issued by the House.
2) A person, whose displacement from the disputable area is proved to be due to reason related to the dispute, shall have the right to vote.

28. Time Set for Resolving Border Disputes

The House shall pass the final decision on a border dispute in not later than two years time from the day of its receipt.

29. Miscellaneous Misunderstandings and Disputes

1) The House shall request the parties to resolve their misunderstandings by peaceful means and discussion where their misunderstanding is other than border disputes. It shall also attempt to abridge their difference;
2) If the concerned parties could not resolve their misunderstandings through discussion, the House shall strive to find a solution in any mechanism possible;
3) Without prejudice to the principles of the division of power stipulated in the Constitution, the House shall seek solutions to misunderstandings that may arise between the Federal and the State governments.

30. Devising Conflict Prevention and Resolution Mechanisms

The House shall study the traditional as well as modern ways of conflict prevention and resolving mechanisms, to resolve misunderstandings, and devise working procedure and institutionalize same.

Questions that matter

The role of the Upper Chamber (HoF) is to counter balance or act as a checking mechanism of the exercise of majoritarianism (winner take all proposition) as exercised by HPR.

1. By withdrawing the power to participate in legislating and awarding it the power of interpreting the Constitution, doesn't the constituent Assembly serving the same purpose; i.e. creating a checking mechanism?
2. One can say, it is only USA and India which have sufficiently demarcated and characterized the politicality from legality. In these two Countries and some few others, a Constitution is taken basically as a legal document. I'm afraid in all other countries, more so in Developing ones, a Constitution is a political document. To breach this gap most European Countries have developed an independent and separate forum, i.e. Constitutional Court for adjudicating questions of constitutional nature. In the case of Ethiopia,
    a) Should the power of constitutional interpretation be awarded to the regular Courts? See this in light of historical experience; i.e. Haile Selassie and PMAC, where the Courts were subservient at both times.

b) Where are we heading? To interpretation by regular Courts? or Interpretation by constitutional boards? Supposing further by cutting the umbilical cord that ties the CCI with HoF, wouldn't it be easier or palatable for us to follow the continental experience? Explain.

3. The American and Indian experiences tell us that constitutional provisions are developed by case precedent. We have now a law which gives these kind of power to the decisions given by the Federal Cassation Court. Would that salvage the problem posed? or - The legislator (this HPR and any other one) take-up this role and amplify, articulate, etc.. the provisions of the Constitution?
4. Do you see any inconsistency between the provisions of the Constitution and those of the Proclamation? If the latter gives less power, what should be the solution? If more, what should be the solution?

Section II: - Office of the Presidency[101]

Had it not been to maintain the integrity of the FDRE Constitution, the Office of the Presidency would have been treated along with the notion of State and sovereignty in Law of Constitution I; or at least prior to going into discussion of the federal entities, for the Office as a symbol of the State rather than an operative institution *per se.*

"The President

"The President of the Democratic Republic of Ethiopia is the Head of State."[102]

"Nomination and Appointment of the President[103]

"1. The House of Peoples' Representatives shall nominate the candidate for President.

"2.The nominee shall be elected President if a joint session of the House of the Federation approves his candidacy by a two-thirds majority vote. .."[104]

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[101] Adopted from the Japanese model by Rajini Goyal, Major Constitutions: UK, USA, Switzerland , Japan, China, (Gagotio Publications Pvt. Ltd. New Delhi, 2005), pp. 767ff.

[102] FDRE Constitution, Article 69.

[103] Id., Article 70 (1) and (2).

[104] Id., Article 70.

As prescribed by the FDRE Constitution, major functions of the President are essentially of ceremonial nature.

a) Opening the joint session of the HoF and HPR at the commencement of their sessions.[105]

b) Proclaiming laws and International Agreements in the *Nagarit Gazetta* after they have been duly ratified by the HPR. (Here, one should note that the President has no power to bar legislations; i.e. laws enacted by HPR.[106] (For, if He, for some reason declines to put his signature on such a law within 15 days of submission, it shall, according to Article 57, take effect without His signature.)

c) Appointing recommended ambassadors and other envoys upon their nomination by the PM as well as receiving the credentials of foreign ambassadors.[107]

d) Awarding medals, prices and gifts as prescribed by the law as well granting high military title as prescribed by the PM.[108]

d)Appointing six legal experts to CCI membership.[109]

e) Inviting political parties to form a coalition government upon the expiry of its term of office.[110]

f) Granting pardon as prescribed by the law.[111]

Here, the issue of pardon invites making discrimination between and among notions of amnesty, clemency, commutation, condonation, pardon and reprieve. Pardon refers to[112]

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[105] Id., 71(1).

[106] Id., Articles 71(2) and 57.

[107] Id., Article 71(3) and (4).

[108] Id., Article 71(6) and (7).

[109] Id., Article 82(2c).

[110] Id., Article 60(2)

[111] Id., Article 71(7).

[112] Henry Campbell Black, Black's Law Dictionary, Sixth Ed., (West Group, Bolton, M.A.), 1990.

> *"[a]n executive action that mitigates or sets aside punishment for a crime. An act of grace from government power which mitigates the punishment the law demands for the offense and restores the rights and privileges forfeited on account of the offense. A pardon releases offender from entire punishment prescribed for offense and disabilities consequent on his condition; it reinstates his civil liberties. The power to pardon for non-federal cries is power to pardon for federal offense. .. . "*
>
> Clemency is *"[k]indness, mercy, forgiveness, leniency; usually relating to criminal acts. Used e.g. to describe at of governor of state when he commutes death sentenced to life imprisonment or grants pardon."*
>
> Amnesty is *"[a] sovereign at of forgiveness for past acts granted by a government to all persons (or to certain lass of persons) who have been guilty of rime or delict, generally political offense – treason, sedition, rebellion, draft evasion – and often conditioned upon their return to obedience and duty within a prescribed time. . . Amnesty is the abolition and forgetfulness of the offence; pardon is forgiveness."*

Questions that matter.

1) How does pardon differ from those explained above?
2) First explain each?
3) Then try to find the rational of each of them?
4) Pro-cons and cons of each as a legal and/or legal remedy?

Section III: The Head of Government (the Executive) – the OPM and the CoM

Parliamentary Systems of Government

Parliamentary systems owe their name to their founding principle, namely, that Parliament is sovereign. Thus parliamentary systems do not permit insulation of power between Parliament and executive: they are all based on legislative executive power sharing, and, as such, there is separation of power. This is also to say that all the systems that we call parliamentary require

that, governments (executives) to be appointed, supported and as the case may necessitate, be discharged by parliamentary vote.

The fact is that 'parliamentarism' does not denote a single entity. If the performances of parliamentary systems are as different as they are, this is because they relate to, and result from, very different kinds of executive-legislative linkage. Indeed the English-type of premiership or cabinet system, in which the executive practically prevails over parliament; at the other extreme the French (III and IV Republic) type of assembly government that makes governing a near-impossibility; and a middle-of- the –way formula of party- controlled parliamentarism.

The underling, common problem of all parliamentarism, is to have parties that do not cross, in voting on the floor of the Houses, party line. In the American case, party indiscipline is always and necessarily a liability. Parliamentary-fit parties are parties that hold together in supporting the government (generally, also if in coalition); that is their appointees keep the line. Therefore, the understanding of parliamentarism assumes an understanding of who controls the parties, how, and-in-turn, what it is that parties control.[113]

Power Sharing[114]

Parliamentary systems are all power-sharing systems. But power sharing cannot be pinned down as tidily as power division can. The formula is elusive, for sharing denotes diffusion and diffuseness. Who shares what, with whom, in what way or to what extent? To say the least, power sharing admits a very great variance. Still some order can be brought into this maze by looking into the core authority structure in which a chief executive, a prime minister is empowered to perform. From this standpoint the head of government may relate to the members of his government as:

i) A first above un-equals
ii) A first among un-equals

[113] Giovaini Sartori, "Parliamentary System", Constitutional Law, LLM Course The Ethiopian Civil Service College, (Compilation), Volume I, University of Amsterdam, 1998), pp. 1001-117.

[114] Ibid

iii) A first among-equal

These are all power sharing formulas in that they all exclude a power concentration in just one person, in a primus souls, as in the case of the American president whose government is only his private cabinet. But they have indeed very different formulas. A British prime minister stands as a primus (first) above un-equals; for he or she truly runs the government and has a free hand in picking and firing truly subordinate Ministers; the German chancellor is less pre-eminent but still is a primus among un-equals (not among equals); whereas a prime minister in an ordinary parliamentary system is a primus inter pares, among equals, and thus not much of a primus either.

A first above un-equals is a chief executive that is the party leader, that can hardly be unseated by a parliamentary vote, and that appoints and changes cabinet ministers at his or her pleasure. So, this 'first' rules over its Ministers and, indeed, over-rules them. A first among un-equals may not be the official party leader, and, yet, cannot be unseated by a mere no confidence parliamentary vote and is expected to remain in office even when his cabinet members change. So, this 'first' can unseat its ministers but can not be unseated by them or the Parliament. Finally, a first among equals is a prime minister that falls with his cabinet; that generally must embark on the governmental team - 'imposed Ministers' – and that has little control over the team (better described as a non-team whose untouchables play their own game).

The significant point is that the formulae in question outline a scale of power sharing arrangements that undercut the conventional wisdom about what presidentialism and parliamentarism, respectively, do best. For one, the scale indicates that an British prime minister can govern for more effectively than an America President. This entails that the presidential primus solus formula can not be credited with any prevailing 'governing merit'. Furthermore, the scale suggests that there is no net advantage in replacing a primus solus, a president, with a primus inter pares. So, the power sharing formulas that hold 'governing promise' are: i) first above un-equals, and ii) first among un-equals.

These are the interesting working cases of parliamentary government – the premiership systems that range from England to Germany. But this is by no means to assert that all other forms of parliamentarism are non-working.

Premiership Systems[115]

The premiership system, or cabinet system, at its best is illustrated by the British system of government. As every one knows, the British premiership system assumes single party government (it would founder with coalition government), which in turn assumes a single member district system that engenders a two-party system. Let it also be underscored that it is single party government that calls for a strict party discipline that obtains in Westminster; for there to vote against one's own government would imply handing it over to the opposition.

Thus as indicated, the Westminster system of government rests on three major conditions. These conditions build on each other in this order: i) Plurality elections, ii) Two-partyism, and iii) Strong partisan discipline.

This implies that if the first condition is altered, a domino effect will follow – a domino effect that presses for the adoption of some kind of premier system and, in any case, for the rejection of the winner-take-all system. So, the British premiership system can easily get disrupted, while, on the other hand, is not easily obtainable.

Therefore, any country that adopts a single member district system on the argument that a premiership system of government would follow may be severely disappointed. Remember, also, that the winner-take-all system is inadvisable when a polity is polarized and/or characterized by a heterogeneous political culture.

Moving on, as the United Kingdom and accordingly modeled countries illustrate, the strong case of premiership parliamentarism, Germany illustrates the weak, or weaker case of the category. The German Federal Republic has never had a two-party system, and only for a

[115] Ibid.

short time single party government. It has long been, instead, a three-party system (some say a two-and–a-half), has always displayed two-member coalition governments, and does not employ a majoritarian electoral system.

Working Parliamentarism[116]

With reference to governing capabilities, 'working' branches out in two meanings, namely: effective government and/or stable government. And this distinction allows for three combination of circumstances, that could be either:

i) Both effective and stable,
ii) Stable and possibly effective, or
iii) Unstable.

So this framework allows for an array of working cases that certainly extend beyond the British model and the German experience.

The first combination eminently includes the premiership systems, but also includes the 'predominant party system' of countries such as Sweden and Norway, Japan and Spain, which may neither have premiership structures, nor a two-three party format, and yet display un-interruptedly for some ten to as much as forty years, single-party government (of the same party); and this, on account of the simple fact that one party obtains across a succession of legislatures, the absolute majority of parliamentary seats. Predominant party systems, thus, can provide the stability and the effectiveness capability that all single-party governments provide.

The point, here, is that what cannot be accomplished on the basis of the leadership principle might be accomplished by particular kind of structuring of the party system. That is also to say that the list of the working parliamentary democracies is extended by cases that are no longer explained by any particular constitutional arrangement.

[116] Ibid.

Beyond this frontier we can surely still find multiparty countries with coalition governments that turn out to be stable and reasonably effective. But these are single-case success stories whose success must be credited to policies and successive personal leadership qualities – not to any kind of structure. Provided that one crucial condition is always respected, namely, that the parties are parliamentary-fit and thus sufficiently controllable and in control.

Parliamentary government functions are somewhat like a misnomer; that is to say, when parliament, does not govern, when it is muzzled. Conversely put, working parliamentarism never is a 'pure' parliamentarism that fully embodies the principle of the sovereignty of Parliament.

Stability and Effectiveness[117]

In much of the literature 'stability' is the major indicator of working democracy. The reasoning is that if a parliamentary system obtains stable government, then it equally obtains effective government. Conversely, unstable governments attest to inefficient government.

Let us begin with 'governability' – effectiveness or efficiency in governing. The preliminary admonishment is that these notions do not address actual performances but structural capabilities. Performances depend on performers just as driving depends on capability of drivers. Moreover, drivers need roads and, similarly, performers need structures that allow them to perform. So we cannot get decisive government without a decisive effective government.

Second point is this: that we should not confuse 'effective government' with 'activist government' and 'ineffective government'. The former is a government that has the capacity of implementing the policies that it pursues; but it may expound a non-activist philosophy of government and therefore choose, whenever it so decides, to remain inactive.

The difference between 'effective' and 'ineffective government' is that the former is capable to execute its duties (even when it decides against doing something for other reasons),

[117] Ibid.

whereas the latter cannot do what it would like to do. In parallel fashion the difference between 'effective' and 'activist government' is that while the first may be effective in executing policies, strategies .. and dismantling things, an 'activist government' is a presumptuous government; one assumed to be a 'doer' for it assumes that there is no problem that politics cannot accomplish or solve.

'Inefficient government' is the best retreat any one can have against 'bad government': the lesser a government's effectiveness, the greater the loss. An 'ineffective government' can be quite harmful, for one of the major characteristics of inefficiency is to waste resources, distribute resources for matters that do not achieve any end, that simply go down the drain. So, only 'effective government' is not of any risk, which any civilized nation should prescribe to itself by default, as any of the other alternatives are worse or worst.

Turning to 'stability', the introductory question is: Which stability? or Stability of which unit and substance? Stable democracy is one thing, stable government quite another. That democracy should not fall is obviously important.

But why is it important that any kind of government should not succumb? The answer generally is that stability of government 'indicates' effective government. Unlike the long-lasting 'State', government stands for a mere duration. Sometimes governments can be long lived despite being inefficient. In other words, the time duration governments stay at power is by no means an indicator and even less an activator of efficiency or efficacy. Indeed, in most parliamentary systems which require government by coalition, governments prolong their survival by doing next to nothing. In this context the little that coalition governments can do is usually done in the first six months; during their initial honey- moon period. After that, they linger on and buy time by staying still; by trying not to rock the boat. Thus, the ensuring factor to effectiveness and over-coming national problems is not merely longevity, i.e. how long governments last, but whether governments are given the capacity and are capable to govern. Stable government may be a facilitating condition, but certainly is not a sufficient condition for the existence of an effective government.

After having ironed out that a government can be stable but idle, long lasting but powerless, it can of course be conceded that duration helps in the implementation of policies. However,

the more we hold that stable government is a necessary condition (though not sufficient) to an efficient government, the more we must make sure that that stable government consistently stays true to its mane (i.e. responsibilities, obligations and duties) and undertakes the same in a lasting manner.

The Office of the Prime Minister

"The prime minister is the chief executive, the chairman of the Council of Minister, and the commander-in-chief of the National Armed Forces."[118]

The Office of the Prime Minister (PM) occupies a position of great importance as the real executive. It is his relationship with the Council of Ministers (CoM), party in Parliament, the HPR, the public and the world at large, which have the potential to influence the course of events in FDRE government. While the OPM is the steering wheel of the ship of the state, while it is the PM who is the steering man**.**

Before we look into the OPM under FDRE Constitution, let us have a glimpse of as to what some leading authors have to say about the British Prime Minister, which will give the reader, an idea of the immense power wielded by him, in the context of Westminster Paradigm.

John Marriot – the PM is the core of the British constitutional system.
Gladstone – Nowhere in the world, has so small a substance cast so large shadow.
John Morley – *T*he PM occupies a position, which, as long as it lasts, is one of exceptional and peculiar authority.
Asquith – The Office is what its holder chooses and is able to make of it.
Jennings – All roads of the Constitution, leads to the Prime Minister.
Greaves – the government is the master of the country and the PM is the master of the government.

[118] FDRE Constitution, Ob. Cit., Article 74 (1).

There are phrases as well, which describe his position vis-à-vis the Cabinet. The one most commonly used is the Latin phrase; *primus inter pares, i.e.* first among equals. Yet, since the PM is more than merely a first among equals, he is; *inter stella luna minors, i.e.*, he is a moon among lesser stars. Albeit, his exact position is that, the PM is the 'sun around which all planets revolve.'

It is a cardinal principle of a parliamentary government that PM enters the OPM through the HPR, he/she must possess the same qualification as any member of the House.

Appointment of the PM[119]

(1) *The prime minister shall be elected from among members of the House of Peoples' Representatives.*
(2) *Power of government shall be assumed by the political party or coalition of political parties that constitute(s) a majority in the House of Peoples' Representatives.*

When a new HPR is constituted after a general election, the leader of the majority party in HPR takes over as the PM-ship. In respect of this, three situations can be identified: the first is when the majority party is left without a leader during the tenure of the Parliament for its leader has resigned, the second situation arises when no party has a majority in the HPR and a coalition government has to be set up the leader of the party, which has the largest vote may take OPM. Lastly, a situation may arise where among parties there is such a split that even a coalition cannot be formed. FDRE Constitution seems to have not contemplated this last possibility.

In respect of these issues, what is provided by Ethiopia's Constitution is that:[120]

1. The PM can, if he believes that he would fetch better result by calling new election prior to the end of his term, in which case he has to get the consent of HPR.
2. In respect of loss of majority in the HPR, what is provided by the FDRE Constitution is that *"[t]he president may invite political parties to form a coalition government within one week, if the Council of Ministers of a previous coalition is dissolved*

[119] Id., Article 73.

[120] Id., Article 60.

because of the loss of its majority in the House. The House shall be dissolved and new elections shall be held if the political parties cannot agree to the continuation of the previous coalition or to form a new majority coalition."

3. If the House is dissolved pursuant to sub- Article 1 or 2 of this Article, new elections shall be held within six months of its dissolution.
4. The new House shall convene within thirty days of the conclusion of the elections.

Following dissolution, and till a new government with its own PM takes over the function of state, the pervious government acts only as a caretaker government; i.e. as an agent authorized only for acts of managements. It may not therefore: …enact new proclamations, regulations or decrees, nor may it repeal or amend any existing law.

Powers and Functions of the PM[121]

The powers of the PM are now examined vis-à-vis the Cabinet, the Council of Ministers, the Parliament, his party and the people – both in the context of domestic and foreign affairs.

The PM exercises the following powers vis-à-vis the Council of Ministers. The PM has a free hand, while appointing his ministers. In the British system the King does not play any active role in this regard and has to agree with the PM's choice, for if he did not, the latter would have to resign and the leader of the opposition cannot be invited to take over since he does not have the required majority. The PM, through his power of selecting ministers, enjoys immense patronage because on him depends the political careers of contenders for office. *"But more important, on the quality of his choice depends the quality of his government"*. Drawing up this list, was, as PM Benjamin Disraeli said: *"a very severe trial"*. The task of choosing appropriate men is both delicate and challenging at the same time. A.L. Lowell likened this task of the PM to: *"that of constructing a figure out of blocks, which are too numerous for the purpose and which are not of shapes to fit perfectly together"*.[122]

[121] Id., Article 77.

[122] As quoted by Guyal, ob. Cit., Note No. 99, pp. 152-153.

Selecting the ministers is not a matter of personal choice alone; the PM has to take several factors into consideration while making the appointments. Some of them are listed below.

i) He shall consult the senior members of his party.
ii) There is a tradition that surviving members of past ministers of his party, if they are desirous to be appointment, are to be given preference and posts, commensurate with their seniority to the PM.
iii) He has to see (Nation, Natioality and Peoples) the nations people are duly/fairly represented in the Cabinet.
iv) Different factions of the same party should be given representation.
v) Social, economic and religious groupings are not to be ignored.
vi) Women should be adequately represented.
vii) Men who are good orators with a clean image be chosen.
viii) He must obtain the consent of those chosen.
ix) If there is a strong reason to include a member who is not MP in the cabinet, he will have to contest a by-election or else, a title of a life--peer will be bestowed on him, in order to facilitate his induction into the Cabinet. (this is further explained by the next point)
x) There is a tradition that, while most of the Cabinet Ministers are taken from the Commons (HPR), the PM has the power to appoint non-party, non-parliamentary few individuals in the Cabinet.
xi) The Party Whip, if there is one, must be consulted. (The Part Whip is an office/person which/who is in charge of discipline.
xii) The group chosen, must have a degree of homogeneity required to function together as a team;
xiii) He must give representation to the youth in order to prepare the next line of party leaders; and
xiv) Such other considerations as are appropriate in respect of time and place.

The task is indeed formidable. The choice is not a simple one and the real test comes when the Cabinet has to function as a team.

It is the PM who determines the size of the Council of Ministers. Governmental foundations are ever widening, which means more and more departments are created and more ministers

appointed as the situation requires. The desire of ambitious political leaders to be in the Cabinet has also to be satisfied. Besides, by appointing more ministers, the PM obtains a wider support base. The more widely a PM distributes jobs, the broader the base of support. It is indeed correct that very often jobs, the size of the Cabinet is not determined by the demands of efficiency alone but is governed by the political debts that have to be paid.

The opinion in the modern times is in favour of large cabinets, so that representation can be provided to all strands of opinion in the party. As Gilmour correctly opined:

> *"A large cabinet helps the PM to control his senior colleagues. A small cabinet would help his senior colleagues to control him. For most men, it is easier to dominate a body of 20, than of five. The presence in the Cabinet of Ministers who are less than equals, ensures that the PM remains more than first amongst them."*[123]

Yet, the size of the Cabinet should be such that, collective responsibility and secrecy are both possible and imperative, for they are the essential attributes of a parliamentary government. The work of the government is divided into several ministries and the PM, in consultation with his senior colleagues, has to distribute these ministries between the various ministers. Again, this distribution is not an easy task as Jacob and Zinks pointed out:

> *"Two or more men may want and have equally good claim to the same position. Some may insist on posts for which the PM does not consider them suitable. Others may be reluctant to take places of specially arduous or hazardous character."*[124]

While distributing portfolios amongst the ministers, the PM keeps the following factors related to the former in mind; their individual standing in the party, their parliamentary record and experience in previous governments, their personal skills and knowledge in a particular area and several such other practical considerations.

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[123] Id., pp. 153-154.

[124] Id, p. 155.

If the PM has the power to shape the Cabinet, he also has the power to reshape it. Changes in the political situation or the poor performance of certain ministers may force the PM to reshuffle his ministry. Generally, reshuffling precedes a general election so that the dissatisfied members of the party can be made ministers.

The PM has the undoubted and sole discretionary power of removing a colleague, whose presence in the Cabinet, as in his opinion, prejudicial to the efficiency of the government; and with no need for endorsement by HPR, while approval is a requirement for appointment. Ian Gilmour rightly observed that the *"Cabinet Ministers are in the position of being tenants of the PM, with no security of tenure"*; the PM can sack a minister for varied reasons such as indiscipline, disapproval of the government's policy, inefficiency, insubordination, etc...

The only limitation on his power is a question of prudence; that is, he must avoid provoking a revolt/resentment within his party. Great caution is to be exercised by the PM while dismissing ministers, for the opposition will grab the chance to impress upon the public that, the government is internally weak and that the original appointments were faulty. *"The opposition is in a position to use such events to bring strictures against the PM, to raise the cry that he is an inept judge of men and hence equally untrustworthy as a leader"*.

A minister who has incurred the wrath of that PM or who is in search of better pastures in the opposition camp or who has genuine differences of opinion with the policies of the government can submit his resignation to the PM.

The risks of resignation are almost always high; most of those who resign simply fade away into oblivion. A minister who resigns is in deep trouble, for he has committed the unpardonable sin of rocking the boat. Gilmour said: *"the boat may have been about to sink, it may have been steering straight for the rocks, the captain may have been ill and incapable; still in the party's eyes it was the duty of the minister to remain on board and keep his mouth shut. Mutiny is unpardonable."*[125]

[125] Id., p. 156.

Resignations are always treated as a sign of disloyalty and held against the minister. The party does not regret his departure, yet minister has to resign when and whenever a minister has to escape from collective responsibility or when the PM insists for his honorouble leave. All said and done, resignations bring little or no benefit to those who tender them. Gilmour said in this context that:

> *"Although the resignation has made plain his differences with the government, the former minister has to hold his peace and pretend that nothing has happened. He has to convey discreetly that his jump overboard, in no way implies criticism of the captain or the crew; merely that he preferred the water."*[126]

PM as Chairperson of the Council of Ministers[127]

The PM derives his authority in large measure from the chairmanship of the CoM, both when it is meeting and even when it is not. Therefore, he should provide to the Cabinet a leadership which is firm, highly visible and yet approachable. The agenda of CoM meetings is prepared by his secretary under his own guidance, in which the PM has the last word on the sequence of events and issues of the agenda. He presides over the meetings as well as guides and controls the discussions. His role is to see that some sort of agreement emerges out of the disagreements. Harmony, rather than discord, should be the key word. During the discussions he encourages, advises, instructs and even admonishes the ministers. On a group of men/women who may disagree, he presses the point that agreement is the key to keeping together.

Whence, the major functions of the executive are:

2.2 implementation of laws and decisions;

2.3 organizational structures and status of administrational agencies such as Ministries, Commissions, Authorities, etc…;

[126] Id., p. 157.

[127] Id., pp. 157-158.

2.4 formulation and execution of policies; i.e. economic-, financial-, political-, foreign-, .. policies;

2.5 ensuring order and peace; i.e. commanding the army, the Federal Police and the Security Office;

2.6 provision of public goods and service like provision of essential commodities, services such as telecommunications, water supply, …, minting coins and monitoring currency and transactions, etc..;

2.7 declaration of emergency;

2.8 effecting intervention as per the FDRE Constitution and the Proclamation shown hereunder.[128]

Federal Intervention

Distinct from the power of declaration of emergency, the Federal Government can intervene in state matters whenever the both Houses decide and ask it does same in line with Articles 14(2b) and 15 especially for cases related with abuse of Human Rights. Though both conditions cannot be presupposed to be violations of state sovereignty, the central government has the right to suspend the state's executive and replace it by a Provisional Administration, in the latter case. Comparison of the latter with that of India, whereby the President may by a proclamation declare a state to be under the authority of Parliament, seems to indicate that FDRE Constitution has left little playing ground for centralization efforts.[129]

Question that matters

1. See the Preamble of the following Proclamation. There are four constitutional grounds. Compare and analyze them with the corresponding/respective provisions of the Constitution.
2. See parts 2, 3, 4 of the same Proclamation. Are these consistent with the respective provisions of the FDRE Constitution?

[128] FDRE Constitution, ob. Cit., Note No. 35, as condensed from Article 74 and other related Articles.

[129] As asserted by Fesseha, Ob. Cit., Note No. 42, pp. 334- 339.

3. The purpose of enacting this Proclamation is stated under the 5th paragraph of the Preamble, which states that *"WHEREAS, it has become necessary to prescribe by law the system that enables to implement the afore mentioned provisions of the Constitution;.."*
   a) Does the Proclamation deal only with matters of implementa-tion?
   b) Among the implementation mechanisms provided the Proclamation is the one provided under Article 50. Wouldn't this contradict the very essence of the Covenant of the federation?
   c) Can you point out any other means by which intervention may be avoided?
4. Some students of Law like to see emergency power serving the same purpose. Aren't they different mechanisms serving different purposes? (See the part of this text on Human Rights and Emergency.) Explain.
5. Under Article 62(9) the HoF has the power to order the intervention of the Federal Government, where any state endangers the constitutional order. Does this make the HoF the ultimate savior and protector of the Constitution? (See this in light of Article 61(7), Article 8(1) and the Preamble; i.e. *"We, The Nations, Nationalities and Peoples of Ethioipia .. [h]ave adopted .. this Constitution through representatives we have duly elected for this purpose."*

Proclamation[130]

WHEREAS, it is provided for in Article 5(1) of the Constitution that the Federal Government has power and responsibility to protect and defend the constitution;

WHEREAS, it is provided for in Article 51(14) of the Constitution that the Federal government deploy Defense forces at the request of state administration to arrest a deteriorating security situation within the requesting state, when the Region is unable to arrest such situation;

WHEREAS, it is provided for in Article 55(16) of the Constitution that the House of Peoples' Representatives request, on its own initiative, a joint session of the House of Federation and House of Peoples' Representatives to take appropriate measures when state'(s') authorities are unable to arrest violations of human rights within their jurisdiction, and give directives to the concerned Council of State;

WHEREAS, it is provided for in Article 62(9) of the Constitution that the House of Federation orders Federal intervention, if any state, in violation of this Constitution, endangers the constitutional order;

WHEREAS, it has become necessary to prescribe by law the system that enables to implement the aforementioned provisions of the Constitution;

NOW, THEREFORE, in accordance with Article 55(1) of the Constitution, of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows:

PART ONE

GENERAL

1. **Short Title**

This Proclamation may be cited as the "System for the Intervention of the Federal Government in the Regions; Proclamation No.359/2003."

2. ***Definition***

In this proclamation;

[130] Proclamation No. 359/2003, System for Intervention of the Federal Government in the Regions, Fed. *Negarit Gazeta*, *Year 9th* No. 80.

1. "Intervention" means a system for intervention in the Regions pursuant to Article 62(9) of the Constitution and includes measures to be taken in accordance with Article 51(14) or Article 55(16) of the Constitution.
2. "Person" means a natural or juridical person.

INTERVENTION IN CASE OF DETERIORATIONG SECURITY SITUATION

3. Principle

The security situation shall be deemed to have been deteriorated where there is an activity that disturbs the peace and safety of the public and the law enforcement agency and the judiciary of the Region are unable to arrest the security problems in accordance with the law.

4. Request of the Region

The State Councilor the highest executive organ of the Region shall present its request to the Prime Minister through the Ministry of Federal Affairs where any Region faces a deteriorating security situation and is unable to arrest it on its own.

5. Deployment of Force by the Federal Government

1. The Prime Minister shall deploy the Federal Police or defense force, or both to arrest the deterioration security situation taking into consideration the gravity of the situation. The force to be deployed shall be under the command of the concerned Federal organ;
2. The force to be deployed and the measures to be taken by same shall be proportionate to enable to arrest the deterioration security situation and maintain law and order;
3. The Regional Government shall have the responsibility to provide information that enables to arrest the deterioration security situation and facilitate conditions;
4. The force shall take necessary legal measures to bring to justice those who participated in deteriorating the security situation.
5. The mission of the force deployed shall be terminated where the deterioration security situation has been arrested or where the highest executive organ of the region or the regional council requests the Prime Minister for such termination;

6. Report

The Prime Minister shall present periodic report to the House of Peoples' Representatives on the activities carried out by the forces in the Region.

INTERVENTION IN CASE OF VIOLATIONS OF HUMAN RIGHTS

7. Principle

An act of violation of human rights shall be deemed to have been committed where an act is committed in a Region in violation of the provision of the human rights stipulated in the Constitution and laws promulgated pursuant to the Constitution, and the law enforcement agency and the judiciary are unable to arrest such violations of human rights.

8. Investigating Team

1. The House of Peoples' Representatives may send a team to the Region for investigation of a case when it receives information from the Human Rights Commission, representatives of such Region or from any other person on the violations of human rights which require the Federal intervention and on the failure of the region to arrest the acts. The team shall consist of members from the House of Peoples' Representatives;
2. The team may, where necessary, request the assistance of the experts of the Federal Executive organs;
3. Any Regional organ shall have an obligation to cooperate with the team.

9. Report of the Team

1. The team shall compile and submit with its recommendations to the House of Peoples' Representatives information gathered within the Region where the alleged acts of the violations of the human rights are committed;
2. The report compiled pursuant to Sub-Article (1) of this Article shall specify concrete evidence that describes the act of the violations of human rights in the Region, the sources of the problem and persons responsible for it, efforts made and measures taken by the Region to arrest such violations of human rights and whether or not such Region will be able to arrest the act.

10. ***Request and Report***

1. The House of Peoples' Representative shall, upon hearing a report submitted to it pursuant to Article 9 of this Proclamation, call a joint session of the House of Peoples' Representatives and the House of the Federation and submit the request to same where it finds that the matter requires the intervention of the Federal Government;
2. The House of Peoples' Representatives shall present a report with justification to the joint session of the necessity of the intervention of the Federal Government.

11. Giving Directive

Where the joint session is convinced by the report submitted to it pursuant to Article 10(2) the House of Peoples Representatives shall, according to the decision of the joint session, give directives to the Region to arrest the acts of violations of human rights, and bring to justice those who violated such human rights and take other measures as maybe necessary.

INTERVENTION WHEN THE CONSTITUTINAL ORDER IS ENDANGERED

12. Principle

An activity or act carried out by the participation or consent of a Regional Government in violation of the Constitution or the constitutional order and in particular:

1. Armed uprising;
2. Resolving conflicts between another Region or Nation, Nationality or People of another Region by resorting to non-peaceful means;
3. Disturbance of peace and security of the Federal government; or
4. Violation of directives given pursuant to Article 11 of this proclamation;

Shall be deemed to have been an activity or act that has endangered the constitutional order.

13. Investigation and Decisions

1. The House of Federation, on its own initiative or when it receives information from the House of Peoples' Representatives or from another body that any Region has endangered the constitutional order by violating the Constitution, may, based on the information submitted to it and after having conducted a necessary investigation, give directives to the Council of Ministers or to other government organ to investigate and report to it in order to decide whether there is danger;
2. Without prejudice to Article 93 of the Constitution, the Council of Minister shall, when it receives information that any Region in violation of the Constitution has endangered the constitutional order, present the matter to the House of the Federation after having carried out its investigation and where it finds it that such danger requires the intervention of the Federal Government;
3. The report to be submitted pursuant to sub-Article (1) and (2) of this Article shall indicate that the peaceful means to settle the causes which endangered the constitutional order has been left out and the conditions provided for in Article 12 of this proclamation have been met;

4. The House of Federation shall, after having examined forthwith the report submitted to it pursuant to Sub-Articles (1) and (2) of this Article, order the intervention of the Federal Government where it finds it necessary.

14. Measures to be taken by the Federal Government

1. The order to be given pursuant to Article 13(4) of this proclamation shall be that which enables to arrest the situation that has endangered the constitutional order;

2. Without prejudice to the generality of sub-Article (1) of this Article and Article 93 of the Constitution, the House of Federation may take the following measures;

a) To give directives to the Prime Minister to deploy the Federal police or national defense force or both, depending on the seriousness of the problems, to enable arrest the danger;

b) to decide to setup provisional administration that is accountable to the Federal Government by suspending the State Council and the highest executive organ of the Region.

3. The Provisional Administration may take the following measures in the Region;

a) To bring to justice the Regional Government officials, appointees, officials elected by the people, members of the police and security force, and other persons responsible for the danger of the constitutional order;

b) To speedily facilitate conditions for the Regional Government to resume its office by restoring the constitutional order;

4. The Prime Minister may, upon the recommendation of the Ministry of Federal Affairs, assign temporarily the Federal Government personnel for the resumption of regular activities of the region where the capacity of the executive organ of the Region is impaired by the measures taken pursuant to Sub-Article 3 (a) of this Article;

5. The measures to be taken by the Federal police or the defense force pursuant to sub-Article 2(a) of this Article shall be proportionate to enable to arrest the situation that has endangered the constitutional order;

6. The House of the Federation shall, where it believes that the situation that endangered the constitutional order has been arrested, give directives to the concerned organs determining the expiry period of the Provisional Administration period to the period mentioned in Article 15(3)

15. ***Provisional Administration***

1. The Provisional Administration shall take measures that enable to arrest the situation that has endangered the constitutional order;
2. Without prejudice to the generality of Sub-Article (10) of this Article, the Provisional Administration shall have powers and duties given to the highest executive organ of the Region, and shall in particular;
   a) Lead and coordinate the executive organ;
   b) Assign the Heads of the Provisional Administration;
   c) Ensure the enforcement of law and order;
   d) Facilitate conditions for conducting election in the Region in accordance with relevant law;
   e) Approve a plan and budget of the Region;
   f) Carry out other duties to be entrusted to it by the Federal Government.
3. The Provisional Administration shall stay in the region for a period not exceeding two years; however, the House of Federation may, where necessary, expend the period for not more than six months.

16. Reporting and Follow-up

1. The Prime Minister shall quarterly submit report on the conditions of the Region to the House of Federation;
2. Without prejudice to sub-Article (1) of this Article the Prime Minister shall, on request of the House of Federation, present a report at any time;
3. The House of Federation shall devise its own mechanism to conduct study and evaluation within the Region sending its own team, and given directives where there are matters that require corrective measures based on the findings of the study and evaluation.

17. Publication

1. The House of Federation and the Prime Mister shall issue statements to the public about the situation that endangered the constitutional order, the order given by the House of Federation and current situation of the Region;

Without prejudice to Sub-Article (1) of this Article, a forum shall be held periodically to enable the public within the Region to have access to information about the situation and give opinions hereon. The public opinions expressed on such forum shall be compiled and submitted to the House of Federation and the Council of Ministers…

Questions that matter

1. Should the federal government (in any federal system) have the power to interfere in the affairs of constituent states?
    1.1 If yes, what factors should qualify as to necessitate it? If no, why?
    1.2 Cite federal systems with no and without the power of intervention and the rationale, thereof.
2 Can you make distinction between the power of intervention and emergency power of a federal government, as envisaged by Article 93 of FDRE Constitution?
3 The entire field of managing and commanding defense forces is the province of the Executive. Shouldn't the Parliament and/or other organs of control, such as Auditor General, Ombudsman, Human Right Commission…have any role to play? See the following synopsis.

Synopsis: Parliamentary Control over Defense

The power to establish and administer national defense, public security forces as well as federal police force is given to the Federal Government. So is the deployment of federal forces to arrest deterioration of security in a state, but with the request of the state in question or with the instruction of the House of Federation. Drawing-up, approving and administration of federal budget are also parts of the federal jurisdiction.

In general, the House of Representatives are, with few exceptions, the single most important branch of government which has the sole power to enact statutes (parliament-made law). The developers would, therefore, like to address the question of parliamentary control over defense under the following headings.

I. Direct Control:

a. By Enacting Legislations

Following the procedures established by law and the Constitution, the House of Representatives, has as per Article 55(7) the power to determine by enactment the organization of the national defense and public security.

Does this mean or would this imply the conferring or determining of:

- powers and functions of bodies of administration?
- procedures of the use of defense forces?
- goals, tasks and powers of same?
- providing guarantees of ensuring civil, social and personnel of same?
- prohibition of creation of defense forces other than for the purpose envisaged by the House of Representatives.

There are proclamations, regulations and directives issued by the House of Representatives, the Prime Minister, Council of Ministers, The Ministry of Defense and Departments of the Ministry. The scope, content and whether these legislations are consistent with parent laws are matters to be pondered upon.

b. Allocation of Budget

On the basis of the budget proposal formulated by the Ministry of Defense, developed and submitted by the Council of Ministers, the House of Representative has the power to ratify the federal budget as per Article 55(11). Does this mean or would this imply:

- That the House of Representatives is supplied with adequate information to make reasonable decision?
- that the House of Representatives is provided with the power of checking the performance of state budget?

c. Enforcing Transparency

There is no direct reference to transparency with respect to defense, but the Constitution under Article 12 states that the conduct of affairs of Government shall be transparent. Then

- How is the scope of state secret determined?
- How much should the mass media have access to state secrets?

d. Enforcing Political Neutrality

Under chapter ten, Article 87(2)(4) and (5), captioned as on National Policy and Objectives, the Constitution stipulates

- Composition of the defense force shall reflect ethnic composition of the Country;
- The Minister of Defense shall be civilian;
- The armed forces shall at all times obey and respect the Constitution; and
- The armed forces shall carry out their functions free of any partisanship to any political organization(s)

Then:-

- are there prohibitions and mechanism of controlling political parties from doing business in the Army particularly the party in government?
- Should there be judicial or quasi-judicial mechanisms of enforcing infringement?

e. International Relation

The House of Representatives, as per Article 55 (12) has the power to ratify international treaty.

- Does it have the power to nullify treaties which may go against the Ethiopian interest?
- If any, how are secret military treaties regulated?
- What are the mechanisms set for regulating international purchase of arms?

- If there are defense industries, how are they regulated?

f. Human Right Infringement

- Under Article 55(7), it is provided that if the conduct of the forces infringe upon human rights, the House of Representatives shall carry out investigation and take the necessary measures.
- Can this legislation be made functional? How? Are there appropriate procedures and organs for enforcing this proviso?

g. The use of Defense in time of War and Peace

The House of Representatives has the power to:-

- As Commander-in-Chief of the Army, the Prime Minster leads the operational aspect of defense matters. The General Chief of Staff is directly under him.

h. The Council of Ministers

- determines on the implementation of the laws and decisions adopted by the House of Representatives;
- decides on the organizational structure of ministries and other organs of government; and it coordinates the activities of same;
- draws the annual federal budget and when approved by the House of Representatives, it implements same;
- submits draft laws to House of Representatives, including Emergency Decree made as per Art 93 of the Constitution;
- has the power to regulate matters by issuing regulations.

II. Peripheral Control Mechanisms

a. The House of Federation/Council of Constitutional Inquires:-

- by interpreting the Constitution.

b. Federal Ethics and Anti-Corruption Commission

- By creating awareness and promoting public service code of ethics.
- By preventing, if possible, when it is committed by investigating and bringing the cases before a court of law.

c. Human Rights Commission and Ombudsman

- What is and would be its role in defense matters?

d. Auditor General and the Ministry of Finance

- Conducting auditing annually and inspecting budget performance: fiscal and asset auditing;
- Regulating disbursement and purchasing of goods and services.

The assessment of parliamentary control over defense can also be effected by international/regional organizations on the basis of established international parameters.

Can you say any thing in this respect? Consider UN Security Council, European, etc… Does Africa have any arrangement?

Charter III

The Judiciary and Other Organs of Control

Section I:- Judicial Power[131]

Exclusive Power

There is a question as to where the division of power inherent in federalism applies for judicial power to the extent of requiring each order of government to have its own court system. On the one hand there is the view that State Courts subject to review by the Supreme Court are sufficient to protect the interest of the federal government. Lower Federal Courts are perceived as unnecessary, expensive and likely to be an intrusion on the autonomy of the state governments. According to this view, State Courts are believed to be competent for the work required so long as appeal is guaranteed to a higher federal tribunal. This seems to be the trend in Germany, Switzerland and India.

On the other hand, there is a view that Federal Courts like federal executive agents are desired to effectively implement the power of the federal government. If one takes the federal principle of division of power strictly, not only are legislative and executive functions divided between the federal government and the states, but judicial authority too is divided. This would lead to a dual set of courts: Federal Courts applying and interpreting federal laws and another set of Courts applying and interpreting the laws of each state. That seems to be the case with the United States and Ethiopia. Where separate court systems exist it is assumed that judicial power should be divided between them in line with the rest of the federal arrangement.

The United States follows the dual court system of courts. The Constitution provides that the judicial power shall be vested in one Supreme Court and in such inferior courts as the Congress may form time to ordain and establish. As a result, two types of Federal Courts are established: the Constitutional Courts, also called Article III Courts, and the Legislative

[131] Fesseha, Ob. Cit., Note No. 42, pp. 400-422.

Courts, also called Article I Courts. The former are established by Congress under Article III of the US Constitution while the latter existent to Article I of the same Constitution.

Only Federal Courts are provided for in the Constitution. There is the federal court system, an integrated system divided into numerous geographic units and various levels of hierarchy. In addition, each state has its own court system that operates within the state. Because of this duality, the State Courts administer state law and Federal Courts administer federal law.

Germany introduces a judicial hierarchy different form the United States. All judicial power not given to Federal Courts is reserved to the states. This means that in contrast to the situation in the United States, most matters involving federal law are litigated initially in State Courts subject only to ultimate and limited federal appellate review. Unlike in USA, in Germany all lower and intermediate courts of appeals are State Courts, whereas all Courts of final appeals are Federal Tribunals. The Basic Law expressly contemplates Federal Courts only for military, civil service controversies and intellectual property.

The organization and operation of the judiciary is more or less shared between the federal government and the states. Federal law specifies the basic organization and jurisdiction of State Courts, but their administration and staffing, including the training of judges is under the control of the sates. Regular courts adjudicate, among other things, constitutional cases, while the Federal Constitutional Court is the highest Court of review for constitutional cases.
The Swiss judiciary is also organized in a more similar fashion to Germany. The statutes of the federal government need not be applied by special federal agencies and Federal Courts. They have to be executed by cantonal agencies and be enforced by Cantonal Courts. The law is an indivisible unite. Therefore one cannot have competing federal and state court systems. Thus cantons do execute and implement federal laws with cantonal courts and cantonal agencies. In each canton there are intricate civil, criminal, administrative and other specialized courts with extraordinary jurisdiction and with some intermediate level of appeals and finally one finds at the highest level of appeal, the Federal Supreme Court.

The Indian Constitution sets up a federal judiciary consisting only of the Supreme Court without any inferior courts in the federal judicial system. Unlike the United States, there is a single integrated system of courts for the Union as well as the states that enforce and interpret

both the Union and state laws and at the head of the entire system stands the Supreme Court of India. Below the Supreme Court stand the High Courts of the different states and under the high courts there is a hierarchy of other courts which are referred to in the Constitution as subordinate courts: courts subordinate to and under the control of the High Courts. The states in India are all subjected to the jurisdiction and powers of a single integrated judicial system. The Ethiopian Constitution gives some hint about the organization of the judiciary the Constitution states that supreme federal judicial authority is vested in the Federal Supreme Court and reserves for the HoPR to decide by a two-third majority vote to establish inferior Federal Courts as it deems necessary, nationwide or in some parts of the Country. There is only one federal Supreme Court with nationwide jurisdiction and, until very recently, the Federal High Court and First Instance Courts were limited to Addis Ababa and Dire Dawa.

As for the organization of the inferior Federal Courts in the states, the Constitution declares that the jurisdiction of the Federal High Court and of the First Instance Courts are delegated to State Courts. By virtue of this delegation, the State Supreme Court exercises, in addition to its state jurisdiction, the jurisdiction of the Federal High Court and the State High Courts exercise, in addition to their state jurisdiction, the jurisdiction of the Federal First Instance Court are appealed to the State Supreme Court, while decisions rendered by a State Supreme Court on federal matters are appealed to the Federal Supreme Court. [132] With the recent decision of Parliament to establish Inferior Federal Coutrs, a full-fledged dual court structure is on its way, at least in five Regional States. As a result there are Inferior Federal Courts in some states, while the delegated power seems to continue in three other states namely: Oromia Amhara and Tigray; i.e. adding to the point noted in Chapter five that some level of asymmetry exists in reality among the constituent states.

As far as the State Courts are concerned, from the provisions of the Constitution one finds that the judicial structure consists of the State First Instance Courts at the lowest level, also called '*Wereda'* Courts, above which we have the intermediate '*Zone'*/High Court and at the highest level we have the State Supreme Court. All the state Constitutions too stipulate that the judiciary of the Regional State shall be organized in such a way as to comprise the Regional Supreme Court, High Courts and First Instance Courts.

As a result the Ethiopian judicial system, theoretically speaking, is organized on a dual basis in which there are two parallel court systems, the federal courts and the state courts with their own independent structures and administrations. However, until the enactment of the new laws the operation of the Federal and State Courts were an integrated one. One probable reason for the original design of the dual but delegated court structure under Article 78(2) was the lack of trained legal experts while it was set-up in 1995. However, after 10 years of experience it appears that the delegated function of State Courts has brought some inadequacies in the enforcement of federal laws.

Shared Judicial Power

As described above, among the federations considered, the United States alone adopted the dual structure of Courts, one set of Courts interpreting federal laws and another set of Courts enforcing state law. Ethiopia too seems to follow the same pattern. But this parallel system does not necessarily imply that each set of Courts exercises jurisdiction that is completely exclusive of the other. Although there are certain matters, which the federal legislature may provide to be exercised exclusively by Federal Courts, there are many matters falling within the judicial power of United States in which State Courts have a concurrent jurisdiction with that of the Federal Courts. In a nutshell, there may obviously be, like other powers, exclusively federal, exclusively state and shared judicial powers. Of course when there are concurrent judicial powers between the federal and state judiciary, mechanisms should be installed to resolve conflict of jurisdiction.

There may be confusion for litigants as to where to file their case. In certain circumstances, a case brought before a State Court may thereafter be taken to a Federal Court. Otherwise, even when there is a parallel system of courts as in the United States, Congress has not made the jurisdiction of each court exclusive. The two systems in the United States interlock One aspect of that interlocking occurs when in a case before a state court any question arises that calls for the interpretation of the constitution of the US or of the validity of any act of Congress or Treaty made there-under. Such questions normally fall within the ambit of Federal Courts or in last resort in the Supreme Court either because the case may be transferred from the state to the federal court or because it can go on appeal to the Supreme Court from the highest court of the state.

There are two views as far as the Ethiopian court structure of shared judicial power is concerned. On the one hand there are those who hold that the dual court structure is strictly taken both under the constitution and the proclamations issued[106] and as a result contend that civil or criminal cases fall either before an exclusively federal court or an exclusively state court; hence there is no case of shared/concurrent judicial power. One indication of this is the fact that Proclamation 25/96 has not openly provided for the existence of shared judicial powers. The other view, which this author holds, holds that despite the law's silence there still remains a concurrent judicial power. For instance, labor cases are mentioned nowhere in the proclamation as federal cases but we know for certain from Article 55(3) of the Constitution that it is federal law matter. The Commercial Code too is a federal law by virtue of Article 55(4) of the Constitution and the same holds true for the Penal Code (Article 55(5)). We know also for certain that the State Courts do adjudicate criminal cases in the regular discharge of judicial duties, not in their delegated powers. The fact that the federal Supreme Court does also review state cases when it discovers errors of law also suggests the existence of shared judicial powers. As a result despite the apparent parallel existence of courts, like other powers, there are shared judicial powers.

Besides, the federal and state Constitutions incorporate a huge number of rights and freedoms. It is declared that *"[a]ll federal and state legislature, 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 clause, if taken seriously, has far reaching consequences as far as the role of the judiciary in enforcing and protecting human rights is concerned. It must be emphasized also that it is a duty imposed on the judiciary at all levels, apart from the other branches. It is also clear that 'respecting and enforcing' fundamental rights and freedoms by the judiciary is meaningless, unless the judiciary in one way or another is involved in interpreting the scope and limitation of those rights and freedoms which it is bound to enforce. In this respect, contrary to popular thinking, the federal and state courts are not prohibited from interpreting the constitution.[134] One need only mention incidentally the United States supreme Court had to labor a lot to enforce the fundamental rights and freedoms throughout the federal system because it lacked such constitutional authority and its inclusion in Ethiopia was meant to a void such mishaps. This adds to the view that that there is shared judicial power although the final say as far as constitutional

interpretation of parliamentary legislation is concerned it is reserved to the HoF. It is obvious, therefore, that there has been no uniformity among federations in organizing their judiciary. A dual judiciary would seem to be logical corollary of the dual polity in federations but as indicated it is not strictly followed. Even in the United States there is some reliance on state courts to apply and interpret the laws of the federal government. The method of organizing courts in federations, therefore, indicates some variation. What is common to all is that either there is a safeguard clause granting the federal government the power to establish federal courts or the right of appeal to a federal government is at issue.

Jurisdiction

The US Constitution spells out the powers of the federal judiciary in some detail including the assignment of original jurisdiction to the Supreme Court in some matters as well as appellate jurisdiction in others. Even if it is true that Congress may, within the limits of the Constitution, provide remedial measures or together with the states attempt to amend the Constitution, such measures are taken rarely and it is *"simply a fact of life that in the United States all social and political issues sooner or later appear before the Supreme Court, thus making it the most powerful of al courts."* The Supreme Court has two kinds of jurisdiction, namely: appellate and original. In the exercise of appellate jurisdiction the Court is the highest tribunal in the republic although it exercises it as a matter of discretion. Its original jurisdiction is constitutionally specified as extending to cases involving two states, those between a state and the federal government and those involving foreign ambassadors – exercised rarely. The Constitution reserves to Congress the authority to alter appellate jurisdiction by law, but its original jurisdiction can only be altered by constitutional amendment.

As is well-known, the primary task of the Supreme Court lies in the realm of appellate jurisdiction. Here, with its power to declare laws and acts of the executive unconstitutional, it servers as final arbiter in the interpretation of the Constitution. It provides the authoritative and uniform interpretation of the law of the land. Appellate cases reach the Supreme Court from both, the Constitutional Courts and the Legislative Courts as well as the highest State Courts, within the context discussed above.

To begin with the authority of the Federal Courts, it is limited to certain specific situations, all other possible types of jurisdiction being reserved to State Courts. The specific types of jurisdiction granted to the Federal Courts under this principle may be grouped under two broad headings. First, certain kinds of cases may be heard by the Federal Courts because of the nature of the subject matter of the litigation. Thus, if the facts of the case are such as to involve Federal Constitution, a federal treaty or a federal statute, the case may be heard at Federal Court. Likewise, any case arising within the field of admiralty or maritime law falls within the parties, may hear certain types of cases irrespective of the subject matter; for instance, cases affecting ambassadors and other foreign diplomatic and consular agents, controversies to which the federal government is a party, cases between two or more state governments and cases between a state government and citizens of another state or between citizens of different states. The Federal Courts also have exclusive jurisdiction over bankruptcy, patent and copyright law. They share concurrent jurisdiction with states over suits between citizens of different states, in which federal judges apply the appropriate state law; and cases involving the Constitution and federal laws, in which state judges must apply federal law. By and large all other possible types fall within the jurisdiction of the State Courts.

The Indian constitution has set up a federal judiciary consisting only of the Supreme Court without any inferior courts in the federal judicial system. The State High Courts and other inferior courts continue to be the Courts constituting the state judiciary. The Supreme Court has three kinds of jurisdiction, original, appellate and advisory. Under Article 131 of the constitution, the Supreme Court has exclusive original jurisdiction to any dispute:

A. Between the government of India and one or more states;
B. Between the government of India and any state or states on one side and one or more states on the other;
C. Between two or more states, if and in so far as the dispute involves any question whether of law or fact on which its existence or extent of a legal right depends, so long as such a treaty does not exclude the court's jurisdiction.

The Supreme Court in its original jurisdiction adjudicates purely federal disputes or intergovernmental disputes. A dispute falling within A-C, as noted above, to be justiciable by the Court should involve a question whether of law or fact on which the existence or extent

of a legal right depends, thus excluding political questions. Controversies concerning the election of the president and vice president are also decided by the Supreme Court. The Supreme Court in its original jurisdiction is also the guardian of fundamental rights and freedoms and issues writs for the enforcement of the rights. It is the supreme interpreter of the constitution and the guardian of the people's fundamental rights. As noted already, it is the ultimate court of appeal in all civil and criminal matters and the final interpreter of the law of the land and thus helps in maintaining uniformity of law throughout the Country.
The jurisdiction of the Court, however, does not extend to disputes arising out of any treaty where such treaty or agreement excludes the jurisdiction of the Court. It must be a dispute in respect of a legal right but not a political one. Private parties or agencies could not bring a case under Article 131.

The appellate jurisdiction of the Supreme Court is described as follows: An appeal shall lie to the supreme Court from any judgment, decree or final order of a high court in the territory of India, whether in civil, criminal or other proceedings if the High Court certifies that the case involves a substantial question of law as to the interpretation of the constitution. The appellant should confine himself to the constitutional law point involved. Such a restriction is necessary to limit the flow of cases coming to the Supreme Court. Where the High Court has refused to give such a certificate, the Supreme Court may, if it is satisfied that the case involves a substantial question of law as to the interpretation of this constitution, grant special leave to appeal for such judgment, decree or final order. The Supreme Court's jurisdiction in this regard is remarkable in interpreting the Constitution. In addition to the constitutional matters stated above one can appeal from the decisions of the high court even in civil proceedings if it involves a substantial question of law, though of course only if the high court certifies it. The substantial question of law involves arguable cases often indicating a difference of opinion and whose significance is not limited to parties but requires intervention of the Supreme Court in guaranteeing some uniformity. Thirdly, in criminal matters appeal is allowed from the decision of the High Court in exceptional circumstances for instance when the High Court reverses the decision of the lower court that acquits a suspect from life imprisonment or death.

Fourthly, the Supreme Court also has important pours of review regarding decisions of tribunals other than the regular judiciary. In the modern era of complex government there are

numerous disputes handled by a host of varied adjudicatory bodies outside the regular judicial hierarchy. Indeed it is wrong to assume that the courts monopolized the entire business of adjudication. There is the plethora of bodies and officials that undertake adjudicatory functions under powers conferred to them by legislation often covering controversies between the administration and individuals. They are often called quasi-judicial, indicating that they are not courts pure and simple but do have some features of both courts as well as the administration. The Supreme Court hears appeals from decisions of such bodies; it is a forum to correct any misuse of power or procedural irregularity by such bodies. It is interesting to note that the Supreme Court exercises this power even if many of the statues establishing such tribunals state that their decision is final.

Lastly, the Supreme Court also exercises advisory jurisdiction. The president may if it appears to him that a question of law or fact has arisen or is likely to arise which is of such a nature and of such public importance that it is expedient to obtain the opinion of the supreme court, refer it to the Court for consideration. The president may even under this clause refer matters excluded from the normal jurisdiction of the court. This is contrasted with united stats supreme court that consistently refuses to give advisory opinions, refusing to decide abstract, hypothetical or contingent questions.

Unlike the United States Supreme Court whose appellate jurisdiction is confined to cases arising form constitutional issues, federal laws or treaties, the Indian Supreme Court is the highest court of appeal concerning civil and criminal cases apart from cases relating to the interpretation of Constitution. Besides, the Supreme Court has an extraordinary power to entertain appeal without any limitation upon its discretion from the decision not only of any court but also of any tribunal with in the territory of India. This is in addition to its federal umpiring role. The decisions rendered by the Supreme Court are binding on all the authorities throughout the Republic of India. Because of the lack of inferior federal courts, the states in India are all subject to the jurisdictions and powers of a single intergraded judicial system at the apex of which stands the Supreme Court.

The Ethiopian judicial system, compared to other federations, stands constrained in its jurisdiction. Even within the limited powers conferred by the Constitution, several internal as well as external factors seem to be at play to maintain the judiciary's low profile. Firstly

judicial powers are being taken away from the regular judiciary to special other tribunals whose constitutional status remains controversial. When there is legislative leeway for intervention, governments often decide to 'strip' Courts of their jurisdiction to adjudicate matters in which the government of the day has vital interests or they may transfer jurisdiction over such matters from the Regular Courts to tribunals whose decision-makers often lack the security of tenure or expertise enjoyed by the judiciary. For instance, in Ethiopia despite the constitutional clause under Article 78(4) stipulates that *"special or ad hoc courts which take judicial powers away from the regular courts or institutions legally empowered to exercise judicial functions and which do not follow legally prescribed procedures shall not be established"* there are controversial tribunals introduced from time to time by the federal legislature and they do seem to dismantle the courts' jurisdiction. The clause of prohibition is understandable in light of the terrible experience under the military that used to set up many such 'special courts' for summarily executing political suspects; the clause appears to be a significant departure in this regard.

While this was the background, recent developments seem to case some doubt on the workability of this principle. Slowly, important powers are being taken away from the regular judiciary to special tribunals within the various ministerial offices. Allegations are often made in relation to delay of cases in the Courts, that they are dragging their feet. It is also alleged that many suspects die in jail before they see the gates of the Court. Examples to these allegations are cited. Some have been released right away when the Court gives its verdict because they have been in jail for a period beyond the court's sentence. More importantly, the delay is affecting business transaction. Businessmen and women cannot rely on the rule of law and decisions of courts, because no one knows how long a case is going to take. Consequently, Civil Service Reform in general and justice reform in particular is and should remain top of the agenda for the government as ensuring legality of any activity, including that of any business transactions, is crucial.

Moreover, one may wonder if taking away the judiciary's constitutional power is going to help any institution in the long run. The point here is not that such semi-judicial bodies are unimportant. Comparative study indicates that such semi-judicial bodies exist and they do play an important role along with the regular judiciary. In the United States the bulk of them are known as Article I or Legislative Courts as opposed to Article III Courts. In India too

there are similar institutions. In Germany and Switzerland such tribunals exist but constitute part of the regular judiciary. In India and the United States their decision are subject to review by the regular judiciary. There is an ever-increasing governmental activity and some cases may better be addressed by the tribunal with the administration. These may also have to do with the fact that the courts are overburdened to take up these new matters or such technical matters. Nevertheless, it is difficult to consider them as 'courts' in the proper sense of the term and yet they decide questions affecting the rights of citizens and their decisions are binding upon them. Indeed, it is true that not all cases and controversies go to the regular judiciary and because of the technicality involved or there is a wish to reduce the caseload of the judiciary, their relevance might not be questionable.

Seeking a way out, let's refer to comparative study which suggests two alternatives. While the tribunals are unavoidable they should either be autonomous (indeed Russell extends the concept of judicial autonomy to any such tribunal involved in adjudication or rendering authoritative settlement of disputes about legal rights and duties, which is quite less practical as they are often structurally placed within the executive) or else the highest judicial organ as the Supreme Court should exercise judicial power on specific grounds. The trouble in Ethiopia is that such tribunals are neither autonomous nor subject to review at a higher level. Secondly, although the judiciary arguably has power to interpret the Constitution, it has no power of reviewing the constitutionality of laws as this power has been expressly granted to the HoF. Thirdly and more importantly, the judicial branch's power of reviewing decisions of several other tribunals is far from clear and the system has not yet established it beyond doubt. The German, Indian, not to mention United States federal experiences clearly indicate that at least the highest tribunals do not allow appeals even by way of last resort to the Federal Courts.

In the Ethiopian case, worst of all is Proclamation No. 25/96 which is supposed to define federal and state judicial powers, but has left so many things unresolved and making the Federal Courts to review by way of appeal matters granted to states as regards exclusive federal matters, but are to be allowed to review the bulk of shared judicial powers. A state Supreme Court decision on a federal matter, not exclusive, could be final and binding without resort to the Federal Supreme Court except by way of cassation.

As to what concerns the issue of jurisdiction of Courts in Ethiopia, their power to adjudicate cases is constitutionally guaranteed by the Federal Constitution. The Constitution declares that judicial powers both at federal and state levels are vested in the Courts. Besides, the Constitution guarantees every citizen right of access to justice. It is stated that 'every one has the right to bring a justifiable matter to and to obtain a decision or judgment by, a Court of law or any other competent body with judicial power. This seems to define broadly the scope of judicial power. It suggests that not all disputes are within the scope of judicial power. Judges or other bodies with judicial power decide only justifiable matters, those that arise form actual cases and are capable of settlement by legal methods. Furthermore it states that the federal supreme Court shall have the highest and final judicial power over federal matters. It also states that the Supreme Court shall have the highest and final judicial power over state matters. The Constitution then vaguely leaves one to wonder as to what constitutes federal matters, which seem to be the key for the allocation of jurisdiction between federal and state courts.

This rather vaguely stated principle of federal and state matter is somehow defined under the proclamation that establishes federal courts. As per this proclamation the common jurisdiction of federal courts is stipulated as follows: federal laws and international treaties. Secondly, over parties specified in federal courts shall have jurisdiction over the following cases, making the parties more specific: 'cases to which a federal government organ is a party; suits between persons permanently residing in different regional; cases regarding the liability of officials or employees of the federal government in connection with their official responsibilities or duties; cases to which a foreign national is a party.' The federal courts also have jurisdiction over place specified in the constitution or in federal laws. Article 3(3) specifies that federal courts shall have judicial power in places specified in the constitution or in federal laws and traditionally all cases arising in Addis Ababa and Dire Dawa fall into this category. According to the new proclamation that sets up parallel federal courts across the country, federal courts will also exercise jurisdiction over cases arising in other places of the country.

As can be seen, the proclamation allocates subject matter jurisdiction to federal courts on the basis of there grounds; laws, parties and places. Under the first paragraph Federal Courts assume judicial power over cases arising under the Constitution, federal laws and

international treaties. This goes a along way in illustrating what constitutive federal matters. However, one immediately encounters a problem. According to one author, despite the lack of definition of what constitutes a federal matter 'we can presume that all cases that arise or claims that are based on federal law may be called a federal matter and the rest may be categorized as state matter. Yet this rules out the possibility of shared judicial power. If we look at other provisions of the proclamation that define the respective original, civil and criminal jurisdiction of the federal Supreme Court, federal High court and federal Fist Instance Courts, the phrase 'federal laws' is given a very wide definition under Article 2(3) of Proclamation 25/96 as "*laws of the federal government include all previous laws in force which are not inconsistent with the constitution and relating to matters that fall within the competence of the federal government as specified in the constitution."*

Accordingly, all laws enacted by virtue of Article 55 of the federal Constitution by the HoPR are federal laws. Besides all other laws enacted by previous regimes that are not repealed or inconsistent and so long as they fall within the competence of the federal government, are also by virtue of Article 2(3) of Proclamation No. 25/96 federal laws. As a result, the penal law remains federal law. The Labor Code as well as the Commercial Code are also federal laws. While this is the general clue as to what constitutes federal law, the Proclamation that defines the civil and criminal jurisdiction of Federal Courts lists only a fraction of the offences or cases to be adjudicated by federal courts. In any case, one cannot safely conclude that the proclamation exhaustively enumerated the jurisdiction of Federal Courts and as noted, we know for certain that State Courts do adjudicate cases arising from federal laws in their competence as State Courts not in their delegated function.

The question then is whether what is defined under Proclamation No. 25/96 is only exclusive federal jurisdiction and as to whether there is a shared/concurrent judicial power between Federal and State Courts? If so, do State Courts have jurisdiction to try federal cases as a result of this concurrent jurisdiction and can those cases be appealed before the Federal Supreme Court. One author has stated State Courts not only adjudicate on matters that arise under state law but also on cases that arise under federal laws. Abebe argues that those federal cases not mentioned by Proclamation 25/96 belong to exclusive state jurisdiction because a federal matter by virtue of this proclamation is narrowly defined. He writes, matters not specifically mentioned under the proclamation as falling under the federal court

jurisdiction are presumed to fall under exclusive state jurisdiction. The rest of the federal laws, which are not enumerated, are then understood to be within the jurisdiction of State Courts. The point, however, is that it is difficult to think federal courts are prohibited from adjudicating what is inherently their subject matter. Not every case arising from federal law, as the Constitution suggests, is within the jurisdiction of Federal Courts. While what is stated in the proclamation constitutes exclusive federal powers, in the context suggested by Abebe Mulat, rules out what bulk of federal cases adjudicated by State Courts as shared, not as exclusive state matter and what is defined by Proclamation 25/96 is the exclusive federal matter.

If we agree that what is defined in Proclamation 25/96 is only exclusive federal matter then the next question is who adjudicates all other cases arising from federal laws and on what capacity. We earlier noted that in the United States Federal Courts almost exclusively deal with matters of federal law and matters raising constitutional interpretation, whereas State Courts deal primarily with matters of state law, but State Supreme Courts also hear cases raising issues of both federal and state law. Central to this is of course the fact that constitutional interpretation is decentralized.

The question in Ethiopia's case, then, is whether the State Courts, in doing so, undertake a delegated function, or is it a shared jurisdiction as suggested above? The constitutional provision adds-up the confusion in this regard. The Constitution delegates to State Supreme Courts and State High Courts the function of federal High Court and Federal First Instance Court respectively. That is, the Constitution speaks of delegation until the HoPR decides to set up lower federal courts across the Country, implying the revocable position of the delegated power. The Amharic version, however, is less explicit implying a given authority, not necessarily a delegated one. On the other hand, Article 79(7) speaks of concurrent power rather than a delegated one, and the same term is employed under Article 80 which outlines rather more the concept stipulated under Article 78(2)

Despite the apparent confusion in the use of terms delegated or concurrent power, this writer contends that the delegated function of State Courts is restricted to exclusive federal matters rather than to shared federal powers. Until such time as the HoPR establishes Federal Courts throughout, State Courts have delegated power to adjudicate exclusive federal cases as

defined by the Proclamation. But state courts have concurrent/shared, not delegated power over federal matters not mentioned under the proclamation. As far as shared power is concerned they do not need any delegation. The proclamation has not exhaustively listed all federal matters and whatever is not included in the proclamation belongs to state courts and in doing so they exercise shared judicial power with Federal Courts.

The trouble once again, however, is that a decision of a state supreme court on such shared, not delegated powers, as a matter of practice cannot be appealed before the federal supreme court and the latter does not seem to have realized that it is divested from reviewing all federal cases arising from federal laws.[155] the appellate power of the Federal Supreme court is explicitly stated under Article 80(6) *"decision rendered by a State supreme court on federal matters are appeasable to the federal supreme court"* and appeal cases from state courts exercising delegated federal jurisdiction to a higher court in the hierarchy are stipulated under Article 80(4)and (5).

There is then a bit of confusion between what is stated under the Constitution, the proclamation 25/96 in which appeal to the Federal Supreme Court is expressly permitted. The Proclamation does not exhaustively define federal matters and even if defined the state courts continue to adjudicate federal matters. These powers should be viewed as part of the shared judicial power between federal and state courts and because on federal matters, not limited to exclusive federal ones, the federal Supreme Court has the highest judicial power (Article 80(1)) appeal should be allowed when there are grounds of appeal. Note that the Supreme Court's appellate power is not restricted to exclusive federal matters. It is quite difficult to understand why the Supreme Court's power is restricted in practice only to Cassation, in all cases other than exclusive federal matters.

The Constitution provides that the decisions of State High Courts exercising jurisdiction of Federal First Instance are appealable to Federal Supreme Court. This gives the Federal Supreme Court a final appellate judicial authority over federal matters. However, first of all the final appellate jurisdiction of the Federal Supreme Court has been limited to federal cases that are originally decided by State Supreme Courts in their appellate (delegated) jurisdiction in variation of State High Court decisions. That is, the Federal Supreme Court is excluded from reviewing appeal federal matters; that is, the Federal Supreme Court, as a matter of

practice, has also no power to review federal matters decided by State High Courts and affirmed by state Supreme Courts. The Federal Supreme Court, as a matter of practice, has also no power to review federal matters decided by State Courts in the exercise of shared judicial powers. The only way for the Federal Supreme Court is cassation as not limited to federal matters. As indicated below, it even extends to cases arising from state matters, so long as there is a fundamental error of law.

Here one notices the fundamental contradiction: the Federal Supreme Court trying to compensate its supposed to be power through the cassation clause.

The Power of Cassation

Unlike other federal Constitutions the Ethiopian Constitution, indeed, seems to take the principle of dual court structure seriously. Accordingly, the Federal Supreme Court shall have the highest and final judicial power over federal matters, whereas the State Supreme Court shall have the highest and final judicial power over state matters. In this regard, it appears, as far as state matters are concerned, there is no appeal from State Courts to Federal Courts. However, the assertion of matters within each respective state is not without difficulty. The Federal Supreme Court has found ways and means of reviewing State Supreme Court of last resort for appeals in civil and criminal cases. As noted already, if a case does not involve federal law, then the State Supreme Court issues the final and determinative ruling in the case. Could one state this with equal force in Ethiopia?

As noted already, the appeal power of the federal courts is limited to only exclusive federal cases. Which means that even the bulk of the federal cases, shared, however, the federal supreme court reviews by way of cassation, cases decided by the state supreme court that one could hardly categorize as federal cases, if it discovers a basic error of law.

Could one consider the cassation cases on ordinary civil and criminal cases, which should have been dealt with by the state courts, as falling within the ambit of Article 80 of the federal constitution? Should it not be limited to federal laws and cases with a view to guaranteeing uniformity of interpretation of federal laws? The relevant provisions state ‘notwithstanding’ the provision of sub-articles 1 and 2 of the article:

A. The Federal Supreme Court has a power of cassation over any final court decision containing a basic error of law.
B. The State Supreme Court has power of cassation over any final court decision on state matters which contain a basic error of law.

If one considers the wording of A and B above, in the latter, the power of cassation is explicitly stated on state matters. In the former it does not limit the power of cassation of the federal Supreme Court. It does not specify he federal supreme court's cassation power to federal matters. It simply says' over any final court decision. The introductory paragraph of Article 80 sub 3 and the omission seem to suggest that although appeal from a state supreme court on state matters is not allowed as matter of right, the federal supreme court can review state supreme court decisions by way of cassation, if such decisions, contain a basic error of law. It gives one the impression that the federal Supreme Court has the power to review all final decisions rendered by any court throughout the country. After all, Article 80(3a) provides *"notwithstanding the pro-visions of sub-articles one and two"* the Federal Supreme Court has the power of cassation over any final court decision. Which again could be construed to mean that the State Supreme Courts have a final say over state matters, although by way of exception; i.e. the federal Supreme Court may review by way of cassation decisions of State Courts, state matters. The minutes of the Constitutional Assembly also suggest that the federal supreme court has the power of cassation not only over federal matters but also on state matters and even more interestingly the federal Supreme Court reviews state matters in which the state supreme Court has rendered a final decision by way of cassation. Furthermore, a study indicated that in the years between 1996-1998, 1,121 cases came from the State Supreme Courts to the Federal Supreme Court for cassation and this constituted fifty percent of the workload of the cassation division of the Federal Supreme Court. The cases by and larger relate to possessory actions with respect to immovable; titles related to immovable; filiations and adoption; division of matrimonial property and breach of contract. These are undoubtedly matters that fall within the jurisdiction of State Courts. Besides, some of the cases were already reviewed by the cassation division of the State Supreme Court and hence constituted, what one may call, cassation within cassation.

There is a contrary view that holds that the Federal Supreme Court cannot review even in cassation state matters as it takes away the jurisdiction of the State Supreme Court. The

cassation division may rightly review cases decided by regional supreme courts and high courts on matters delegated to them but does not have the power of cassation over cases relating to state matters or over cassation decisions on state matters. In short, practice should not justify the wrong interpretation of the law. Ethiopia has adopted a dual court structure and practice distorts the structural set-up of the courts. This approach forces one to interpret 'any court' under Article 80 as any federal court or any other court rendering a final decision on federal matters. By the same logic Article 10(3) of Proclamation 25/96 also needs qualification and hence be limited to the delegated function of the State Courts. Furthermore, opening up the process endlessly in creates legal uncertainty, as the winner has to wait until the losing party gives up. Execution of judgment, then, has to wait for a long period time.

A more convincing argument for this view could perhaps be made from the principle of federalism. When a matter is assigned to belong to a state jurisdiction it is based on the view that the matter is of local rather than of national importance. It is because it is felt that the case allows for regional variation as opposed to uniformity. If so, the practice of the Federal Supreme Court to review stated cases, that is matters intended to end within the jurisdiction of the state because they are of local importance, under its cassation power, is contradictory to the federal idea. The current practice of the Federal Supreme Court, however, indicates that the Federal Supreme Court does review any state matter so long as it is convinced that there is a basic error of law involved. The ambiguity at constitutional level and this contradictory trend is further reinforced by another Proclamation that stipulates that power of cassation of the Federal Supreme Court over final decisions of the regional Supreme Court rendered as a regular division or in its appellate jurisdiction. There is still a question whether this is warranted in view of the position taken under Article 80(3), but the Supreme Court is using this power to guarantee a uniform interpretation of laws across the states.

As can be seen from the experience of other Federal Supreme Courts there is a need for guaranteeing uniformity regarding some cases and that function can only be guaranteed through the Federal Supreme Court. However, as noted previously, the function of guaranteeing uniformity is often limited to federal laws. This important qualification is missing in the Ethiopian situation, but the Supreme Court has somehow found a way out to discharge this role, extending its scope beyond what is desired. That is to say, the power of cassation of the Federal Supreme Court, which, actually, should have been limited to only

federal matter, goes further to incorporate even state matters. Otherwise the Ethiopian Supreme Court stands to be the weakest in terms of jurisdiction, except for cassation power. It can interpret the Constitution but cannot declare the law unconstitutional. It is also not the Highest Appellate Court, comparable to the ones in the Indian or European Federations, as its powers are limited to exclusive federal cases.

For reasons explained in the first section of this Chapter, the Ethiopian Constitution vested the power to interpret the Constitution and to review the constitutionality of laws in the HoF, rather than in the regular judiciary. Reform in this regard does not seem feasible in the near future and hence discussions focus on analyzing the provisions of the Constitution and the new laws that define the scope and powers of the HoF and the CCI. Thus we see the first mark of restriction on judicial power.

Second, as we mentioned in several parts of the study, the judicial atmosphere as well is not very comforting, either. Apart from its own institutional weaknesses related to undue delay and integrity of the judges, its jurisdiction has been restrained. All these things added up together, created a tense judicial atmosphere and hence a high degree of 'judicial timidity, thus the role of the judiciary in the delicate process of enforcing the Constitution and federal integration is far from satisfactory, Strangely enough, despite the existing diversity and wide powers of the states on the one hand and centralized federal system in practice on the other, only a few cases of intergovernmental conflicts have been brought before the HoF. Thus its role has so far been modest. This is certainly because of the congruence in the party system at federal and state level. The present calm situation is expected to change with a change in the political party configuration at federal and state level.

Questions that matter

CCI is placed under Chapter 9 which deals with Structures and Powers of the Court in the FDRE Constitution.

1. Is CCI a Court in matters of composition and accountability? (See also Article 84(1), that it has the power to investigate constitutional disputes. What does investigation include and exclude?)
2. Can you imagine of any Court which can not dispose a case as long as the issue is justuicable and within its sphere of competence?
3. See Article 82, the manner of composition. Wouldn't the representation of the HoF be awkward in this instance, for the proposal of CCI finally goes to it?
4. Wouldn't it have been better to make the delegation made under Article 80 by ordinary legislation?

Section II:- Power of other Organs of Control

Under the FDRE Constitution there are certain entities established under and by the HPR, which, *stricto senso*, do not fall under the executive; i.e. rather these organs are controlling systems set against the executive in particular and their arms of control may even extend to checking at least certain spheres of operations of organs like the HoF, HPR itself and the Office of the Presidency.

So, what I the Developer characterize as Organs of Control constitute the following:

- The Institution of the Ombudsman;
- The Human Rights Commission;
- Auditor General;
- The House of Federation together with CCI, as interpreters of the Constitution, which have been already treated, above.

Questions that matter

1. Proclamation on Human Rights and Ombudsman are annexed. (See Annex?? and Article 55(14) and (15), which establish these entities.) Is it the HPR on its own?
2. See the powers of these entities. What makes them and the procedures they use when they are attending cases submitted to the? What makes them different from Regular Courts? Do they make decisions? If yes, how do they excute them? If no, then what?

To answer these questions and to have a fair idea of how they operate the Developer has seen it fit to reproduce some of the how the Swedish counter part operates.

The Institution of the Ombudsman: The Swedish Parliamentary Ombudsman System[132]

Introduction

If one wants to understand the role and the impact of the Swedish Parliamentary Ombudsmen, it is of great use to have some knowledge of the Swedish administrative system and of the historical background of the Ombudsman institution. There are especially two factors that should be emphasized. The first is the Swedish administration combined with the comparative independence of the Swedish administrative authorities, and the second one is the accountability under criminal law of every official for his actions when exercising public power.

Historical Background

The office of the parliamentary Ombudsman was created in 1809 as a part of the new Constitution that was adopted that year. It had, however, a prototype in the office of the King's Ombudsman, which was created in 1713 by King Charles XII, who ruled as an absolute monarch. The King created the office of the Highest Ombudsman, i.e. the king's

[132] The material is totally taken from Claes Eklundh, Chief Parliamentary Ombudsman, (??), Unpublished, presented to a symposium held here in A/Ababa.

foremost representative, the duty of which was to ensure that the judges and civil servants acted according to the law and otherwise fulfilled their obligations. The weapon of the Ombudsman was the right to prosecute transgressing officials. This office, later known as the office of the Chancellor of Justice (Justitiekansler), still exists as the government's Ombudsman.

After the death of King Charles in 1718 Sweden had some decades of Parliamentary rule, and between 1766 and 1772 the Swedish Parliament, the Riksdag, exercised the right to appoint the Chancellor of Justice. The year 1766 is important in Swedish constitutional history also for another reason. In that year Sweden was given its first Freedom of the Press Act which, to date, contains provisions laying down the principle of public access to official documents.

Later on, the royal prerogative of appointing the Chancellor of Justice was restored in 1772. After a new period of royal absolutism King Gustavus was dethroned in 1809 and the Riksdag adopted a new Constitution based on the principle of balance of power between King and Riksdag. The Constitution provided for the appointment by the King of the Chancellor of Justice and for the election by the Riksdag of a *Justitieombudsman.* The Ombudsman of the Riksdag should be *"a man of known legal ability and outstanding intergrity"*. His duty was to supervise, in his capacity as a representative of the Riksdag, the observance of laws and decrees by all judges and other officials. Like the Chancellor of justice he was a prosecutor.

One reason for the creation of the new office was the Riksdag wanted to have a supervisory institution of its own that was entirely independent of the King. Another important difference between the King's Ombudsman and the Parliamentary Ombudsman was that the former acted in the King's interest, whereas the supervisory activities of the latter should have as their aim to protect the rights of the individual citizen.

In 1915 the Riksdag created a separate office for the supervision of the armed forces the *militeombudsman* – and thus, from 1915, Sweden had two parliamentary Ombudsmen. In 1968 the two offices were amalgamated into one institution consisting of three Ombudsmen. In 1976 the office was reorganized and the number of Ombudsmen increased to the present number of four.

The Parliamentary Ombudsmen and the Constitution

The most important provisions concerning the Parliamentary Ombudsmen are laid down in the constitution of 1974. The activities of the Ombudsman are a part of the parliamentary control of government. This control is divided between the Riksdag and the Ombudsman in such a way that the Riksdag supervises the Cabinet and the Cabinet ministers, whereas the Ombudsman on behalf of the Riksdag supervises the way in which the laws are applied by the courts of law and by the administrative authorities of the state and the local government. The reason for this division is to be found in the special constitutional relation between the Cabinet on one side and the administration on the other. A Swedish Cabinet Minister is not head of a ministry in the usual sense; he has to his disposal only a rather small staff – usually between 100 and 200 persons who prepare bills, governmental decrees and other cabinet decisions. The administrative work is instead carried out by semi-independent agencies headed by civil servants. This means that a Cabinet minister is not allowed to give orders to the authorities within his area of responsibility; this can be done only by the Cabinet as such and it is usually done in general terms; e.g. by issuing decrees or guidelines for the use of the funds appropriated for the activities of the authorities.

Consequently, and peculiar to normal practices, a Minister is not personally responsible – legally or politically – for the single actions of an administrative authority or an official. That a Minister can never be held responsible for a decision of a Court of Law goes without saying.

The division of supervisory powers between the Riksdag and the Ombudsmen means that the activities of the Ombudsmen can be regulated by the Riksdag only in general terms; i.e. by an act of law. Thus the Riksdag cannot give an Ombudsman's instructions as to which individual case he should investigate or dismiss, nor can the Ombudsman accept such instructions.

Organization and Duties

There are at present four Parliamentary Ombudsmen, all of whom are elected by the Riksdag at a plenary sitting for a period of four years. The elections are prepared by the Riksdag's Committee on the Constitution.

The Ombudsman's Office is strictly unpolitical, and it has been a tradition that an Ombudsman should be acceptable to all the political parties represented in the Riksdag. Re-elections are possible and indeed frequent.

The Ombudsmen usually come from the judiciary and are recruited among persons who are, or would be suitable as Justices of the Supreme Court or the Supreme Administrative Court. One of the four Ombudsmen is head of the Ombudsman's Office. He cannot, however, interfere in the supervisory activities of the other Ombudsmen. Each Ombudsman is accountable for his actions only to the Riksdag.

It is obvious since no Ombudsman can carry out his/her duty, fulfill his role if he/she does not enjoy the confidence of the Riksdag. The activities of the Ombudsmen are scrutinized by the Riksdag's Committee of the Constitution on the basis of their annual report. If an Ombudsman does not have the confidence of the Riksdag, he can be dismissed immediately by a majority vote.

The Ombudsmen are assisted by a staff of about 50 (at present about 30 lawyers as well as registrars, secretaries and administrative staff). The legally trained staffs are usually recruited from the authorities and most of them are junior judges in the judicial career.

As a rule, only one of the four Ombudsmen is authorized to sign a final decision even if it is only a question of dismissing a complaint without further investigation.

The Ombudsman's Office receives its funds directly from the Riksdag without any intervention by the Ministry of Finance.

The main object of the Ombudsmen's activities is the safe-guarding of the principle of "Rule of Law" and the protection of the Rights and Freedoms of the individual as laid down in the Constitution and Swedish Law.

It is said in the 'Ombudsman Act' that it is the particular duty of Ombudsmen to ensure that the courts of law and the administrative authorities observe the provision of the Constitution concerning objectivity and impartiality and that the fundamental Rights and Freedoms of the citizens are not encroached upon in the process of public administration.

The last-mentioned provision alludes to the detailed Bill of Rights in the Swedish Constitution which lays down the freedom of speech, the freedom of assembly, the freedom of demonstration, the freedom of association and the freedom of religion – which are fundamental features of a democratic society. The Bill of Rights also protects different aspects of the integrity of the individual; e.g. his right to communicate privately with others, his right to privacy in his home and his freedom of movement. These Rights and Freedoms can be limited only by means of Statutory Law which can be decided by the Riksdag. The public authorities, thus, can not interfere with Rights and Freedoms of an individual except when this is expressly allowed by an act of law. In addition, the European Convention on Human Rights has recently been incorporated into the Swedish domestic law.

The Jurisdiction of the Ombudsman

The Ombudsman's supervision covers virtually all governmental agencies and the local government as well as the individual members of their staff. The four Ombudsmen, thus, supervise the police, the security police, the armed forces and the prison administration, respectively.

The Ombudsmen also supervise all other persons who exercise public power. For example, an employee of a state-owned company which is responsible for safety controls of cars can be subject to supervision by the concerned Ombudsman to ensure that no car with faulty design or defects makes it to the roads.

The Courts are as well supervised by the concerned Ombudsman. But that doesn't mean that the Ombudsman would interfere in the decision-making activities of the Courts, since this would be in direct conflict with the fundamental principle that the Courts shall carry out their duties in an independent way, subject only to the contents of the law. For this reason the

Ombudsmen as a rule do not make pronouncements concerning the way in which the Courts apply the law or assess the evidence when deciding a case. The Ombudsman's main concern in supervising the Courts of law and the administrative Courts is, instead, to ensure that cases are tried according to the rules of Court procedure, and that judgment is rendered within reasonable time.

This doesn't either mean that judgments are entirely exempt from supervision, however. If a judgment turns out to be deviant (or in breach of) to the law, the Ombudsman is obliged to take corrective action.

Investigatory Powers

The Ombudsmen have vast powers of investigation which are laid down in the Constitution. Thus, they have access to all official documents. Although the work of the Swedish administration is based on the principle of transparency, i.e. the right of every individual to have access to the documents of the authorities, some information must be kept secret in order to protect national interests, like for example the security of the state or the personal integrity of an individual. But, as access to such classified documents is obviously a prerequisite for an effective supervision process, the afore mentioned four Ombudsmen have access to the respective documents of their sphere of duty. Furthermore, every official under supervision is obliged to give the concerned Ombudsman all the information he/she might seek and assist his/her investigation effort and in all necessary way.

The Ombudsman's Office is usually described as an extraordinary institution. This means that the Office does not supplant an Ombudsman or a regular supervisory institution within each public administration to carry out its duties. It also means that all four Ombudsmen (and their subordinates) are entirely independent of the government and do not in any way take part in the ordinary decision-making activities of the authorities. They do not function as an instance of appeal and they cannot change a decision made by a Court or an administrative agency, nor can they order a Court or an authority to act in a certain way.

The role of the Ombudsman is, instead, based on the principle of personal accountability of every official for his decisions. When the Ombudsman Office started its activities 180 years ago its main character was that of a Prosecutor's Office. Whenever an official was found to be in fault the Ombudsman instituted legal proceedings against him or – in minor cases – requested disciplinary measures.

Though this practice is still in tact and still has a special weight to the critical pronouncements made by the Ombudsmen, nowadays prosecutions are not very frequent due to the fact that very few of the errors discovered by Ombudsmen are serious enough to deserve punishment under Criminal Law.

The Ombudsman Office cannot be described as a crime-fighting organization as its main task is, instead, to try to prevent mistakes from occurring. Their most important weapon for this purpose is the power to admonish officials. If an Ombudsman finds that a measure is inadequate, improper or unwise but not punishable under criminal or other law, he will point out how, in his opinion, the matter should have been handled.

The respective Ombudsmen also have the right to make pronouncements laying down guidelines for proper judicial and administrative behaviour. This has proved to be a very effective way in improving the quality of the Swedish administration. One reason for this is considered to be that it is very embarrassing for an official to be publicly criticized by an Ombudsman.

The Ombudsmen may also address the Cabinet or the Riksdag asking for amendments to the law.

The Handling of Complaints

When the Ombudsman Office started its activities all the cases were taken up on the Ombudsman's own initiative. After some time, however, people began to send in complaints to the Ombudsman, and the handling of complaint cases now constitutes the main part of the Office's activities. The annual number of complaints is approximately 5000.

The Riksdag considers the handling of complaint cases to be the central part of the work of the Ombudsmen. There are several reasons for this. The most important aspect is that in a democratic society based on the principle of "Rule of Law" every individual shall have the right to have the right to have the dealings of the authorities scrutinized from a legal point of view by a competent agency that is quite independent of the Government. It is also considered to be of great importance that every official is aware that his actions can be scrutinized by the Ombudsman and that action may be taken against him if he has acted in an incorrect way.

Everyone – even citizens of other countries or people not living in Sweden – can complain to the Ombudsmen. There is no rule saying that the complainant must be personally concerned in the matter. No absolute time limit is set, but it is prescribed that an Ombudsman should not, unless on special grounds, start an investigation if the matter complained of took place more than two years prior to the receipt of the complaint.

Complaints should be presented in writing. If necessary, however, a member of the staff will help the complainant to word his letter. No fee is charged. Anonymous complaints are not admissible. But, sometimes, these might cause an Ombudsman to start an investigation by his own initiative.

In most cases a decision by an administrative authority can be appealed against to an Administrative Court that has the right to review the matter in its entirety. So if a person wants to have a decision changed he should lodge an appeal. But if the person also wants to have the responsible official punished or admonished because of the way in which he has handled the matter, he can complain to the Ombudsman.

There is no rule saying that existing judicial or administrative remedies should be exhausted before a complaint is lodge. Normally, however, an Ombudsman does not intervene while the matter is pending in a Court or and appeal is still possible. An intervention will usually be made at this stage only when it is alleged that the case does not advance or that judgment is not delivered within a reasonable time after the hearing.

It should be added that the Ombudsmen are authorized to refer to other agencies, e.g. the public prosecutors, such complaint cases that cannot be dismissed; which can be more efficiently handled by, e.g. the police or a public prosecutor.

The complaint cases that are not dismissed or referred to another agency are investigated, followed-up by the Ombudsmen. Often the first step is to request the relevant documents from the authority concerned.

If in the course of his investigation the Ombudsman finds that there is reason to believe that an official has committed a crime in his job-e.g. negligent use of public power – he has the same obligation to start a criminal investigation as a public prosecutor. In such cases the investigation is carried out according to the provisions in the Code of Judicial procedure, and the Ombudsmen then often makes use of their constitutional right to request the assistance of a public prosecutor. If an official is suspected of a crime his duty to give the Ombudsman full and truthful information comes to an end. Instead he has the same right as every person suspected of a crime to remain silent.

If an Ombudsman finds that there is sufficient ground for a prosecution, he is obliged to prosecute in the same way as ordinary public prosecutor. The Ombudsman, then, is usually represented by a public prosecutor or a member of his Office.

When the investigation is completed, the Ombudsman pronounces his decision, which – like most other documents in the Ombudsman's Office, including complaints – is open to the public. It is of great importance for the efficiency of the Ombudsman institution that the principle of transparency is applied as widely as possible in its activities.

The Ombudsmen's decisions are often very detailed and they are in many respects written in the same way as any judgments passed in Courts of law. They are often reported in the media, and such decisions as are of interest to the members of the Riksdag, civil servants etc, are afterwards published in the Ombudsmen's Annual Report. The decisions are also often distributed by the concerned central agency to its subordinate authorities.

Cases initiated by the Ombudsmen

In order to make the best possible use of the resources of the Ombudsmen's office the Ombudsmen are not only allowed to choose which complaints should be dismissed and which should be investigated but they are also entitled to start investigations on their own imitative. The majority of these are based on observations made during inspections. Sometimes reports in the newspapers or in the radio or TV give the Ombudsmen cause to opine investigations.

Furthermore, when investigating a complaint case, Ombudsmen make it their own duty to pursue the complaint's case till the end. As an Ombudsman does not open an investigation without good reason, it is understandable that a much higher percentage of these cases result in criticism. On the average the percentage of cases ending with forwarding criticism in the cases initiated by the Ombudsmen is very high.

Inspections and Annual Reports

Ombudsmen, usually together, spend 50-70 days each year inspecting authorities. Inspections are also carried out by members of the Office on their behalf.

During an inspection session, much time is spent in inspecting files and other documents. The Ombudsman will meet with the head of the authority and other senior members of its staff. When a prison, mental hospital or a similar establishment is inspected, the inmates will be given the opportunity to meet the Ombudsman and express their grievances if they have any.

The inspections are of great value in several ways. They give the Ombudsmen and their staff the opportunity to meet the people who are serving in the authorities, in their proper surroundings and to learn to know their working conditions. It is also much easier to find errors of systematical nature in the work places dealing with complaint cases.

Also the knowledge that any authority can be inspected by an Ombudsman at any time contributes to keep the officials on their toes.

Under the Ombudsman Act the Ombudsmen shall submit a printed report to the Riksdage every year. This report usually consists of about 500 pages and gives a full account of all those cases handled by the Ombudsmen that are considered to be of general interest. A summary in English is appended to the report.

The report is studied by the Riksdag's Committee dealing with matters of Constitution. The Committee then reports to the Riksdag. The committee's report might be discussed at a plenary session of the Riksdag. The Annual Report is also read by judges, civil servants, law professors etc.

Significant of the Ombudsmen

It is of course difficult to assess the impact of the ombudsman institution in the Swedish society. But it may safely be stated that it is hardly possible to imagine that the administration would have kept its discipline and kept abreast with the ever demanding effort to ensure the citizen's rights and freedoms as already stipulated in the Swedish law would have been effectively safeguarded without the parliamentary Ombudsmen.

One important reason for the success of the Office is that it functions as a stabilizing factor in the Swedish society by offering the ordinary citizen a cheap and simple way of having the actions of an authority impartially scrutinized as to their legality and fairness. By exercising and effective supervision of the public authorities the Ombudsman Institution strengthens the confidence of the general public in the authorities.

The Ombudsman Institution also is of great help to the authorities by offering advice and clarifying the contents of the law concerning e.g. administrative and judicial procedure.

The task of preserving the rule of law and protecting the rights and freedoms of the individual cannot of course be left exclusively to the Ombudsmen. They cannot replace such law-preserving agencies as the courts of law or the public prosecutors. In Sweden the Ombudsman institution has, however, proved to be an indispensible complement to them.

The special qualities of the Ombudsman Institution gives it a practical and psychological effect that cannot be taken over by any other agency. Among other things it has an important preventive effect; a lot of errors probably never occur because of the existence of the Ombudsmen.

Part III: Miscellaneous Concerns

CHAPTER I
Bill of Rights

(This article does not attempt to analyze the provisions of Human Rights embodied in the FDRE Constitution. What it rather does is to bring home the interrelationships of basic international instruments and the remedies at that level. For at Qaliti there was the consensus that the course on Human Rights should not overlap with that of the FDRE Constitution.)

Section I: International Perspective[133]

Under this Chapter we will discuss the Human Rights protection systems developed under the support of the United Nations. Therefore, this Chapter is limited to the examination of the protection provided by what are called the main International Bill of Rights; i,e. the UDHR, ICCPR, and ICESCR. However, we begin our discussion with the initial human rights concerns of the UN as reflected in its Charter.

At the end of WW-II, there was a concern that the atrocities and destructions caused by the war wouldn't happen again, for that, an international organ was deemed necessary. As a result the UN was established by a charter adopted in 1945 by the San Francisco Conference. At the time of the preparation of the Charter, there were suggestions for the incorporation of a Bill of Rights, though there were some who opposed the idea. As a result, the Charter didn't incorporate bill of rights. However, the document contains a number of important references to the promotion of Human Rights, which are worth considering.

[133] Developre, Haragewoin Birara and et la paper prepared for class discussion. The Paper has taken insight from the seminar the developer has participated in Austia, Vienna on Human Rights of Women.

Universal Declaration of Human Rights (UDHR)

History

Immediately after the coming into force of the Charter, a recommendation calling the ECOSOC to establish a Commission on Human Rights and direct it to prepare an International Bill of Rights was adopted by the General Assembly in February 1946. The Council acted on it immediately, and the Commission on Human Rights was established. It was recommended by majority vote that since the Council consisted of representatives of governments, the members of the Commission should be elected by the Council from a list of nominees submitted by governments, but serve in an individual capacity. Some States opposed this proposal, notably the former USSR, and the Council decided the Commission should consist of eighteen members, appointed by the governments which were selected by the Council. Finally the Council decided to leave it to the governments concerned to decide whether to appoint government officials or independent persons. So governments are members of the Commission, while its members, in fact, attend as representatives of governments. (Membership has increased over a period of years).

In 1947, the Commission assumed its first task, i.e., the drafting of bill of Rights in three parts; a Declaration, a Convention containing legal rights and obligations and measures of implementation – a system of international supervision and control. A committee composed of eight members prepared and submitted through the ECOSOC a draft declaration to the General Assembly, and the Declaration was adopted on 10 December 1948. The Commission got established, headed by Eleanor Roosevelt and by the Modern Human Rights Movement. The Universal Declaration of Human Rights (UDHR) by Resolution 217 (III), with forty eight votes in favor, none against and eight abstentions.

The Universal Declaration of Human Rights is not the product of one over a night; it is a cumulative effect of many acts that had taken place before 1948. In other words, major historical acts pertinent to the UDHR include the following;

1. Magna Cartha known as the Great Charter, signed in 1215 by King John of England. The two most important legal clauses of Magna Cartha included are:

a. Clause 40 promises *"to no one will we sell, to no one will we deny or delay right of justice"*. This clause establishes the principle of equal access to Court for all citizens without exorbitant fees.
b. Clause 39 promises *"no freeman shall be taken or imprisoned or dismissed except by lawful judgment of his peers or by the law of the land"*. This clause establishes that the King would follow the legal procedure before he punishes someone. Because of this departure it is considered as a corner stone for democracy; it became the first step leading to codifying human rights laws.

2. The second act that had an effect on the codification of Human Rights is the declaration of rights of citizens. The declaration was adopted by the French Revolution. The declaration stated that men are born free and equal with the rights to liberty, property and security. All people are guaranteed equality before the law, granted of freedom, unlawful arrest, freedom of speech, press, religion... etc. This concept of the declaration served as the main point in the declaration of Human Right.

3. The American Declaration of Independence in 1776. This Declaration laid two facts, namely:
   a) The natural equality of man and have certain inalienable rights,
   b) The purpose of the government is to secure those inalienable rights, and
   c) Of man the government gets the power; i.e. from the consent of the governed people.

All these declarations contributed a lot to the development of UDHR. The concept of the International Human Rights owes its recognition beginning to the end of the Nazi times (1939-1945) as millions of people – specially the Jews – were unlawfully exterminated by the Nazis. Allied Forces that won the war set out the UDHR to ensure that such a thing could never happen again.

The outline of the Universal Human Right Declaration includes the right of life, liberty, security of person, freedom of conscience, religion, opinion and expression, association and assembly, and freedom from any arbitrary arrest. The Socialist Countries placed a higher emphasis on the right to work and adequate housing, while many liberal Capitalist Nations

believe on the freedoms from government control on matters such as the right to privacy, fair trial and free press as more important. In some societies the concept of Human Rights is shaped by religion such as Llama, but despite these differences, there is wide agreement in the content of the Declaration, on the adoption on the Fundamental Rights such as protection against arbitrary arrest, torture, and summary execution.

Having stated these facts, would like to mention that there are some scholars now which argue that UDHR does not possess a legally binding force; that is to say it can not create any obligation against member states which might say no, pointing that there are no mechanisms set for the implementation of the articles set forth in the declaration; i.e. the UDHR is simply a statement of intent and principles, nothing more. Why? Because it simply is a Declaration, it is not a Treaty or Convention.

Nevertheless, a number of states immediately included selected portions of UDHR in to their domestic laws or in to their respective Constitutions. This shows that the UDHR has got quite a significant recognition by UN member governments. Due to its age, the UDHR got the name Customary International Law and now constitutes a standard to all – applicable to all nations whether or not they have expressed their consent or not.

Over the years, series of Conventions were introduced by signatory states so as to make the UDHR binding over them. Nonetheless, various and differing degrees of Human Rights violations are committed, some of the gravest of recent times being those committed by Cambodia's Khmer Rouge Movement in the 1970's and the Tutsi-Hutu genocide in Rwanda and Burundi (1998).

In Ethiopia, during the years that followed the 1974 Revolution, killings between opposing political parties and factions took place. As the PMAC Regime permitted its proponents to arrest without legal warrant and even kill without due process of law, some of its officials got convicted on charges of genocide and crime against humanity and stood trial at the special Bench of Federal Court, but prosecuted by special office of Prosecutor.[134]

[134] According to the Ethiopian law, they have been sentenced, some in absentia. In view of closing this dark chapter of history and as part of the reconciliation effort, burial ceremonies at various parts of the Country have been held as well as a memorial is being finalized at the Mesquel Square.

The Rights Protected

The Declaration is the first comprehensive International Human Rights instrument incorporating civil, political, economic, social and cultural rights in one document. However, as its name implies, it neither was intended to neither impose legal obligations on states, nor establish supervisory organ. As a result, some critics have questioned its significance. Its defenders state that apart from and in addition to establishing goals for states to work towards, its adoption by the UN General Assembly without a dissenting vote reflects the international moral commitment of states; it imposes a moral obligation which states may not ignore. The operative part of the Preamble reads as follows:

> *"The General Assembly proclaims this universal declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of member states themselves and among the peoples of territories under their jurisdiction."*

Section II: International Convention on Civil and Political Rights (ICCPR)

History

After the adoption of the UDHR, the Commission on Human Rights embarked on the second part of the Bill of Human Rights, namely the development of norms that were indisputably binding **t**o those states to adhere to. The Commission proposed in 1950 to keep all rights in one Convention. However, USA and some other Western Countries argued against this proposal and in 1951 they succeeded in persuading the General Assembly not to follow the recommendation of the Commission. Instead it was decided that two separate conventions be adopted: one on civil and political matters the other on Economic, Social and Cultural. In hind sight, one can question whether this decision has well served the cause of Human Rights. Today, most proponents find it essential to emphasize the interrelationship and

mutually reinforcing nature of all these various rights. The tendency in the subsequent development of standards, starting already in the sixties with the convention on the Elimination of Racial Discrimination has been to both bring up a particular subject and regulate it in grater depth; protection of particular needs. Concerning the substantive rights dealt with in treaties or instruments of later times such as the kinds on refugees, against racial discrimination, against the discrimination on women, on children, on minorities – this approach has been followed.

It should also be noted that although the rights dealt within the Covenants are contained in the two different documents, it has often been emphasized in UN resolutions and documents that the Conventions belong together and should be seen as a whole. As of January 2001, 146 states have become parties to the Covenant on Civil and Political Rights, while 142 to the Covenant on Economic, Social and Cultural Rights. Both Covenants contain some identical provisions such as the right to self determination and the principle of nondiscrimination. In addition they have clauses that safeguarding rights should not be used as a pretext for violation of other rights.

The Rights Protected

The ICCPR lists down the rights which the Covenant is designed to protect under Articles 6-27. One can also include the right to self-determination to the list. Generally, these rights can be summarized as follows:

- The right to life
- Freedom from torture and inhuman treatment
- Freedom from slavery and forced labor
- The right to liberty and security
- The right of detained persons to be treated with humanity
- Freedom from imprisonment for failure to pay debt
- Freedom of movement and of choice of residence
- Freedom of aliens from arbitrary expulsion
- The right to fair trial
- Protection against retroactivity of the criminal law
- The right to recognition as a person before the law

- The right to privacy
- Freedom of thought, conscience and religion
- Freedom of opinion and of expression
- Prohibition of propaganda for war and incitement to national, racial or religious hatred
- The right of assembly
- The right to marry and found a family
- The right of the child
- Political rights
- Equality before the law
- The right of individuals belonging to linguistic, cultural, or religious minorities

The normative content of these rights is elaborated by the Human Rights Committee, which provides the most authoritative interpretation of the Covenant. Thus, one is required to consider the general comments of the Committee on each right, because the Human Rights Committee is the main organ supervising the implementation of the Covenant's provisions, though not binding, are the most authoritative interpretations.

Enforcement Mechanisms

As already noted one of the controversial issues during the drafting process was the measures of implementation to be included in the Covenant. Finally, an agreement has been reached for the establishment of a Human Rights Committee. Article 28 of the Covenant provides for the establishment of this Committee which thus becomes the principal organ of implementation of the ICCPR. The Committee consists of eighteen (18) members. As regards the qualifications of members of he Committee, in the first place they must be nationals of states which are parties to the Covenant; secondly, they must be persons of high moral character and recognized competence in the field of Human Rights and, thirdly, consideration shall be given *'to the usefulness of the participation of some persons having legal experience'*. According to Article 29 and 30 of the Covenant, members are elected by secret ballot by state parties from among the nominees submitted by state parties themselves. The Covenant also provides that the Committee may not include more than one national of any state and that consideration shall be given to the principle of equitable geographical

distribution and the representation of the different forms of civilization and the principal legal systems. Article 28(3) of the Covenant provides that the members of the Committee shall serve in their personal capacity. It means that though they were nominated by state parties, once they are elected they are not government (state) representatives. This is intended to ensure their independence and impartiality in discharging the duties entrusted to them by the Covenant. The Covenant deals also about term of office, working procedure, voting, etc ...

The Committee monitors the implementation of the Covenant in the following two ways: a) by considering state reports, and b) by considering communications ("complaints").

(1) Considering State Reports

The Covenant adopted reporting procedure as the principal means of implementation. Article 40 of the Covenant imposes on states the duty to submit reports (initial and periodic). The reports shall indicate:

a) the measures states have adopted to give effect to the rights recognized in the Covenant,
b) the progress made in the enjoyment of those rights, and
c) the factors and difficulties, if any, affecting the implementation of the Covenant.

These reports shall be transmitted to the secretary general of the United Nations, who shall transmit them to the Committee for consideration.

Some criticize the reporting procedure, in general, as not effective by pointing out that reports prepared by state (government) officials would naturally not give the real Human Rights situation in their countries. Besides, some states fail to submit reports properly and/or timely.

Though it has been acknowledged that these reports by themselves do not constitute an effective measure of control, they open an opportunity for critical examination, for drawing attention to gaps or inaccuracies in the information provided, and for comparing official statements with other sources of information on the same subject.

It has been suggested that in order for any reporting system to be effective, the following elements shall exist; (a) the cooperation of governments in providing full information, (b) the possibility of obtaining further information from other responsible sources, (c) the examination of information obtained by independent persons who are not government officials, and (d) the right of some organ or body taking part in the procedure to make suitable recommendations with the view to induce improvements in the law, procedure or practice of the country concerned.

One of the effective procedures of international monitoring and control of states' behavior vis-à-vis Human Rights is the complaint procedure. This is a procedure by which one may submit complaints to and obtain remedy from the appropriate organ alleging that a state party has not discharged its obligation; i,e. violated the rights recognized in the Covenant. Does the ICCPR provide for such procedure? The Covenant doesn't use the world 'complaint'. As state parties seem to have deliberately avoided the use of this term, which appears to make them sensitive in fear of being accused for violation of rights before any international organ, the Covenant rather uses 'communications' as a moderating term. The Covenant recognizes two types of communications, namely: inter-state and individual communications

(a) Inter-State Communications

As cited earlier, during the drafting process of the Covenant, one of he controversial points was the mechanism of international control and supervision. By 1950 the Commission on Human Rights had decided that there should be a permanent body of independent persons to examine alleged violations; normally – non-governmental organizations. Also, since the Covenant provides for a procedure by which inter-state disputes can be submitted and considered under Articles 40, 41 and 42, the Human Rights Committee has the power to entertain inter-state communications if the conditions necessitate. Here, one of the most important conditions is whether a state has recognized, by a separate act, the competence of the Committee to consider inter-state disputes. A separate declaration recognizing this competence, in addition to the act of ratification, is a prerequisite. Meaning, the mere act of ratification of the Covenant does not amount to recognizing the competence of the Human Rights Committee to consider inter-states communications. So, the Committee can examine communications only if (1) the state alleged to have committed violation of human rights has

made a declaration recognizing the competence of the Committee, and (2) the complaining state, the state that have submitted the communications, have made similar declaration.

Ever if the above conditions are fulfilled, a state party has to first follow certain procedure before it can submit its communications to the Committee (see Art. 41(1a-b). These procedures are meant to enable the states concerned to adjust the matter by themselves. The Covenant envisages, in the first place, bilateral communications and negotiations between the two states concerned. If the two states fail to solve the matter, either of the states may then refer the matter to the Committee by a notice submitted to the Committee and to the other state. The Covenant outlines the time within which the different steps may be taken.

The Committee examines the communications in closed sessions (meetings). Before dealing with the merits of the case, the Committee has to first ascertain whether the communications are admissible or not. One important notion in this regard is the principle of exhaustion of local remedies. It holds that one should not seek or obtain remedies at an international level without exhausting available local remedies. Article 41(1c), thus, provides that the Committee shall deal with a matter only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter. However, the last paragraph states that exhaustion of local remedies shall not be a prerequisite if the application of such remedies is unreasonably prolonged. In such cases, the committee may proceed by calling for all relevant information and the state parties may be represented, make oral and written submissions. The Committee, however, cannot pass its opinions on violations. It is to make its good offices available with a view to a friendly settlement is not achieved; the committee is required to submit a report which shall be confined to a brief statement of the facts, with the functions of the committee, under Article 41, in relation to inter-state communications are very much limited. However, Article 42, of the covenant provides, another procedure. If the matter referred to the Committee under Article 41 is not resolved, the committee may, if those States consent, appoint and ad hoc conciliation commission. The Commission cannot pass binding decisions. Its activities are more or less similar to that of the Committee.

This is a procedure by which individuals may submit communications, with a view to obtain remedy/remedies, to the Human Rights Committee claiming that a State party has violated their rights recognized by the Covenant. As we have seen earlier, one of the controversial

questions during the drafting process of the covenant was on mechanisms of enforcement. Arguments for & against the idea of individual petition system were raised. Finally, the 1966 Covenant didn't recognize the individual communications procedure because States were not ready to accept it. The first Optional Protocol provides for such procedure to the Covenant, which is a separate instrument. Thus the individual communications procedure applies only in respect of those States that have ratified the Optional Protocol.

It has been commented that …the real test of the effectiveness of an international system for the protection of human rights is whether it permits and individual who believes that his rights have been violated to seek a remedy form an international institution ….According to the classic conception, international law is the law that governs relations between States and the individual has no place. His interests are supposed to be protected by the State of which he is a national, and he has no *locus standi* before international tribunal or international organizations'…. However, this conception of international law has changed over years.

As a result of change of mind of States, a move towards providing individuals of the mechanism of submitting complaints was made. Thus, the Optional Protocol allowing individual communications procedure was adopted separately but in the same year as the ICCPR and entered in to force on 23 March 1976.

Article 1 of the Optional Protocol stipulates that a state party to the Covenant that becomes a Party to the present protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that state Party of any of the eri8ghts set forth in covenant. Articles 2 & 3 of the protocol introduce the rule of exhaustion of local remedies and provide that communications shall be considered inadmissible if they are anonymous, abusive or incompatible with the provisions of the Covenant. Article 5, paragraph 2, introduces a further condition of admissibility, excluding communications which relate to a matter which is being examined under another procedure of international investigation or settlement. Thus, the covenant embodies the principle of pendency, which is found in many national laws/ jurisdictions. Paragraph 2 of Article 5 also repeats the rule of exhaustion of local remedies, adding that the rule shall not apply if the domestic remedies are unreasonably prolonged. Article 4 & the remaining paragraphs of Article 5 deal with the procedure of the Committee

when dealing with individual communications. According to Article 4(2), the communications must be communicated to the State Party concerned, which shall within six months submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State. Communications are to be examined in closed sessions (Art.5(3)), and pursuant to Article 5(4) the Committee shall forward its views to the State Party concerned and to the individual.

Section III: The International Convention on Economic, Social and Cultural Rights (ICESCR)

One of the points of controversy during the drafting process of International Bill of Rights was whether to include Civil, Political, Economic, Social and Cultural Rights in one International Covenant. Finally, it was decided that Economic, Social and Cultural Rights should be included in a separate one. Consequently, this was agreed upon (entered into force on 3 January 1976) and the International Covenant on Economic, Social and Cultural Rights came into being upon the approval of the General Assembly of the UN on 16 December 1966. The rights contained in the ICESCR are similar but different from those found in the ICCPR except for some rights. For example, the right of all peoples to self-determination is common to both Covenants (See Article 1 of both Covenants).

The Covenant of Human Rights consists of 31 Articles of which the first 15 are of a normative character and the last 16 of are a procedural nature. In its part III, it sets out many of the fundamentals for the well being and prosperity of the individual. Each state party is under an obligation to undertake steps *"to the maximum of its available resource to with a view to achieving a progressively the full realization of the right recognized in the present covenant by appropriate means's including particularly the adoption of legislative measures."*

The obligations assumed by state parties and the international control under the ICESCR is also different from that found under the ICCPR. A core provision in Article 11, recognizes the right of every one to an adequate standard of living, including adequate food, clothing, and housing and to the continuous improvement of living conditions.

Based on this provision, some people argue that the obligation assumed by state parties is not intended to be of immediate application. They hold that the Covenant doesn't require states to implement the rights immediately, it rather lists standards which they undertake to promote and which they pledge themselves to secure progressively, to the extent possible, having regard to their resources in order to achieve progressively the full realization of this rights.

Therefore the difference between these two major covenants lies in the method of implementation. The protection of most Civil and Political Rights require few economic recourses if any. With minor exceptions, little more than legislation and a decision not to engage in certain illegal practices, not to torture people, not to imprison them arbitrarily etc… seems ton suffice.

Guaranteed Rights

The Covenant sets out a longer list and more detailed definitions of Economic, Social and Cultural Rights than those contained in the UDHR. The Economic, Social and Cultural Rights protected by the Covenant include the following:

- The right to work and rights inn work;
- The right to social security, including social insurance;
- The right to protection of the family, including special assistance for mothers and children;
- The right to an adequate standard of living, including adequate food, clothing and housing, and the continuous improvement of living conditions;
- The right to the highest attainable standard of physical and mental health;
- The right to education;
- The right to participate in cultural life and enjoy the benefits of scientific progress.

The contents of these rights are well elaborated by the Committee on Economic, Social and Cultural Rights. This Committee was created by the ECOSOC to assist it in the supervision of the implementation of the Covenant. One of the distinguished works of this Committee is to interpret the provisions of the Covenant through what is referred to as General Comment. For a better understanding of the normative content of these rights and corresponding state

obligations, you are required to look at the respective General Comments. One such comment on the right to work is provided at the end of this section.

The Covenant clearly imposes duties of some kind on states parties. It becomes necessary that states parties discharge their duty. The main system of control and supervision provided by the Covenant is a system of reporting, which the state parties have the duty to submit periodically to the Secretary-General of the UN, specifying the measures they have adopted and the progress made in achieving the observance of rights listed. The Secretary-General will send all reports to ECOSOC for its consideration. The ECOSOC may make arrangements with the specialized agencies to obtain reports on the progress made in achieving the observance of those provisions of the Covenant, falling within the scope of their activities. This is intended to enable the ECOSOC obtain relevant information from the Specialized Agencies while considering state reports. The ECOSOC may also transmit the reports of states to the Commission on Human Rights for study and general recommendation; and the state parties may then submit to the Council their comments of their general recommendations. Finally, the Council may submit a summary of the information it has received, together with its reports and recommendations of a general nature to the General Assembly and at the same time draw appropriate matters to the attention of other organs of the United Nations and the specialized agencies concerned.

It is clear that the Covenant doesn't establish a new organ of implementation. It rather delegates the supervision of its implementation to an already existing UN organ; i.e. ECOSOC. This has been criticized by some, on the pretext that members of the ECOSOC are state representatives and not independent experts and on the grounds that the ECOSOC has other duties under the Charter.

In 1985, the ECOSOC set up a committee consisting of eighteen experts elected in their personal capacities and on the basis of equitable geographical distribution. This Committee is known as the United Nations Committee on Economic, Social and Cultural Rights. The role of this Committee is to assist the ECOSOC in supervising the Covenant.

Unlike the ICCPR, this covenant does not recognize communications procedure. For that matter, NO communications procedure is recognized yet, officially. It is important to

compare this with the European Social Charter, which is intended to safeguard Economic, Social and Cultural Rights at the continental level. Though, the Charter as adopted in 1961, it also didn't recognize communication's procedure. The third Optional Protocol to the Charter adopted in 1995 provides for a system of collective complaints.

As stated earlier, the Committee on Economic, Social and Cultural Rights provides an authoritative interpretation of the provisions of the Covenant. By so doing, it explains the contents of the rights and the corresponding obligations of state parties. Because such explanations are too many to be reproduced here, you are required to look at them. Then find an example of what the Committee has to state under General Comments. This particular comment explains the content of the right to work and the obligation of the State and even non-state actors.

Despite it is problematic to evaluate and has weaknesses in gathering communications, implementation of the ICESCR directly relates to a state's economic strength and institutional capacity. It is problematic due to the complexity of defining the minimum acceptable standard; i.e. what is adequate and acceptable vary among countries and groups within countries. Since state parties have different economic, cultural, social standards, it was not possible to formulate consistent indicators of progressive realization in addition to furnishing monitoring body. This implies that the ESC Committee is supposed to devise a mechanism and value the incremental changes as to the quality of life of different societal groups. Lack of operational standards, translating abstract legal norms into minimum standards to be followed by state parties is as well difficult to set and asses their own performance.

And, so, without effective monitoring mechanisms in place, state parties can not be strictly held responsible for their non-proper implementation or even violation of rights. This problem partly occurred due to the wordings of the provision; the Covenant's Article 2/1 made state parties to take steps according to available recourses such as to achieving full realization of rights, progressively. This, for one, seems to create ambiguity in evaluating the full realization of those rights of the Covenant vis-à-vis available resources. The other problem is that this Covenant imposes only programmatic obligations upon governments,

whereas the rights to be fulfilled incrementally through ongoing programs were presumed to be obligations.

From the major reasons stated above, we can say that there are loopholes in setting a minimum standard with regard to certain rights as there are several state parties which can not meet minimum standards. This makes us note the existence of a very wide gap between aspired set standards in the Covenant and prevailing situations in the different countries of the world. For example the covenant states for the right to work, right to medical care, and right to education. These rights, when being implemented, are directly related to the economic resource of any state party. All the same, it is not quite a defense for state parties to state that *"this is the maximum available resource we can give to our subjects."* as long as it can not prove that it really is so. Due to this and the other factors mentioned like lack of consistent parameters, eligible 'communication' mechanisms, etc.., it is difficult to put the infringer accountable and make it receive the consequences thereof.

Despite all this, when Limburg Principles were adopted by the ESC Committee, it tried to elaborate principles for understanding and determining what constitute violations of ICESCR, but provided little guidance on how to identify and actually measure concrete violations in social and political contexts especially in the violations resulting from specific state actions related to patterns of discrimination and taking place due to state's failure to fulfill the core minimum obligations contained in the Covenant. In general, as the Covenant's implementation depends upon the specific countries context, it will remain controversial to come-up with a universal evaluation and condemning violators mechanisms.

Difference between ICESCR and the ICCPR

The differences offered clarity to the UN Human Rights Charter by showing how easily it can be violated and is not specific enough. On the other hand it provided detailed rights by making the instrument binding. But it also contains 'Derogable Rights' in Article 4, which made state parties to set aside those rights for the duration of public of emergency, which is proclaimed as '*a time which threatens the life of the nation which have of temporary nature'* with the exception of the rights stated under Articles 6,7,8, paragraphs 1,2,11,15,16 and 18.

This Convention on part VI deals with institutions and procedures of supervision and control. One of the controversial issues during the drafting process was the measures of implementation to be included in the Covenant. Human Right Article 28 of the Covenant provides for the establishment of this Committee which thus becomes the principal organ of implementation of the ICCPR. The Committee consists of eighteen (18) members – persons of high moral character and recognized competence in the field of Human Rights. (As regards to the qualifications of its members, election procedures, etc .., similar to ICESCR.) The committee monitors the implementation of the Covenant in two ways: a) by considering State reports, and b) by giving general comments.

As most of the procedures employed here are similar to that outlined above, we mention only the different, important ones.

State reporting: this procedure is adopted as the principal means of implementation. As per Article 40 of the Covenant, state parties have the duty to submit reports (initial and periodic) as mentioned above. And in order for any reporting system to be effective, the following elements shall exist: (a) the cooperation of governments in providing full information, (b) the possibility of obtaining further information from other responsible sources, (c) the examination of the information obtained by independent persons who are not government officials, and (d) the right of some organ or body taking part in the procedure to make suitable recommendations with a view to improvements in the law or practice of the country concerned. Also the information given by state is verified by asking information from NGO's, individuals.

The General Comment: since the committee is interested in the proper implementation of the Covenant, it gives comments on the reports presented when found appropriate. It could be general and specific comment. The General Comment of the Committee focuses on how that state tried to implement the Covenant, while the Specific Comment deals with the report of the state and might suggest and give recommendations by expressing its satisfaction or by stating the area of concern which that state party should improve. In addition, due to the facts that ICCPR has optional protocol and has separate implementation mechanisms, it empowers individuals to 'communicate' to the committee provided that they have exhausted their local

remedies. From this we can presume that it has diverse, intangible, evasive or strong allegation as well as supervision mechanisms.

The language and terminologies used are also different in this covenant it has terms like every one has right to, no one shall be, everyone, all persons … etc this indicates that this Covenant is focusing for individuals who are subject to violation of Human Right rather than sates who are signatory to the covenant. This Covenant, in addition, doesn't depend on the resource availability of a state rather a good will to be a signatory and be obligatory on the wordings of the Convention.

Thus, to summarize:-

1. Signatories of this Covenant, since they are state parties, have obliged themselves to undertake the appropriate steps to achieve the realization of the rights enshrined in the document. From the provision of Article 2 it's understandable that states are not compelled to provide the rights to its subjects more than what it can supply and subjects can not ask those rights as of rights; i.e. state can only provide to the extent of the maximum resource available which, by it very nature, is not uniform throughout the world. And it is difficult to set minimum standard which can be followed by every state. This allows each respective state party to be evaluated and monitored with regard to its economic, social and cultural standards. It is also clear that the Covenant doesn't establish a new organ of implementation. It rather delegates the supervision of its implementation to ECOSOC.
2. The Covenant sets out a longer list and more detailed definitions of Economic, Social and Cultural Rights than those contained in the UDHR from Article 1 to 15, which has loopholes, seems non-binding, etc...
3. The language and terminology employed is different from that of ICCPR in that it makes state parties rather than individuals involved responsible. With regard to availability of resources, particularly, any government can use it as its defense as long as it can prove the same.

Section V: Human Right under FDRE Constitution

Human Rights and Freedoms can be categorized in number of ways using various criteria. In view of how our Constitution has arranged the provisions on Human Rights, it leaves no option but to follow the following approach.

Article 10, which deals about Human and Democratic Rights, as one of the fundamental principles of the Constitution (see title of Chapter two) breaks the whole notion into two categories: Human Rights and Democratic Rights. This same Article goes on to stipulate two provisions under it. Here is how they read:-

> *"1. Human rights and freedoms, emanating from the nature of mankind, are inviolable and inalienable."* (Emphasis added.)
>
> *"2. Human and democratic rights of citizens and peoples shall be respected."* (Emphasis added.)

Both are mandatory, but their tones are different; i.e. that of the first is strict, while that of the second is loose. The difference in the tones reminds us of the deep division between the Western approach and that of the collective approach of "the socialist camp of the Third World", during the time of signature of UDHR and thereafter. It was due to this very reason that the Treaty had to come out as a Declaration rather than a Convention. It took a long time and effort to categorize these two approaches into two basic Conventions; i.e. ICCPR and ICESCR, respectively. It must have been that the Commission and the Assembly framed the above cited two sub-articles accordingly.

Following the same scheme Chapter Three of the FDRE Constitution captioned as Fundamental Rights and Freedoms creates to catalogues of the entire bundle of Human Rights as part one and two. Part one is captioned as Fundamental Rights and part two is captioned as Human Rights: the former consisting of Articles 14-28, the latter, consisting Articles 29-44; i.e. each pertaining to the two respective Conventions.

Since each and every provinsions of the FDRE on Human Rights are to be interpreted pursuant to Article 13(2) *".. in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international*

instruments adopted by Ethiopia.", part one (Articles 14-28) has to therefore should be interpreted in line with ICCPR in general, and each Article vis-à-vis the corresponding provisions of ICCPR. The same should hold to the second part (Article 29-44) vis-à-vis ICESCR.[135] The Developer believes that the part herein underscored is a crucial issue in understanding and implementing the entire provisions of Human Rights embodied in the Ethiopian Constitution.[136]

Among all categories of International Law, International Human Rights Law is noted for having a variety of international mechanism for ensuring their implementation in a better way. In this regard, one could mention the Commission on Human Rights, the Human Rights Committee, the Sub-Commission on the Promotion and Protection of Human Rights and others.

However, the protection and enforcement of International Human Rights Norms depends primary on the national institutions. The fine words and sentiments of International Human Rights Norms and Jurisprudence respect for Human Rights begins and ends at home, as (per Article 2 of ICCPR and its analogous article in ICESCR) imposes the obligations on the state parties themselves to respect and ensure the rights affirmed in this instruments. State parties are obliged to adopt legislative and other pertinent measures to undertake the obligations they assumed under International Law and to apply them in good faith.

The Ethiopian Constitution forcefully emphasizes the themes of democracy and respect for Human Rights; i.e. the 1994 FDRE Constitution gives Human Right Norms prominent position. It affirms the right giving it one full chapter under the title "Fundamental Rights and Freedoms", sub-dividing it in to Human Rights /Articles 14-28/ and Democratic Rights /Articles 29-43/. Ethiopia accepted the two International Covenants on June 11, 1993. Ethiopia is not a party to the two optional protocols of the ICCPR, but is a party to CERD, CEDAW, Child Convention; i.e. conventions against torture and other cruel and inhuman or degrading treatments, on the political rights of women. It also became member to African

[135] Take note of – at least – the fact that Article 29 and Article 31 seem to have been misplaced; i.e. both placed ICESCR instead of under ICCPR.

[136] Instructors and students are advised to see the chart given here under and observe correlations between provisions in FDRE Constitution and those of ICCPR and ICESCR.

Charter on Human and Peoples' Rights of 1998, African Charter on Human and Welfare of the Child in 2001.

Status of International Human Rights

The fundamental rights and liberties contained in this chapter shall be interpreted in conformity with the UDHR, International Human Rights Covenants, Humanitarian Conventions and with the principle of other relevant International Instruments which Ethiopia has ratified; Article 13(2).

These instruments mentioned above are considered to be part of the law with regard to Article 9(4). This means that they have not the function of Constitution (Supreme Law) but must be regarded as part of Ethiopia's Law. Therefore judges have to be trained in those International Agreements and Conventions. The extent of interpretation of Article 13(2) only states that these instruments are used in order to give the correct interpretation to the fundamental rights or liberties contained in the 3rd Chapter of the Constitution. Therefore, the Human Rights chapter of the Constitution should be interpreted in conformity with those International Human Rights Declaration or Conventions, as also all these remain Ethiopian Law According to article 9(4).

Catalogue of Rights

Classification of Human Rights in the Constitution and International Covenant on Civil and Political Rights incorporation under Ethiopian Constitution

Human Rights in the Constitution and in the International covenant on Civil and Political Rights of 16 December 1966

Topic	**Article of the Ethiopian Constitution**	**Article of the International Covenant on Civil and Political Rights**
Rights of Nations, Nationalities, and People	Article 39	Article 1 (1)
The Right to Property	Article 40	Article 1 (2)
Economic, social, and Cultural Rights	Article 41	Article 1 (2)
Rights of Women	Article 35	Article 3
Emergency Proclamation	Article 93	Article 4 (1)
Right to Life, Liberty, and the Security of the Person	Article 14	Article 6 (1)
Right to Life	Article 15	Article 6 (1)
Prohibition of Retroactive Criminal Law	Article 22	Article 6 (2)
Crimes Against Humanity	Article 28	Article 6 (2)
Right to Humane Treatment	Article 18	Article 7
Right to the Security of the Person	Article 16	Article 7
Right to Liberty	Article 17	Article 8 (1)
Rights of Labour	Article 42	Article 8 (3a)
Right to the Security of the Person	Article 16	Article 9 (1)
Right to Liberty	Article 17	Article 9 (1)

Rights of Persons Arrested	Article 19	Article 9 (2)
Rights of Persons Arrested	Article 19	Article 9 (3)
Rights of Persons Arrested	Article 19	Article 9 (4)
Rights of Persons Arrested	Article19	Article 9 (5)
The Rights of Persons Detained	Article 21	Article 9 (5)
The Rights of Persons Detained	Article 21	Article 10 (1)
Rights of Persons Accused	Article 20	Article 10 (2)
The Rights of Persons Detained	Article 21	Article 10 (3)
Freedom of Movement	Article 32	Article 12 (1-3)
Right of Access to Justice	Article 37	Article 14 (1)
Rights of Persons Arrested	Article 19	Article 14 (2)
Rights of Persons Arrested	Article 20	Article 14 (2)
Rights of Persons Arrested	Article 19	Article 14 (4)
Rights of Persons Arrested	Article 20	Article 14 (4)
Prohibition of Retroactive Criminal Law	Article 22	Article 15 (1)
Human and Democratic Rights	Article 10	Article 16
Right to Privacy	Article 26	Article 17
Right to Honor and Reputation	Article 24	Article 17
Right of Freedom of Religion, Belief and Opinion	Article 27	Article 18
Right of Thought, Opinion and Expression	Article 29	Article 19
Right of Thought, Opinion and Expression	Article 29	Article 20
The Right of Assembly, Demonstration and Petition	Article 30	Article 21
Freedom of Association	Article 31	Article 22
Marital, Personal and Family Rights	Article 34	Article 23 (1&2)
Marital, Personal and Family Rights	Article 34	Article 23 (3)

Rights of Women	Article 35	Article 23 (3)
Rights of Children	Article 36	Article 24
Rights of Children	Article 36	Article 25
Right to Equality of Citizens	Article 25	Article 26
Rights of Nations, Nationalities, and Peoples	Article 39	Article 27
Economic, Social and Cultural rights	Article 41	Article 27

Enforcement: Mechanisms of Supervision and Control

There are three ways International Laws can be applied in National Courts. The first two always call upon National Courts to apply International Human Rights as a source of binding obligation. The third way is invoked not as binding obligation but rather as a means of aid in interpreting national law.

This is the first way International Human Rights Law can be applied in National Courts. If a state is a party to the treaty concerned, and if the treaty became the integral part of the domestic law, interested parties may call upon the Court to apply the treaty directly. The Court considers applying the treaty, since it has been incorporated into the domestic law.

The two well know theories of incorporation of international instruments into domestic law are the *monist* and the *dualist theories,* whereby the *monist model* is subject to international law. As a result they must be governed by a superior law applicable to all; i.e. applicable to the international laws – superior over the national laws. On the other hand, the dualist theory provides that international laws and municipal laws are two separate regimes; i.e. neither International Law nor municipal law can create or invalidate the other. Also dualist argues international law to become part of national law they shall have have special legislative acts that transform it into the national law.

Ethiopia, being a *monist* Country, the Courts can apply provisions of treaty where the treaties are self-executing; i.e. directly applicable in domestic Courts and impose obligations which are specific, mandatory and capable of implementation without further acts of legislation.

The Civil and Political Rights clauses of the main Human Rights Instruments are widely accepted to be self-executing.

Customary Law refers to unwritten law inferred from the conduct of states undertaken in the belief that they were bound to do so by law. Thus Customary International Law is created by a fusion of an objective element, practice and subjective element.

The mere existence of conduct does not suffice to constitute International Law, even if it is consistent and uniform unless it is consistent and uniform; i.e. unless it is compelled to be mandated by law: Customary International Law and general principles of International Law when included in the form of part of domestic Law become like unwritten Common Law. It is formed by the action of the state party instead of being discovered by judges as it is the case in Common Law. Meaning, it is constantly growing while Common Law decreases enactment of statutes. But importantly, it binds the concerned state party including those that have not ratified any Human Right Treaties so long as they have not persistently objected the development of the rule.

Apart from applying International Human Rights Laws through direct incorporation of same through Treaty Law Courts, it can also apply it by way of interpreting the National Law. These constitute indirect incorporation and is said to have a great impact on interpretation of relevant laws as would the method of direct incorporation.

On the whole, Human Rights Norms in the international instruments are viewed as tools in construing respective Human Rights provisions within the Constitution. So, as time progresses, it is more likely than not that in cases like that of Ethiopia, Courts would be expected to interpret the Human Rights chapter along the lines of International Law. The international stand can be presented in support of desired interpretation of the domestic law or as a source of legally binding obligation.

As already discussed, human rights are rights that belong to human beings. Thus, everyone is entitled to enjoy/exercise them without discrimination and on an equal footing. Equality of rights of all human beings is one of the fundamental principles

Enshrined in the UN charter and in numerous international and regional human rights instruments as well as national laws, these instruments stipulate that every one is entitled to these rights, and state parties shall ensure these rights to all without discrimination on any impermissible grounds.

Section VI: Other Major UN Human Right Treaties

One of the other major treaties of the UN is the one on the Elimination of Discrimination Against Women. Being humans, women are entitled to the enjoyment/exercise of the rights enshrined in human rights instruments on an equal footing with men. The Preamble of the charter reaffirms *"faith… in the equal rights of men and women …"* This principle is proclaimed in the UDHR, ICCHR, ICECR, and other instruments we have discussed. For example, Article 2 of the Declaration states *".. with out distinction of any kind such as... sex…*"

Immediately, after the adoption of the two Covenants, the UN General Assembly the Declaration on the Elimination of Discrimination Against Women (1967), the legally binding Convention of which – CEDAW) – was adopted in 1979 by the General Assembly and entered into force the same year. It was a reaction based on growing concerns that additional means for promoting equal enjoyment of Human Rights by women were necessary.

The convention consists of 30 Articles of which the first 16 are normative in character. The other provisions deal with mechanisms of enforcement, while Articles 17-22 of the Convention deal with mechanisms of international supervision and control.

Convention on the Rights of the Child

Despite some theoretical controversies, children are entitled to Human Rights simply because they are human beings. Children have the rights contained in the various International and Regional Human Rights Instruments. For example, they are entitled to Civil, Political, Economic, Social and Cultural Rights set forth in the UDHR, ICCPR, ICESCR and the like. Even if the UDHR doesn't specifically deal with the rights of the child, it provides equal enjoyment of the rights contained therein. In addition, Article 25(2) specifically addresses the

rights of the child. It provides that motherhood and childhood are entitled to special care and assistance. It also states that all children shall enjoy the same social protection, whether they are born in or out of wedlock. The ICCPR and ICESCR, apart from guaranteeing equal rights to all human beings, include provisions addressing the rights of the child (see for example Arts. 24 and 18(3) of the two Covenants respectively). These main International Bill of Rights and other instruments provide the legal basis for the protection of the Rights of Children.

Childhood is characterized by the state of frailty and helplessness. They are generally not able to protect themselves. Thus, the special condition of the child calls for special protection and care. To ensure their full & balanced development, children need to be raised in an environment capable of providing love, affection and happiness.

The provision for special protection to the child has been one of the issues at the international agenda since the first decades of the 20th Century. The League of Nations has promoted the idea of granting special protection to the rights of the child through the adoption of Declaration on the Rights of the Child in 1924. In 1959, the United Nations adopted a Declaration on the Rights of the Child, wherein the rights from the old 1924 Declaration were reaffirmed and further elaborated.

However, these were non-binding instruments. In 1979, the Commission on Human Rights (which was established by the ECOSOC) started its work of drafting a Convention that particularly addresses the Rights of the Child. As a result, a draft convention was prepared, which was adopted by the General Assembly of the United Nations in 1989, and entered into force in 1990. This Convention is named as the Convention on the Rights of the Child (CRC). As of January, 2001, 190 states parties have ratified it while only the US and Somalia failed to accede to it. A number of optional protocols were adopted to supplement the Convention. The first one is the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. It was adopted by the General Assembly of the UN on 25 May, 2000, and entered into force on 12 February, 2002. It is intended to prevent children from involving in armed conflicts or taking part in hostilities.
The second one, adopted on the same day as above and entered into force on 18 January 2002, is Optional Protocol to the Convention on the Rights of the child on the Sale of

Children, Child Prostitution and Child Pornography. This Optional Protocol elaborates the prohibited acts and practices generally formulated in the Convention and extends the measures state parties may take to prohibit and eliminate.

At regional level, we have the 1990 African Charter on the Rights and Welfare of the Child designed to provide special protection to the Rights of the Child in Africa. This is the first regional treaty on the child. It was adopted and opened for signature by the Assembly of the Heads of States and Governments of the former OAU on 11July 1990 in Addis Ababa, and entered into force in 1999. This material focuses its discussion on the guarantees provided by the Charter. However, students are advised to study the special system of protection provided by this charter and compare it with the system enshrined in the CRC.

Some commentators have classified the rights in the convention into four broad categories; protection rights, development rights, subsistence rights and participation rights.

Protection rights as such rights as the right to life, the right to be free from interference (the right to privacy), the right to be free from violence and all forms of exploitation (protections by governments). The rights that may fall under this category are found under articles 6, 16, 19,32,33,34,35,36,37 and others.

Development rights are those rights that allow children to reach their fullest potential and include the right to education and freedom of thought, conscience and religion as provided under Articles 28 and 14, respectively.

Subsistence rights are rights, the fulfillments of which are necessary for the survival of the child such as the right to food, shelter, health care (see Arts. 24 &25).

Participation rights are rights which allow children to take active role in the community and political life (for example see Art. 30).

Here it should be again emphasized that this categorization should be seen with care; because the rights set forth in the CRC include all sets of rights – Civil, Political, Economic, Social

and Cultural Rights – and that it may be difficult to classify each right under any one of these above categories.

Mechanisms of Supervision and Control

The Convention clearly imposes the primary responsibility of implementing the Convention on states parties. Though it imposes duties on parents (see subsistence rights) and members of the society (see participation rights), the state party shall give protection rights and ensure development rights.

The main organ that supervises the implementation of the Convention is the Committee on the Rights of the Child (sometimes called the CRC) established pursuant to Article 43 of the Convention. The Committee examines the progress made by states parties in achieving the realization of the obligations under the Convention.

Convention on the Elimination of all forms of Racial Discrimination

In 1969 seven years before the two Covenants entered into force: the International Convention on the Elimination of all forms of Racial Discrimination entered into force after having been adopted in 1965 by the UN General Assembly. By January, 2001, it already had 156 state party signatories. The Convention contains 25 Articles from which the 1st seven articles are of normative character. A broad definition of Racial Discrimination is found in Article 1 and the Convention sets out a number of detailed prohibitions and obligations to prevent discrimination based on the grounds of age, race, colour, descent of national or ethical origins. States are under an obligation to criminalize dissemination of ideas based on racial superiority and hatred and participation in racial organization or activities.

The Committee established under the treaty has reminded state parties that this undertaking does not only entail an obligation to enact certain Criminal Laws but also to ensure that the laws are effectively enforced. The Committee effectively works on reports and comments submitted by the parties that are empowered to play a role of inquiry and reconciliation that aims at reaching an amicable solution of disputes. So far, there have been no inter-state conflicts on these matters.

But it put optional clauses about the complaints presented by individuals and group of individuals claiming to be victims of a violation by state party. And the committee gives opinion accordingly and proceeds over the report and the procedures that have been thus far successful in bringing many states back to transmitting their reports under CERD and enter into a dialog with the Committee. Since 1993 the Committee has developed an early warning indulgent procedure according to which it examines the situation in state parties which consider of being of particular concern.

Principles and rights

Principles	**Rights**
Rule of Law (constitution Preamble)	-
Dignity (Article 10 (1) of the Constitution	Human Right Chapter 3 of the Constitution
Respect(Article 10 (2) of the constitution	-
Separation State and Religion (Article11of the Constitution) No Interference No State Religion	Freedom of Religion Institutions of Religious Education and Administration (Article 27 (2) of the Constitution)
Conduct and Accountability (Article 12 of the Constitution)	Duty to insure and observe (Article 9 (2) of the Constitution)

1. Judicial Human Right

Freedom from Arbitrary Arrest	Article 17 (2)
Right to liberty in General	Article 17 (1)
Right to Human Treatment	Article 18 (1)
Freedom from Compulsory Labour	Article 18 (3)
Right of Persons Arrested	Article 19
Right of Persons Arrested	Article 20
Right of Persons Detained	Article 21
Prohibition of Retroactive Criminal law	Article 22
Prohibition of Double Jeopardy	Article 23
Crimes Against Humanity	Article 28
Religious and Cultural Courts	Article 34 (5)
Right of Access to Justice	Article 37
Right to Appeal to the Council of Constitutional Inquiry or the House of the Federation	Article 84

Chapter II

Emergency Powers

Emergency as a state power should be treated along with the powers of the PM and the CoM along with that of HPR. Here, the Developer has seen it fit to be along with Human Rights for one reason: emergency presents an unavoidable evil which, however, brings about total or partial arrest of constitutional order. And as such, it should be treated as one of the limitation on Human Rights.

The next section will attempt to explore the Article 93 of FDRE Constitution and other major limitations prescribed by some articles of Chapter 3 of the Constitution.

Need for extra powers during Emergency[137]

"Two World Wars have established the lesson that even in an ultra democratic country, the Government would need extraordinary powers in order to be able to meet a threat against the State itself, by situations such as a war or external aggression or even internal rebellion, civil war or the like, which render it impossible for the normal Constitutional machinery to cope with the abnormal situation.

"In a federal country, such extraordinary emergency situation would call for a greater concentration of powers in the federal or national authorities and a greater encroachment on the powers normally assigned to the State Governments.

The problem of Emergency in a Democracy

"Whatever be the form of Government, emergent situations are bound to arise in any country, owing to various factors like war, rebellion, natural disaster, economic or financial breakdown which call for immediate measure to be taken by the Government to safeguard

[137] Durga Das Basu, Human Rights in Constitutional Law (Along with Human Rights Documents), Second Edition, (Wadhawa and Company, Nagpur, India) Reprinted 2005, pp. 537-538.

the stability of the country or the safety of the citizens, which, in order to be adequate, must be different from or in addition to the normal system of administration.

"But in a country having a democratic system of Government such abnormal situation presents a dilemma, because the assumption of any extraordinary powers by the Government must be in derogation of the civil and political rights normally ensured to the citizens by the democratic Constitution.

"A satisfactory solution of the problem can therefore be had only if extraordinary powers are available to the Government to meet such emergencies with the least encroachment upon the rights and liberties of the citizens.

"This problem has been sought to be solved in different countries in *India, U.S., U.K.* different ways. In some, the written Constitution itself provide, as in *India*, with a separate set of provision which come into operation, in different kinds of 'Emergencies'. In some others, is in the *U.S.A.*, though the Constitution does not contain explicit or elaborate provisions to deal with emergencies, extraordinary powers have been inferred from the normal provisions, by *judicial interpretation*. In a country with an unwritten Constitution, such as the U.K. emergency powers are conferred by statue, apart from common law."

"In passing, it may be mentioned that even in countries where a lawful Government or Constitution has not yet been established after a revolution or a *coup*, Courts have upheld the exercise of emergency powers (including preventive detention) by the *de facto* administration on the basis of a doctrine of 'necessity, ...

"The principle of necessity or implied mandate is for the preservation of the citizen, for keeping law and order……. regardless of whose fault it is that the crisis has been created or persists.'

"It is 'necessary' for avoiding a chaos or a vacuum. The existence of a **Doctrine of 'necessity'** State or social order is necessary to protect the citizens themselves and to ensure their minimum liberties or 'human rights'.

"But in upholding emergency powers even on the ground of necessity, the Courts would insist on three conditions, e.g.-

a) The emergency measures are directed to and reasonably required for the orderly running of the State;
b) They do not impair the rights of the citizens under the previous lawful Constitution;
c) They do not run counter to the previous lawful Constitution, and are not intended to strengthen the usurper.

"The doctrine of necessity has also been applied where there is a valid written Constitution but it does *not* provide for any situation of emergency, and a temporary law passed by the Legislature would not be inconsistent with the Constitution. In this case, the maxim *'salus populi suprema lex'* adds strength to the doctrine of necessity and it is *read into* the scheme of the constitution, or as an implied provision of the Constitution.

"Whatever be the mode of acquisition of such extraordinary powers by the Government, it is evident that such expansion of governmental powers would mean a corresponding diminution of the human rights, for, individual liberty in inverse relation to the extent of authority in the hands of the Powers that be….

".. the need for such 'derogation' of the guarantee of human rights is acknowledged by the International Charters on human rights, such as the International Covenant (Art.4) and the European Convention (Art.15).

"Hence, even after it is conceded that the organs of the Government **Impact on human rights** should be armed with additional powers to meet an emergency; vital issues remain to be solved in order to save the human rights from a *total* or permanent annihilation."

Recognition for 'derogation' in the International Charters[138]

"When, after formulating the human rights in the Universal Declaration (1948), the United Nations proceeded to implement them in the form of a legal treaty, it was found that the

[138] Ibid., pp. 538-539.

political systems in different countries were not on the same level and that various exemptions from the obligation to enforce human rights, in emergencies or extraordinary situations, existed in each one of them, which must be conceded in order to induce them to come within the fold of a binding Treaty or Covenant."

What public Emergency or National emergency means[139]

"Before proceeding further, it would be useful to explain what is a 'public emergency', which justifies a derogation from fundamental Rights under Art. 4(1) of the International covenant or Art. 15(1) of the European Convention.

"The text of these two provisions being substantially similar, let us refer to Art. 15(1) of the European convention because there are numerous decisions of the European Court which offer authoritative judicial interpretation of this provision. Article 15(1) of the Convention says.

> *'In time of war or other public emergency threatening the life of the nation any High Contracting party may take measure derogation from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.'*

"The European Court has defined public emergency in this context as

> *'an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organized life of the community of which the State is composed.'*

"The word 'exceptional' means that the situation is such that

> *'the normal measures permitted by the Convention for the maintenance of public safety, health and order ate plainly inadequate'.*

[139] Ibid., p. 540.

Public emergency

Tests of:

"Combining the foregoing two observations, a 'public emergency', which authorizes extraordinary measures derogating from human rights, nay be defined as -

a) An exceptional situation,
b) Which threatens the organized life of the whole community,
c) Which calls for extraordinary measures, and
d) Which are not permitted by the normal machinery of the administ-ration.

"Another test is that the situation of public crisis calling for emergency powers must be of a *temporary* nature, on the termination of which the normal machinery of the State will be restored, free from the derogation. There cannot be any constitutional Government where emergency powers are perpetuated.

Causes of:

"Apart form the war or external aggression by a foreign State, or a domestic armed rebellion, an emergency calling for a departure form the normal order may be caused by act for terrorism and subversion by reason of which the very existence of the State itself is at stake; or by natural catastrophies or economic crises which threaten 'the life of the nation as a whole'. .."

Section I: Kinds of Emergency[140]

"Article 15(1) of the European Constitution explains that a public emergency may be caused by (a) war as well as (b) 'other' emergency which threatens the of life nation.

[140] Ibid., pp. 541-542.

"Since the nature of these two classes differs, it would be useful to deal with the law under these two classes separately.

War Emergency

International Covenant

Article 4 of the International Covenant on civil and political Rights says -

"Article 4.-1. In time of public emergency which threatens the life of the nation and the existence of which is *officially proclaimed*, the State parties to the present Covenant may take measures derogating from their obligation under the present such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. …"

"Hence, 'derogation' clauses have been provided in the International Covenant on Civil and Political Rights (1966), the European Convention (1953), the American Convention (1969) and son on

Limitation and Derogation

"These general 'derogation' clauses must be distinguished from the 'limitation clauses which are appended to the Clause which guarantee the particular human rights, ..

"In the context of derogation, it should denoted that even during Emergency, some of the human rights cannot be derogated form. These are mentioned in Art. 4(2) of the International Covenant and Art. 15(2) of the Convention. These are called non-derogable rights ...

"Many Constitutions explain that 'war' in the present context is not **External aggression**[141] confined to a condition of actual warfare upon a formal declaration of war, but any form

[141] Ibid., p. 542.

off 'external aggression' by which the security, or sovereignty of the State is affected or threatened."

Other Public Emergency[142]

International Charters

"Article 15(1) of the European Convention makes it clear that the emergency which permits of a derogation from the gurantee of human rights may be caused by circumstances other than war, provided they are of such a kind or magnitude as to threaten the life of the nation as whole.

"Subject to this overall condition, such public emergency may be caused by various factors, characterized by a common feature, a situation which demands immediate action, .."

"Such emergent situations, for instance, are:

a) *Natural catastrophe*, such as famine, or pestilence, flood, earthquake, causing destruction of life or property.
b) *Economic* or financial crisis caused by war by continuing even after its termination.
c) An *economic crisis*, like inflation, in time of peace, imperiling the well being of the nation as a whole, so as to require a regulation and control of prices, profits, wages, salaries, dividends and the like. .."

What measures would be justified to deal with the Emergency[143]

"In determining what was 'strictly necessary', the Court would no doubt have to weigh the facts and circumstances of each case and then apply the objective standard of reasonableness, giving due appreciation for the determination by the State which was responsible for maintaining the organized life of the community. …

[142] Ibid., pp. 547-548.

[143] Ibid., p. 582.

"In judging whether a measure was strictly necessary, the European Court took the following factor into consideration-

i) The gravity of the situation;
ii) The safeguards taken for preventing abuse of the extraordinary powers;
iii) The extent of invasion of human rights and liberties;
iv) The manner in which the measure were applied.

"But if these factors are taken into consideration, the standard of 'strictly' necessary virtually becomes the test of 'reasonably' necessary.

"One thing is clear, viz., that the determination by the State concerned as to what was strictly necessary is not final, but is subject to judicial review. .."

"Under all such Constitutions the standard of 'strictly necessary' should be adhered to, in order to conform to the international standard in Art. 4(1) of the International Covenant Art. 15(1) of the European Convention.

Section II: Impact of Emergency on Fundamental Rights: Limits of the Power of Derogation[144]

International Charters

"The International Charter impose certain limitation upon the State's power of derogation from the obligation to maintain human rights, even during a period of emergency or national crisis, e.g.,-

International Covenant: Art.4 (1) as Art. 15(1) of the European Convention: Art.15 (1)

I.

"Article 4(1) of the International Covenant as well Convention lay down European that derogation shall be permissible only "to the extent strictly required by the emergency," as just stated above.

[144] Ibid., pp. 583-584.

"This means that the power of derogation is not absolute and will not justify excessive invasion of human rights beyond what was reasonably necessary to overcome the crisis in question. On this question the determination of what measure were necessary rests *primarily* on the State concerned but such determination is not final but is subject to judicial review.

II. Both the International covenant and the European Convention provide that no derogation will be permissible where it would be 'inconsistent with other obligations of the derogating State under international law', e.g., where is a party to a human rights treaty which does not permit of any derogation.

III. Article 4(1) of the international Covenant further provides that derogation will not be permissible so as to 'involve discrimination solely on the ground of race, colour, sex, language, religion or social origin'.

IV. Some of the vital human rights cannot be derogated from at all
According to Art. 4(2) of the International Covenant, these non-derogable human rights are-

Rights which cannot be derogated front even in Emergency

(i) Right to life (Art. 6).
(ii) Immunity from torture or inhuman treatment (Art.7).
(iii) Freedom from slavery or servitude (Art. 8(1)-(2))
(iv) Immunity from imprisonment for non-fulfillment of contractual obligations (Art.11).
(v) Immunity from retroactive or *ex post facto* criminal laws and penalties (Art. 15).
(vi) Right to be recognized as a person before the law (Art.6).
(vii) Freedom of thought, conscience, religion (Art.18).

The category of non-derogable rights stems from the concept that some human rights are 'inalienable' so that they cannot be taken away even when the existence of the State itself is at stake, e.g., the right to life, dignity or to humane treatment.

Together with the foregoing list of non-derogable right, the supplemental provision in Art. 5(1) of the International Covenant (Art. 17 of E.C.) should be noted, which, in the present

context means that whatever measure may be permissible for a government in an Emergency, nothing would be permissible which has, for its object the suppression of human rights."

Propositions for questions that matter

a) Emergency is essential extra-constitutional means of governing. Yet, because it is an unavoidable evil, international Human Rights instruments, particularly ICCPR as well as our FDRE Constitution under Article 93 have chosen to regulate it all the same under stringent mechanisms.

1.1 Emergency is declared by the Federal Government where

1. An external invasion,
2. A break-down of law and order occur which endangers the constitutional order and can not be controlled by the regular law enforcement agencies and personnel.

1.2 When a natural disaster or an epidemic occur.

1.3 By state executives can be decreed should a natural disaster or an epidemy occur

b) Emergency declaration of emergency is primarily a function of the executive. Such a decree should be made by the PM according to Article 27(10).From the very time of it is declared, unless otherwise stated in the decree itself, it becomes forthwith executable law, but subject to:

2.1 submission to and approval by HPR within the prescribed time limits set for both and by two-third majority. (If each and every of these is not met, shall be considered as repealed.)

2.2 again by two-third majority, HPR may allow such a Proclamation to be renewed every four months, successively.

2.3 Council of Ministers has to issue regulation to administer such a situation and use its power to the extent it is necessary,

1. to protect the Country's peace and sovereignity; and
2. to maintain public security, law and order.

c) CoM has the power to suspend democratic rights to the extent necessary to avert these circumstances, but it may not (mandatory) suspend the:

1. federal democratic republic nature (Article 1);

2. prohibition of inhumane treatment (Article 18); and
3. right to equality (Article 25, and Rights of Nationalities and People's – Article 39 (1) and (2) only).

d) The HPR has to establish Emergency Inquiry Board comprising of seven members (from its own and from legal experts), which would have the powers and responsibilities enumerated under Sub-article of Article 93.

Questions that matter

1. Should states be empowered to declare emergency? The circumstances which enable them to do so are shown above. Is it a restriction in itself?
2. Are the restrictions put against the Federal Government applicable to state executive and its council, respectively?
3. Under Sub-article 3 of Article 93 HPR has the power to renew the Emergency Proclamation every four months, successively. Hor how many times, successively?
4. HPR can suspend democratic rights; i.e. from Articles 29 - 44. How do you see this? Does this mean that Articles 14 – 28 are non-derogable. (See derrogable and non-derrogable ones under ICCPR.)
5. The above being an excepting clause in itself, Sub-article (c) of the same further goes to except 4 rights as non-derrogable.
6. How do you see making exception of exception? At the end of the day, which ones are actually the non-derrogable ones; i.e. the entire block of natural rights (Art. 14-28) or the above 4 categories, of which again, only Sub-article 1 and 2 of Article 39 are included?
7. See the powers and responsibilities of EIB. Do you consider it to be a sufficient checking mechanism?
8. The EIB is required to make public the names of arrested individuals. How about the disappeared? How about the death? If death is not included under emergency cases, then, in view of the fact that life is more precious than any of the rights made derrogable, wouldn't this necessarily imply that the Right to Life under Article 14 is non-derrogable?
9. Who is entitled to call the attention of pertinent bodies to look into matters of Human Rights abuse – citizens or residents alike? (See the recently Civil Association Proclamation.)

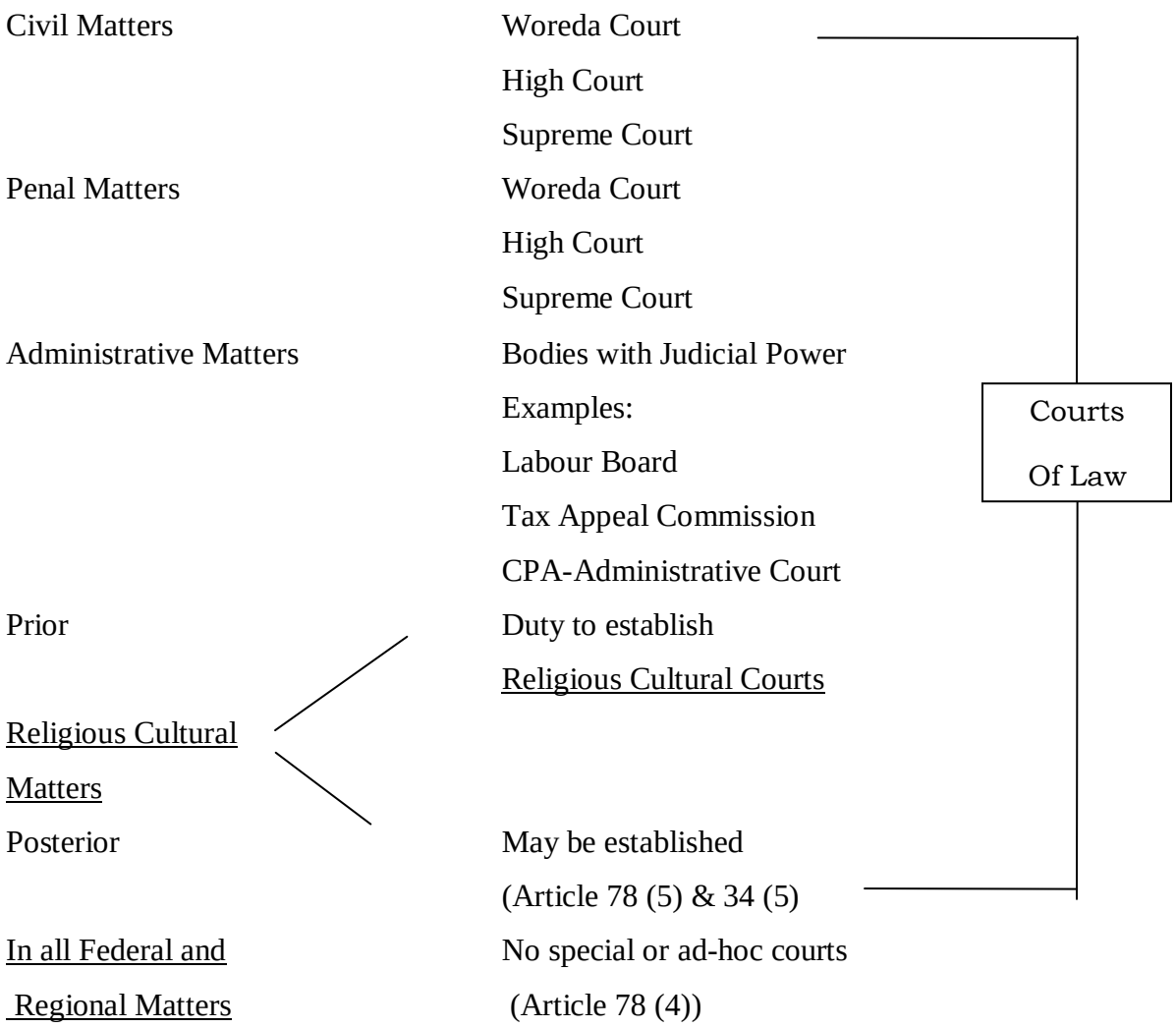
Chart 1: Classification of Human Rights

Individual Rights		Democratic Rights	Collective Rights	Social rights and Programs
Freedom Rights	Equality Right			
Right to Life, Liberty and the security of the Person Article 14	Right to Equality of Citizens Article 25	Right of Thought, Opinion and Expression Article 29	Rights of Nations, Nationalities and Peoples Article 39	Economic, Social and Cultural Rights Article 41
Right to Life Article 15	Rights of Citizenship Article 33	Right of Assembly, Demonstration and Petition Article 30	Right to Property Article 40	International Agreements ensure the country's right to development Article 43 (3)
Right to the Security of the Person Article 16	Marital, Personal and Family Rights Article 34	Freedom of Movement Article 32	-	Aim of development policies shall be to enhance capacity of citizens for development Article 43 (4)
Right to Liberty Article 17	Rights of women Article 35	Rights of Women article 35	-	-
Right to Humane Treatment Article 18	Rights of Labour Article 42(1) Rights of women workers Article 42(1)(d)	Right to vote and to be Elected Article 38	-	-

Chart 2: Rights of Arrested or Accused Persons

Right of the Arrested	Article 19 (1)	Prompt Information Language
	Article 19 (2)	Right to be Silent
	Article 19 (3)	Right to appear before court
	Article 19 (3)	Right to be given full explanation
	Article 19 (4)	Right to petition (habeas corpus)
	Article 19 (5)	No coercion to confession
Right of Persons Accused	Article 20 (1)	Right to Public trial
	Article 20 (1)	Court of Law
	Article 20 (1)	Reasonable time
	Article 20 (1)	Right to Privacy
	Article 20 (2)	Right to be informed in writing
	Article 20 (3)	Right to be presumed innocent
	Article 20 (4)	Right to full access to evidence
	Article 20 (5)	Right to be represented by a legal counsel
	Article 20 (6)	Right to recourse by way of appeal
	Article 20 (7)	Right to an interpreter
Right of the Arrested (Article 14 and 15 of the Covenant)		
Right of the Arrested (Article 14 and 15 of the Covenant)		

Chart 3: Access to Justice Article 37



Chapter III

Constitutional Interpretation and Creating Nexus with (Mainstreaming) of Constitutional Values

Section I: Principles of Interpretation in Continental and Common Law Systems[145]

General

The purpose of this section is to make clear rules of constitutional interpretation, for which Provision is made in Articles 82-84 of FDRE Constitution. This task is given by the Constitution to two organs, namely to The Council of Constitutional Inquiry (CCI) and the House of the Federation. "Do Member States of FDRE have similar power to review and control State Laws and the laws of the Members States?" is a question that needs an inquiry by its own merit. Practice has already established the procedure for the House of Federation and set out some basic principles. According to Article 7 of this Proclamation, the House of Federation is required to identify and implement principles of constitutional interpretation, which it believes help to examine and decide constitutional cases submitted to it. A similar provision is contained in Article 20 of Proclamation No. 250/2001. Naturally these Articles do not refer to different bodies of principles of constitutional interpretation, because the principles applied by the Council and by the House of Federation are identical.

Article 31 of Proclamation 250/2001 similarly requires the rulings of the House of Federation to set out details of the constitutional issue and the justification of the ruling. This manual should also be useful in this context. It should also be useful for government bodies; which, also have to submit explanations with regard to the constitutional issue to the House. Such bodies must be able to apply the principles and methods of constitutional interpretation.

Finally the parties to a court case, who have the right to approach the Council, or disputants outside the court case, must also be made aware how the Constitution should be applied and

[145] Paper presented by Heinrich Scholler on Constitutional Interpretation presented here, in Addis Ababa, Ghion Hotel, 2002, (Unpublished),

how the law must be interpreted. Article 23 of Proclamation 250/2001 will also be of particular importance in that it controls acts of the administration.

The position under the 1995 Constitution differs substantially from the previous ones; i.e. the 1955 Revised Constitution follows the American system of judicial review.

Articles 82–84 of the FDRE Constitution deal with constitutional interpretation or constitutional disputes, which are to be entertained by the House of the Federation. However, in court cases, in which a dispute concerning the Constitution or its interpretation arises, Article 84 No. 2 provides a specific procedure under which the Courts must first submit the matter to the CCI before the final decision is given by the House of Federation. Article 84 No. 2 has the following wording: *"Where any Federal or State law is contested as being unconstitutional and such a dispute is submitted to it by any court or interested party, the Council (of Constitutional Inquiry) shall consider the matter and submit it to the House of the Federation for a final decision".*

With regard to the concept of Law, it must be considered that law in Article 84 No. 2 seems only to refer to formal enactments of Parliament, but as per Article 2 (2) of Proclamation No. 251/01 Regulation, the respective commanding Ministries or Agencies, which are based on an empowerment by Parliament, have the status of formulating laws as well; which are, accordingly, not excluded for constitutional review by CIC and HOF.

The general rules of legal interpretation must therefore be first explained. This explanation will, however, be combined with the principles of constitutional interpretation. The Constitution itself – as well – is in form a law at the highest hierarchical level (Supreme Law). While interpreting the Constitution, it often will be necessary to interpret the law; i.e. the conformity of the law vis-à-vis the Constitution must be controlled.

Specific

Ethiopia belongs to a category of Countries which have codified law (Civil Law), and – therefore – belongs to those Countries of the European Continent such as France, Germany

and Italy; i.e. Countries which have codes, in different legal fields (Civil Code, Penal Code and so on) – the so-called Statutory Law.

On the other hand, there is the so-called family of Common Law, to which Great Britain, Canada, Australia, New Zealand and to a certain extent also the USA belong. While the family of Codified Law developed principles of statutory interpretation (legal interpretation), the family of Common Law Courts developed (judge-made or) case-made law. (Naturally, in modern times, Countries having Common Law have an increasing number of statues, just as the importance of cases or judge-made law is growing in Countries with Codified Law,). There was and to a certain extent still is an important difference in that; the Common Law Countries still prefer a strict interpretation of statutory law, while Countries of Codified Law apply, as a matter of principle of legal interpretation, *the Intentional/the Purposive or the Systematic Interpretation* as to what regards to statutes. This principle that statutory law has to be interpreted in a strict or literal way is not – therefore – applicable to the Ethiopian Law. The following parts of the *manual* are mainly concerned with interpretations made by judges, the Constitutional Council (COCIQ) and the House of the Federation. Legal interpretation and – especially – constitutional interpretation can be done by competent authorities like Courts, the law-giver itself or the professional law teacher. In Ethiopia, the ordinary Court is not entitled to give judicial interpretation which is transferred by Articles 82-84 to the CCI and the House of the Federation. In addition to the Courts, there is the so called authentic interpretation by the law-giver. This means that the legislator himself decides by definition or amendment how the law should be applied (authentic interpretation). The Ethiopian practice of putting definitions of legal terms at the beginning of proclamations is based on the Anglo-American practice, while the Countries of codified laws base themselves on the presumption that all notions used in a code have the same meaning and function, so that definitions at the beginning are not necessary; Proclamations 250-259/2000 are also instances of authentic interpretation.

The principles and problems of legal interpretation in Ethiopia were clearly described by Krzeczunowicz.[***]

Under present Ethiopian law, such refusal to pass judgment might be charged as a breach of official duty unless the various Codes of Procedure provide otherwise; which the Penal

Procedure Code of 1961 does not. The article by Professor Krzeczunowicz was naturally written a long time before the enactment of the 1995 Ethiopian Constitution. The provisions in Articles 82-84 of the Constitution are therefore a legal rule (contained in the Constitution itself) to abstain from a decision, to suspend the case and present it to the CCI**.** The Article quoted continues as follows:

> *"As already mentioned, Ethiopian judges may not stay a case demanding legislative interpretations. But this does not prevent the Government from demanding that a clarifying provision should be enacted ... Such enactment would not constitute a new Provision, but a legislative interpretation.*
>
> *"Such legislative interpretations (as distinct from direct amendments) of prior law are a rarity. More frequently, a law contains, from the outset, a section defining the main terms used in it. This technique, somewhat unfamiliar in Continental Europe, is prevalent in Common Law countries and has in recent years been introduced in Ethiopia."*

In addition to these two kinds of legal or constitutional interpretations, the third kind is that of the judicial interpretation by Courts or Quasi-Courts - which plays a more important role. The decisions of Constitutional Courts in countries with codified law like Germany, Italy, Spain and Portugal have, however, no binding force with regard to Courts and their future decisions. The procedural law concerning constitutional jurisdiction contains special provisions to make the decisions binding for all other public authorities.

In the USA the decisions of the Federal Supreme Court are binding under the so-called *"Stare Decisis"* doctrine. This doctrine says that the decisions of Federal Supreme Court must be followed by all other Courts.

As Ethiopia belongs to those Countries with codified law, even decisions of the Federal Supreme Court of Ethiopia are only binding between the parties involved. Moreover, Ethiopian court cases are only exceptionally published and have, therefore, little influence outside the Courts. This is also necessary in the case of the two procedural laws enacted with regard to the procedure before the CCI and the HOF. Ethiopian law has consequently introduced a rule to make decisions of the House of the Federation in cases of constitutional interpretation binding and to require the decisions to be published as pen.

(1) The final decision of the House on constitutional interpretation shall have general effect which therefore shall have applicability on similar constitutional matters that may arise in the future.
(2) The House shall publicize the decision in a special publication to be issued for this purpose

Here, author would like to quote again from the already mentioned article of Krzeczunowicz in which he well describes the activities of the courts in analyzing facts and law in order to produce the so-called *living law.*

> *"Judicial interpretation is that which emanates from a court when in order to decide a case it applies a law whose meaning is discussed before it. Such interpretations are called quasi-judicial when emanating from an administrative organ in adversary proceedings.*
>
> *"Many judgments involve no interpretations, only simple applications of law. The meaning of the law to be applied to the facts contended is often not disputed. The case is then won by the part who proves his facts. Appreciation of evidence on facts lies, within few legal limits, in the court's discretion. The facts once established, application of a clear rule to them will follow without need for interpretation. For instance, the fact of me having borrowed ten dollars from you may be denied without questioning the rule that, if so borrowed, they should be repaid.*
>
> *"Where a law's meaning is disputed before the court, the decision involves its interpretation. A line of similar interpretations leads to what some called "settled" case law or judicial custom. Judicial interpretations thus become a source of law. "In the judgments alone is to be found the law in its living form." This is hardly the case in Ethiopia, where most judicial opinions are not exhaustively researched and being largely unreported, cannot be really "found"."*

In both legal systems (Continental or Codified Law, in the one hand, and Common Law on the other) there are canons of theories or methods of legal and constitutional interpretation. There is however no rule which theory or method – the *literal*, the *intentional* or the *purposive* – should be applied or should have preference. However there is a certain tradition that legal and constitutional interpretation should always start with the literal theory or method. There are basically four main groups of theories or methods of interpretation: the literal, intentional, systematic and teleological.[4***]

When it is desired to establish how the Constitution controls state activity in a particular field, it is necessary first to ascertain the meaning of the relevant constitutional norms. To do this, the following criteria of interpretation, the so-called canons of interpretation, are traditionally applied: verbal meaning, grammatical construction, statutory context, intention of the original legislator and teleological aspects.[5] The application of these criteria to establish the meaning of a norm in the context of a particular set of facts implies that the legally relevant facts can both be extracted and constructed from many circumstances. Interpretation and establishing the facts of the case are woven together. Norms are formulated and passed with reference to reality. The choice of relevant facts and conceptual definition contained in a norm depends on the choices and values of the legislator. The law-giver has a certain picture (perception) of reality, which is reflected in the law and is combined with legal regulations. While the law-giver has embedded the reality in a law, the judge attempts to discover this perception from the letter of the law.

Interpretation is a process in which the interpreter starts from the literal meaning of the words used in the law. In this process he has to detect factual elements, intentions and purposes and even aims and goals to establish the true meaning of the constitutional provision and the law in question. In doing this, the person who applies the norm draws on the experience of the person who made it. But he must also deal with new apparitions; i.e. examining and evaluating these to see if they are covered by the norm. This is the main function of interpretation. Each case of interpretation perceives reality from the viewpoint of the norm. It is thus creative, but still guided by the norm.

In Germany, constitutional interpretation has been treated since the beginning of the last century as a special case of statutory interpretation. Indeed, some authors discussed it quite

separately form statutory interpretation. There are considerable objections to this approach. In this manual the constitutional interpretation is presented not as something different from the statutory interpretation, but as a special kind of statutory interpretation, so that most of the operations and theories of statutory interpretation can be also applied by the interpreter of Constitutional Law.

Public Law is basically required to be just as clear and workable as Private Law. Moreover, since the application of Public Law concerns the separation of powers and problems of competence, even higher standards should be demanded. This is particularly true for Constitutional Law. It therefore needs no distinct method of interpretation.

It is often assumed that there is a distinct interpretative methodology to be employed in dealing with Constitutional Law. But even when additional tools of interpretation are employed, the classical canons of interpretation are indispensable. These help primarily to *"clarify the possible shades of meaning of verbal uncertainty".* The interpretation of any legal text demands the consideration of verbal meaning, grammar, logic and systematic and historical development. Imagine a judgment on a controversial issue which did not do thus. It would be inadequate, if not totally arbitrary; as it would be a method employed by supporters of a distinct theory of interpretation for Constitutional Law.

Additional aspects of constitutional interpretation generally required are "*the unity of rule of the Constitution", "practical coherence"* and *"appropriate working".* These rule-out the Constitution in isolation of a single constitutional norm and demand that the rest of the Constitution be taken into consideration (systematic interpretation in Continental Law or international/contextual interpretation in Common Law Countries). The three aspects referred to turn out to be simply applications to Constitutional Law of the canon of systematic interpretation. Other methods of interpretation, which are less closely directed to the norm in question, have been changed to supplement the traditional canons of interpretation. New directions in constitutional interpretation demand:

- A topical approach, distinguished by an unlimited extension of interpretative method.
- A democratization of constitutional interpretation.

- An interpretation of scientific realism which considers the social function of the Constitution; the consciousness of the citizen, cultural norms (derivative of the so-called *teleological* or *value-oriented theory*).
- An integrating interpretation, which depends on the position of the political players to achieve a positive outcome of political discussion (derivative of *purposive* and *theological theory*).

The above methods are hardly designed to control the practical business of constitutional interpretation. A methodological free choice is not possible. One can divide the various approaches in to two groups. The first group is distinguished by the fact that it isolates the text to be interpreted from the context. The interpretation of a single norm is explored with great imagination but without regard for its history or position in the overall structure of the Constitutional Law. The individual legal norm must be connected with outside elements which are called extra-contextual sources like drafts, discussions in parliament, the social context, and so on (derivative of the *theory of intentional interpretation*) The division of function between legislation and constitutional review must always be kept in sight and care must be taken that the interpretation follows predictable criteria, as the legitimacy of constitutional review rests on this.

The fact that the constitutional interpretation gives the authority the look into the future, for integrating different tendencies and groups in society and to make the Constitution a living one, shows also the high importance and responsibility of Courts or institutions concerned with constitutional interpretation.

In German Law the Constitution also guarantees a constitutional complaint to be lodged to the *Constitutional Court* (Article 93, Paragraph 1No.4a Basic Law). In such a case the administrate act or the court decision, which should be controlled by virtue of the Constitution, must be based on the law (the statue). And this law (statute) itself has to be examined to determine whether it is violating the Constitution or not. On this level of control, all the methods and theories of statutory and constitutional interpretation have to be applied. In Ethiopia, according to Article 23(1) and Proclamation 250/2001 *"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."

According to the principle of the legality of the administration, an act of government which limits the rights of individuals has to be based on a legal enactment. This legal enact met will therefore be the object of a special process of constitutional interpretation. As a result, we can say that the procedure is similar to the regulations covered by the German *Constitutional Courts*. The CCI, moreover, according to Article 20(1) of Proclamation 250/2001, also has to develop and implement principles of constitutional interpretation, which are naturally identical with those mentioned in Article 7 of Proclamation 251/2001.

The following explanation of legal or statutory interpretation is mainly based on the Common Law as it is used in English speaking courtiers of Africa and especially in South Africa. South African law has the additional advantage that there is a constitutional review granted by the new legal order and that in addition to Common Law, South Africa also knows the codified law system which goes back to Roman Dutch Law. At the end of every section a special remark is added with regard to constitutional interpretation. The number of enumerated theories of interpretation in Common Law seems to be higher, but this is only because the so called *systematic theory* in Continental Law is divided in Common Law into various separate aspects of interpretation.

Words in any legal document or statute must be given a legal meaning. Often the mere literal interpretation does not reproduce the meaning of the provision. And, therefore, in order to achieve this, words must always be read in their context. Context means both internal elements of the statute (drafting and parliamentary debate) and external elements (other legal provisions, socio-economic conditions, etc..). The context involves language, law, and jurisprudence.

Legislative interpretation is therefore three-dimensional in character. The legal context is embodied in the internal and external elements, which can be used as instruments of interpretation. Words can never have a legal meaning devoid of their context. Legal interpretation involves an evaluation of both linguistic and non-linguistic considerations to ascertain the meaning of words through a process of understanding.

Words should therefore only be given their ordinary grammatical meaning if such a meaning is compatible within their complete context. In most cases, the legal meaning of the words of a statute is the same as the ordinary grammatical meaning of the words used. If this were not the case the communication between governmental authorities and the subjects of the State would become completely frustrating; because then, they would speak two different languages. There is no assumption, even if the ordinary meaning of the words used in a statute is clear and unambiguous, that such ordinary meaning is the legal meaning. In each case the interpreter must complete the process of interpretation. This is achieved by reading the words in the light of their immediate linguistic context as well as their wider legal and jurisprudential context; because there are two different types of contexts, the linguistic context, and the legal one. The process of interpretation, therefore, starts with the ordinary grammatical meaning of words, but should never end with it. Even words that are clear and unambiguous must be subjected to the process of legal interpretation, which involves the canons. The extension, restriction, and modification of the ordinary meaning of words may be necessary to give expression to the intention of the legislature and to establish the legal meaning of words using the context of the legislation.

In the Common Law, in addition to the principles of interpretation, there exist so-called presumptions. These so-called presumptions are principles of the Common Law that have acted as a surrogate for a Bill of Rights in the Ethiopian law. They are in Common Law indispensable to the process of interpretation and are relevant regardless of the clarity of the language used by the legislature; as Ethiopia has Codified Law and already a tradition of Human Rights guaranteed in the process of interpretation of the Ethiopia Constitution.

Reason and logic are relevant to the interpretation and development of the Law. The concept of justices is inherent in the nature of Roman-Dutch law, and the Courts are obliged to administer law in an independent, reasonable, and just way. It is presumed that the legislature, as a rational entity, formulates laws on the basis of reason and equitable application. Reason and justice are immanent to the judicial process as a whole and are, therefore, relevant considerations in interpreting legislation.

Teleological evaluation requires not merely knowledge of rules and principles but also a judicious co-ordination of them. The coordination inherent in teleological evaluation is

essentially a skill to be mastered; not a series of rules to be learned. The Interpretation of statutes is therefore not essentially a technical or mechanical operation. It involves a process of evaluating language, law, and jurisprudence. In the Common Law it is – therefore – profoundly influenced by the underlying jurisprudence of the judiciary and individual judges. In detail, the following series were developed in the process of interpretation of statutes in Common Law Countries:-

- literal theory,
- subjective theory,
- purposive theory,
- teleological or value-coherent theory,
- systematic or comparative theory,
- judicial or free theory,
- objective theory or delegation theory.

Although the legal situation under the new Constitution is completely different, it is still helpful and interesting to know the former legal and theoretical situation. Krzeczunowicz wrote with regard to this problem the following, which reflects the approach to the problem in Anglo-American Law.

> *"If laws were to be explained in many different ways, legal security would founder. Interpretation of laws is governed by certain widely accepted rules, often dating from Roman times. Such rules, evolved by commentators and accepted by judges, are based on logic and common sense. No such rules of interpretation are extinct from the works of past Ethiopian commentators (if any) or judges. In other words; there exists in Ethiopia no doctrinal or judicial custom as to applicable rules of interpretation. For this reason, the Civil Codes of 1955 draft apparently introduced in a special Book on "Application of laws" some rules of interpretation. This Book has been excluded from the Civil Codes final version enacted in 1960. Does this mean that one can explain our laws arbitrarily as one likes? By no means [this is acceptable]. [C]ertain basic rules of legal interpretation have wide recognition throughout the world. The Ethiopian legislator seems to sanction them indirectly through making them applicable to contracts. We shall quote those rules, in adapted form, substituting "law" for "contract", and*

> *"legislator" for "parties". On the other hand, the principal rules used in everyday judicial discussion are in the Latin form given them by the old jurists. We shall continue this usage in discussing the rules to be applied, respectively, where the law is: (1) clean, (2) ambiguous, (3) silent, (4) contradictory, and (5) unreasonable."*

The article of Krzeczunowicz then deals mainly with the legal interpretation of the Ethiopian Civil Code and is not, therefore, very relevant for the problems of constitutional interpretation under the 1995 FDRE Constitution.

It is also interesting that Krzeczunowicz's article does not start from the different theories of interpretation but from the deficiency of a provision or even a single word of a norm. Naturally, also a provision of the Constitution can be clear or unclear or ambiguous, like any a provision of Civil or Penal Law. It is regrettable that the law to introduce the Civil Code, which would have contained rules of interpretation, was not enacted because those rules could also have become legal principles for constitutional interpretation.

Literal Theory

The literal theory was the dominant method of interpretation of statutes in England, but less so in the United States. The reason for this difference is that England had no written Constitution. Moreover, in the English legal understanding, statutory law was always to be seen as something which was both outside the Common Law and which limited it. On the Continent, on the other hand, the *literal theory* or literal interpretation had long ago given way to the intentional interpretation or the other different theories. The same is naturally also true for constitutional interpretation. The literal interpretation could be seen as to be somewhat naïve because the words do not by themselves determine the legal meaning but have to be interpreted in their legal context or by going back to the intent of the law-giver. The relationship between words and their meaning is not mathematical or quantitative. According to the theory the following rule was accepted: *"Words should be generally given the meaning which the normal speaker of the English language would understand them to bear in the context, in which they were used."*

This rule must be applied from the simple interpretation of laws (legal interpretation) as well as for the constitutional interpretation. However, there is a very specific problem for the application of this rule in Ethiopia. The six Ethiopian Codes and also other proclamations were drafted first in English or French by foreign experts who also used words and meanings of high cultural and linguistic background. However, the Ethiopian Law provides that all laws – including those used in the Constitution – have to be applied in the Amharic version (Article 5 No.2 of the Constitution).

The problem of language and law in Ethiopia was already discussed by Ethiopian and foreign legal experts at an early stage. In some cases the literal interpretation of the Amharic-version could lead to the question whether the Amharic word really covers in full the meaning expressed by the English word. This is of special importance for constitutional interpretation based on Chapter Three of the FDRE Constitution 1995, where the fundamental rights and freedoms are guaranteed. With regard to Chapter 3, Article 13 (2) provides the following: *"The fundamental rights and liberties contained in this chapter shall be interpreted in conformity with the Universal Declaration of Human Rights, International Covenants on Human Rights and Human Rights and international instruments adopted by Ethiopia."*

Nevertheless, as far as the international jurisprudence on fundamental Human Rights and Liberties are concerned, which correspond to the fundamental rights and liberties guaranteed in the Ethiopian Constitution, it is the English version which is relevant. Also Article 9 of the Constitution refers to international conventions to which Ethiopia has agreed; Article 9, IV: *"All international agreements ratified by Ethiopia are an integral part of the law of the land"*; meaning all those six international conventions are the laws of Ethiopia; in so far as they also grant rights and freedoms, which are found in the third Chapter of the Constitution, the rule of Article 13(2) must be applied. This means that not just the Amharic version but the English version and even decisions concerning those international documents on Human Rights and Freedoms must be taken as overriding the provisions of the Constitution and the ordinary Ethiopian Law must be and remain in conformity with those guarantees. Thus, in respect of Human Right provisions of the Constitution International Law takes precedence over the Constitution. And, as such, Article 13(2) is an exception to 9(4). So, would in like manner the English version be taken as having precedence over the Amharic. (Developers own proposition.)

Thus words should be given their ordinary, grammatically natural meaning at the first step of the interpretation process. However at the second step, the context of the statute has to be taken in to consideration, and it may be necessary to continue the interpretation process by having regard to the intention of the law-giver, the purpose of the law or the aim (*Telos*) of the statute.

The Commonwealth Countries have more or less abandoned this literal approach. Today, in the United Kingdom and in the other Commonwealth Countries, there is a tendency by the Courts to adopt a more holistic law approach, namely that there is only one rule or principle whereby the words of an enactment have to be read in the entire context; in their grammatical and ordinary sense together with the purpose of the act and the intent of the law-giver. However this tendency cannot be recommended because it makes it even more difficult to reach to a sound conclusion. It seems to be sound to select one or two of these different theories and their methods in order to reach at an acceptable solution.

In general the Common Law Countries still tend to lean more towards the literal interpretation of statutes, while the United States and the continent prefer either an interpretation according to the purpose or the *Telos* (*Teleological Theory*) interpretation.
To the constitutional interpretation of the above mentioned general principles should also be applied the following orientation.

- Bills of rights are usually formulated in a particular style and the words and phrases used have a technical meaning of their own.
- A Constitution and Bill of Rights are expressed in a broad and specific style. A wide meaning is therefore particularly significant in the context of constitutional interpretation.

Courts have recognized the Preamble to an Act and the headings to its chapters and sections as, structurally, part of it, but have used them as aids to statutory interpretation only in those instances where the language of a provision is ambiguous or uncertain.

In Canada the Preamble to the Charter of Rights and Freedoms, and especially the reference to the *Rule of Law* it contains, is used to an increasing extent in the interpretation of the Charter even in instances where there is no ambiguity or uncertainty.

Although the headings of the chapters and sections of a Constitution are not purposeful statements to the same extent as its preamble, a systematic and teleological approach to constitutional interpretation requires that they should not only be relied on in instances where the language of a provision is inadequate. Their statutes, as interpretative aids, comes from the assumption that the constitutional legislature has given due consideration to the systematic division of the Constitution. The presumption is premised on an assumed consistent use of intra-textual constituents (or units) of meaning, which are repeated throughout one and the same text. The *economic* use of language in a Constitution and in any Bill of Rights, however, means that the rules of linguistic economy should be applied in preference to this presumption. Linguistic economy also means that each different word and phrase in a legislative text is to be afforded a meaning of its own. Likewise, any text has a history and is itself a historical *even.*

A similar strategy could be considered in the case of constitutional interpretation. Certain provisions of a future Constitution may, for instance, be similar to some of those in even the former Constitution or its predecessors.

Intentional or Subjective Theory

This theory and its method have to be applied when there is a discrepancy between the will of the law-giver and wording it uses. Here, it would be appropriate to ask:- "Shall the interpreter (the Court) go back to the real intent of the law-giver (Make use of *Subjective Theory*)? In such cases, the context, as an outside element (external resource), might also be helpful. The intent of the law-giver might sometimes be sought from the internal elements and quite often from external elements; i.e. like drafts, parliamentary discussions, and the like.

Also the subjective theory (called old theory) of the legislative intent is based on the experience that the formulation of a law is not always identical with the idea or intent of the

law-giver. This distinction between language and thought is not specific to the Anglo-American interpretation, but is also found in the descendant laws of Roman law.

Actually this subjective theory or theory of intent of the law-giver is based on an analogy that the law-giver has a will in the same sense as a single human person expresses his/her intent or will. This means that we are accepting that the intent of the lawgiver is in reality a fiction. There are also two different ways to detect the subjective meaning or the intent of the law-giver:

> *"The first way would mean to find out what the draftsmen or members of parliamentary committees wanted to express in their comments or papers. Sometimes it might be possible to find out what the legislator really meant when he used a certain word or a certain language.*
> *"There is however a second way, which is to find out the aim of the lawgiver in changing the policy of the existing law or in correcting an inadequacy in it. The same is also sound as a fiction, and, as such, the aim of the legislator must be carefully detected out of the law giving process. This form of subjective interpretation is very close to another method which will be explained in the next section; that is the so-called interpretation according to the purpose of the law or the lawgiver."*

In continental jurisprudence, an additional approach to discover intent is used: this is the so-called historical method. To detect the subjective meaning or the intent of the lawgiver, the historical development is taken into consideration; by, especially taking note of the laws which existed prior to the law. In the Ethiopian context this could mean that the interpreter has to find out the intent of the lawgiver – say for example – in the Revised Ethiopian Family Law. In doing so, the judge should then see the provisions of the Civil Code on family law and then go back and see Rene David's comment. Then one has to compare these with the relevant provisions of the current Family Law. This would definitely help discern the law-makers intentions.

In 1584 the so called *Barons of the Exchequer r*esolved an Act which reads as follows: *".. for the sure and true interpretation of all statutes in general (be they penal or beneficial restrictive or enlarging of the common law) four things are to be discerned and concerned:*

(1st) What was the common law before the making of the Act. (2nd) what was the mischief and defect for which the coon law did not provide. (3rd) What remedy the Parliament hath resoled and appointed to cure the disease of the commonwealth. And (4th) The true reason of the reedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief and advance the remedy and to suppress subtle inventions and evasions for continuance of the mischief and pro privato commodo and to add fore and life to cure and reedy according to the true intent of the makers of the Act pro bono publico.''[12**]
The historical method of interpretation is always of importance when one has an additional or amendatory statutes, and when this new law was preceded by others pieces of laws. This kind of historical research and comparison makes it easier to understand the aim of the law-giver which enacted the new rule.

The first way described above in detecting the subjective meaning of the law or the intent of the lawgiver comes close to the literal interpretation. The two methods of interpretation – the method of literal interpretation and the method of interpretation according to the intent of the lawgiver – lack continuous time frame. This means that the rule, which has to be interpreted by the judge, not only has its own history and is placed in a historical development, on the one side, but it also has to be interpreted to solve disputes in the future. If the judge would neglect this time frame, the law would lose its dynamic function and become rigid.
For interpreting Constitution, the above mentioned general principles should find their application with due consideration of the following orientation.

It will be necessary to take account of surrounding circumstances whit special reference to preceding deliberations. Amendment to a Constitution is made only where it is found necessary to meet exigencies of ne development, for a Constitution must be capable to meet new technological, social, political, and economic realities, often unimagined by its framers.
It must be remarked, however, that in the Continent and in Common Law Countries, very often, the literal and intentional theories are actually found in a mixed form.

The Purposive Theory

The purposive theory does not seek to identify either the literal meaning of a provision or the intent of the law-giver, but rather to discover the purpose of the ruling. Contrary to the

subjective theory, the purposive theory can be said objective and much more general with regard to the interpretation of a rule or regulation. This theory does not look at the always doubtful intention of the law-giver, but at the objectives of the law as a whole rather than at the specific rule which is to be applied. The purposive theory looks beyond the manifested intention. In the Common Law literature we find the idea that the purposive method is based on the fact that the law is not something logical but a communication between the law-giver and the public. This communication is by nature purposive. Here, the interpreter must find out the purpose or design of the legislation or specific rule which the judge has to apply. To discover this purpose, the interpreter has to use a contextual approach; an approach which allows the examination of all internal and external resources. In such instances, a method, which is called the contextual approach, is employed; a method that prescribes that the regulation or the very specific rule in question be put into the whole system of the enactment or even the code itself.

Sometimes it might be sufficient to use the context of the specific institution, for instance the institution of marriage, to define the rights of a father and mother or a husband and wife. Although it would not be necessary to go beyond the institution of marriage, it might also be useful to take the whole family law concept into consideration. In this contextual approach we use external and internal sources. This makes it necessary to look not only into the law making process – into statements of the draftsmen or the committee members (internal sources) – but also at other areas of law as well as statements and opinions given in public by politicians or law experts (the so-called environment of the law).

Thus, one can say that the purposive method is the other version of the subjective method not just by the wording, but also by the method it employs. Therefore, this method does not refer to a fiction or quasi fiction, but to objective elements traceable in the process of communication; communication between the law-giver and the public, at large. Articulating the difference in approach of these two and yet attempting to identify their point of convergence, the famous Lord Denning confirmed:

> *"[t]he "social end" of the law, which has to be applied, must be taken into consideration. So the Common Law interpretation method comes very close to the continental one. We can describe this development with the following*

> *phrase. First it was the spirit and not the letter, then the letter and not the spirit, and now the spirit and the letter."*

The difference we observe in the two systems (in America and England) can partly be attributed to different courses of development of their respective judicial systems. On the one hand, there was no judicial interpretation in the legal system of Britain, as it was based on the sovereignty of parliament. English Courts tended to apply the intentional method, while the American Courts preferred the purposive method of interpretation.

When we come to the Ethiopian case, present circumstances demand an interpretative adaptation of the provisions of the Constitution to the demands of the situation. This in turn implies that the CCI and Hof have to be constructive and creative in their interpretation with the view to explore the potential meaning of the broadly phrased texts of FDRE Constitution. Ethiopia's Codes have been drafted on the basis of Continental Law (mainly French and Swiss Law); i.e. the purposive method of interpretation seems more relevant in this respect. But the history of Ethiopia's constitutional development shows that its pendulum has been swinging to and fro – i.e. from West to East. The 1995 FDRE Constitution seems to be modeled after U.S.A., Germany and Switzerland (forgetting not its peculiar aspects), while the 1987 EPDRE Constitution was a replica of the previous Kremlin model while again its predecessors, the 1955 Revised Constitution and that of 1931 had had their inspirations from Westminster and Meji Imperial Japan respectively.

The fact that most of our Private Laws, excepting the Criminal Law and the Procedural Laws, which have originated from Common Law system, are taken from the Continental system, and Ethiopia's Public Law are though predominantly of domestic enactments, they have taken their inspiration from the Common Law system. This justifies that the model of interpretation suggested by Lord Denning is the one that Ethiopia ought to adopt. (Developer's proposition)

Teleological Theory

Quite early on, the English Courts adopted a method, which we now call the teleological method of interpretation (*Telos*: Greek word meaning goal, aim or sense). The judges tried to find the spirit or the letters of the law. This method is not identical with the purposive method because the teleological theory is based on equity. The role of equity in the English Common Law is to reduce the rigidity of the Common Law or statutory law.

The idea that laws have to be softened or tempered by equity can already be found in antiquity. This teleological method is clearly value oriented; which means that in an equitable approach such basic values like freedom and equality, fairness and due process by means of interpretation of the law and the Constitution should be given effect to. Although in Continental Law, the idea of equity does not play the same role as in the Common Law, the idea of teleological interpretation, as a value oriented instrument, is often employed.

The Courts of the European Union follows this teleological method, too. The following passage clearly verifies this assertion. *"The court, multi-national in composition, adopts a teleological approach, searching for the spirit of the treaty, regulation or directive, applying general principles of law, drawing upon principles of law from member states filling gaps, and theoretically not being bound by precedent."*

In Common Law, some principles are part of the teleological method such as strict interpretation of limitations of freedoms and rights, compensation for expropriation and the principle that law should not be retrospective. In Continental Law this value-oriented approach is to a wider extent part of the interpretation of constitutionally guaranteed rights or the continental principle of the *Rule of Law.*

To sum up:-

> *Because a Supreme Constitution and a Bill of Rights are usually expressed in broad and specific (or 'general') language, there is much field of application in the sphere of the role of statutory interpretation; i.e. with the purpose that full effect be given to provisions framed in general terms. In particular,*

> *provisions entrenching fundamental rights should be interpreted generously rather than narrowly or legalistically.*

It should be acknowledged that the interpretation of a Constitution, even though it has to be in accordance with the rules of language, can never be exclusively matter of language. Actually, teleological interpretation is particularly dependent upon systematic interpretation, which would be our next subject of inquiry.

Systematic or Comparative Theory

In the continental system the systematic method plays an important role, because some elements of the intentional theory, the purposive theory and the teleological theory are put together in this method. This results from the fact that Continental Law is generally based on codified law; i.e. on an organized and logical system of rules. The purpose of a law or regulation can therefore often be found in other parts of the same enactment. In the same way, the so called contextual aids or elements, which are used by the intentional theory, also form a systematic order and belong, therefore, to the systematic method of interpretation.

Finally, the teleological method starts from the idea of a coherent value system, expressing fairness and equity. In Ethiopia, as well, important codes and a great number of proclamations require the understanding of the law as a systematically organized body.

In countries with Statutory Law like Ethiopia the comparative method should play an important role with regard to the ordinary law, because law enactments such as the Civil Code or the Commercial Code are acquired from French, Swiss and English models. To understand a particular provision it might be useful to compare it with rules in the other legal systems from which the Ethiopian Law were initially derived from.

Comparative interpretation will soon become a very important and frequently used method of constitutional interpretation, partly because circumstances might necessitate comparison of current provisions with those of previously enacted. Comparative interpretation will also be very important in view partly of (and perhaps more likely) the internationalization of human rights issues. The same is true for the systematic interpretation, because in accordance with

Article 9(4) and Article 13(2) International Charters, Conventions and Declarations of Human Rights are incorporated into Ethiopian Law (as these get ratified by the Ethiopian Parliament).

Objective Theory or Delegation Theory

This theory was originally developed as a reaction against the intentional theory, because it was believed to be more or less a fiction that the interpreter could find out the real intention of the lawgiver. According to the objective theory, once legislation has been promulgated, the legislature's task is complete and the text acquires an existence of its own. This theory believes that the words of a regulation are just a delegation to the Court; one that gives it the competence for its own interpretation. Therefore the more imprecise the regulation would be, the more authority would be transferred to the Court to decide.

This theory is typical for Anglo-American law, because in this system the Courts have the right to make law in a much more extensive way. In Ethiopia, applying this theory would lead to entitling the House of Federation assume – more or less – the function of a lawgiver. Whether that could be made compatible under current conditions depends upon a) the Ethiopian Constitution has given this role more or less to the House of Representatives, b) the provisions of the Ethiopian Constitution, especially those chapters on Human Rights are very broad, and, to a certain extent, not precise.

Section II. Constitutional Interpretation: Illustrations (Sholler's See Annex------)

Chart 1: Organs of Constitutional Interpretation

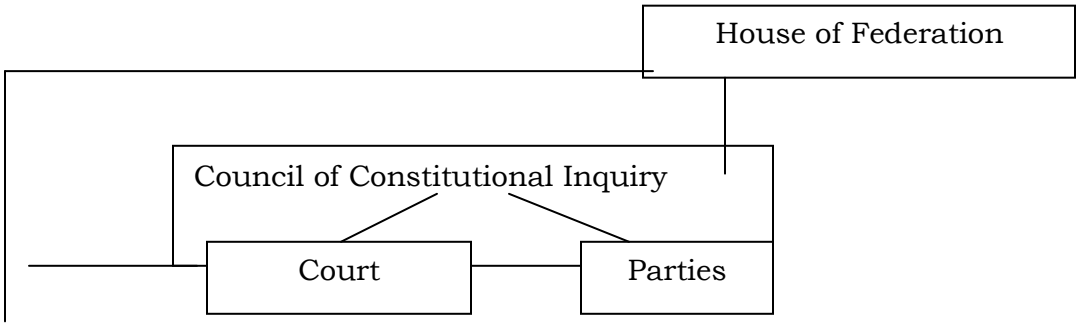


Chart 4: Composition = 11 members

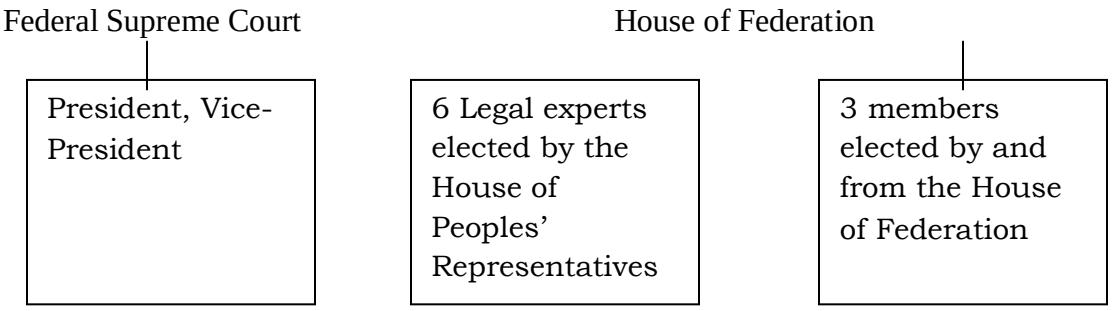
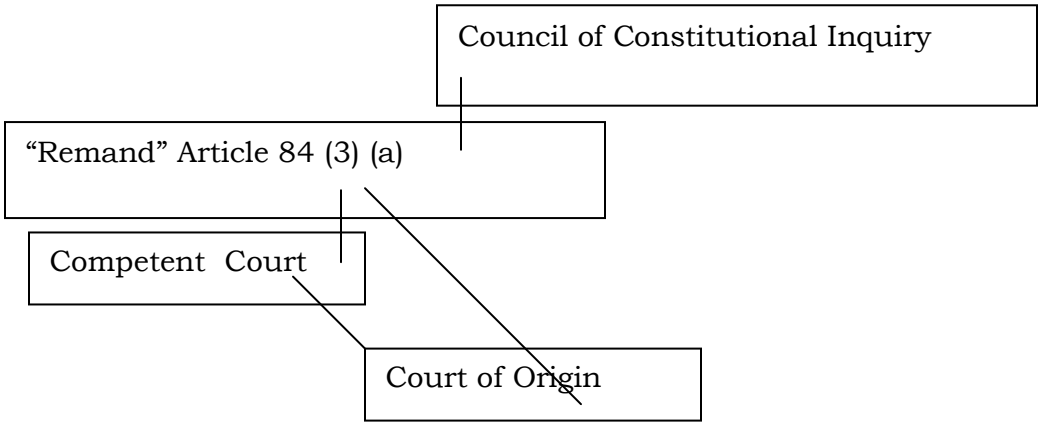


Chart 3: Procedure



Chapter IV

Creating Nexus (Mainstreaming)[146]

All the courses in the law school curriculum may not equally become a sounding board for constitutional values and principles. This is because some of the law courses study purely private spheres that as such do not directly invoke mega principles in constitutional law. Therefore, mainstreaming constitutional values and principles in legal studies at law schools should be mindful of such variations. This is not however to suggest that all private law courses are totally detached from constitutional matters or principles. It is not disputable at all that socio-legal interactions in a modern political society are undertaken on the platform of constitutionalism, rule of law, independence of the judiciary, democracy, some form of separation of powers and checks and balances, government accountability as well as peace and order. One or more or all of these concepts and principles touch on the most private aspect of the life of an individual living and functioning in a political society. At the same time, we note that all of these concepts are the cornerstones of a constitutional system. These principles and concepts are part of the Ethiopian Constitutional text. Therefore, the constitutional values, rules and principles in the Ethiopian constitutional text-beginning from the preambles declarations to the last provision-should be used as the beacon light for fashioning discussions and analysis of the materials for the law school courses wherever that can be done.

As shall be pointed out below in relation to the specific framework for materials on the course, to the extent possible and practicable, constitutional values and principles should be reflected in the core discussions, objectives of the materials and its sub-sections, self assessment and review questions.

Objectives

The objectives of this endeavor are manifold: first and for most, it is to make law students-who are future judges, attorneys, policy-makers, legislatures, rights and public interest advocates, etc, -be aware of the paramount and pervasive nature of constitutional values and

[146] Developer's own Paper Presented to the Workshop on Curriculum Implementation (held Langano), 2007.

principles in the life of individuals and legal institutions. It helps students see that the relationship between one and the other public institutions; public and private institutions; public institutions and individuals; private institutions and individuals; or among private institutions, etc, with which a given law school course deals is one way or another intertwined with the public legal setting provided for by the constitutional values and principles.

Therefore, at the end of studying and mastering the contents of a given course material, in addition to the mastery of the contents of the course under consideration, the student must, at least, be able to:

- See the inter-relationship between general constitutional values and principles of the country and the given course studied;
- Scholarly evaluate and envision the ways and means of improving and developing the legal rules studied in the course by taking advantage of the constitutional environment of the country;
- Consider the relevant part(s) of the constitution as rues and principles of higher status that have a pre-emptive power of enforceability; adequately understand the meaning and effects of the supremacy of the Constitution (Art.9)
- Understand the constitutional ideals, objectives, values and principles and contribute her/his share in their implementation by using the fields of activity in the course studies;
- As appropriate, imagine and reflect upon the dangers/evils that can result in respect of the course studied if the constitutional framework is illegally challenged or rendered inoperative; and
- Be a good example in safeguarding and upholding the constitution.

As a matter of general applicability to all courses and materials, it has to be also noted that applicable relevant parts of constitutions of states of the Ethiopian Federation.

In what follows, specific constitutional values and principles to be entrenched in the specific course materials shall be addressed.

Section I: Principles and methods of Establishing Nexus between Basic Constitutional Concepts and other Laws

Source of Law -Legal Materials (Inputs) and Criteria of Validity[147]

For Laws that have persisted in their application to this date

1. The 19931 and 1955 Constitution-Imperial prerogatives. Although have been already repealed, some of this laws could still be valid. So, ultimately, they get their validity from Imperial prerogative.

   1.1 Proclamation-by being parliamentary enactments.

   1.2 Treaties-by being ratified according to the then procedures.

   1.3 Regulation, orders, etc……by being legislated in accordance with the then procedures and enabling laws, etc……

2. The P.M.A.C., as a supreme legislative body, and the P.D.R.E. constitution; All laws issued by the P.M.A.C and other laws issued there under, which have not been repealed to date, find their validity by administrative fiat.

   Even Decrees issued by the then president find their validity as above in so far as they have not been repealed.

   - *Repeal here means expressed/implied or direct/indirect.*

3. The Charter and the 1994 F.D.R.E Construction.

   3.1 Any proclamation and Regulation is valid, in so far it has not been repealed.

   3.2 Treaties-likewise- are valid, although the Charter under which they had been ratified was repealed.

   3.3 Rules of Custom

   Direct or indirect incorporation in statutes, clear or tacit reference to it, may give them validity.

[147] R.W.M Dias, Jurisprudence 5th Ed., (Aditya Books Private Lt. New Delhi, 1994), p.23.

Tools-Quality of Provisions and /or Components of Laws-to forge (erect) a Legal system/Building Blocks of Laws

1. Rules are percepts attaching definite consequences to definite factual situation.
2. Principles, taken as authoritative points of departure of one rule from another, which are invoked for purposes of legal reasoning.
3. Concepts, taken as categories of set of rules, principles and/ or standards which become applicable to corresponding factual situations, transaction
4. Doctrines, taken as a union of rules, principles, concepts, developed with regard to some ascertainable category of situations or classes of situations, which reflect the quality of logical arrangement of compatibility, and which exhibit the character of interdependent scheme.

- These-jointly and severally-may give rise to Institutions, which may be characterized as embodying corporeal and conceptual entities. Such Institutions are social undertakings, whose endurance has been established through the tests of both time and space parameters.

  Here 'Rule' is meant to refer to specific provision or a series of provisions of law having the said function to which restrictive of enlarging stipulation (usually known as proviso) and exceptions may be added. Vis-à-vis the exception the principal rule, may be said to be principle, which is different from the principle given here under.

  Both principle and concept may, sometimes in this work, be referred to as conceptual frameworks. Resort is made to principle, concept and/or doctrine, where the need to fill a gap in he law or interpreting a rule becomes necessary. The invocation same of this is therefore a search in t the "inner morality" or the "rationale" of the new proposition of law, which should upheld unless otherwise

contradicted by the existence of an equal or superior proposition of law, developed in the present legal order, regional or international.

Objective–Preservation and Development of the Qualities of mankind

1. Preservation here relates to such qualities as life, material and spiritual culture, civilization, conservation of environment,…
2. Development here relates to all round, comprehensive and sustainable advancement of mankind at individual, group, social, ….international levels.
3. Justice and order, seen as correlative principles, are not an end in themselves, by rather meanness for attainment of the objectives mentioned herein above. This approach presupposes that, as justice is correlative to social order, so are all jural relations correlative for distributing and correcting all forms of human advantages and disadvantages; fairly and equitably. Legal mechanisms (Jural Relations) that are available to serve these ends of justice are**:**[148]
    a) Distributive Justice i.e. advantages, resources, values and the like by mines of "claim (right *stricto sensu*), 'liberty (privilege, power and immunity)" of which the most widely used are "rights" and "power"; and
    b) Corrective justice i.e. disadvantages by means of "duty, no claim (lack of privilege), liability and disability", respectively correlated with the above four elements, of which the most widely used are "duties" and "liabilities"
4. Finally, the culture of development, as an aspect of major dimension of life and which encompasses such established goals as peace, freedom, justice and progress has already been accepted as a principle by present day order, as a single, comprehensive vision and framework of action, constituting both, political and Constitutional Cultures; of which, the last is the subset of the just preceding.

[148] Id., p. 68.

Section II: Jural Relation[149]

Distributive and corrective justice is made available by definite jural relations. These relations are right/duty, liberty (privilege)/no right, power/liability, immunity/disability. The jural opposites of each set are right/no-right, privilege/duty, power/disability and immunity/liability.

By using only right/duty, power/liability correlations and-when possible-by supplementing these by their jural opposites, attempt shall be made to sketch the 1994 F.D.R.E. constitution and create nexus with other laws of Ethiopia, with the view to illustrate the connection between the provisions of the Constitution with proclamations; as well as, these proclamations with sub-ordinate/delegated legislations.

Section III: Nexus of the Constitution: Internal and vis-à-vis Basic Regime of laws.

Democracy: - Election, popular participation-referendum.

- ***Recall.***
    - Separation of power-Rule of law, Due process of law.
    - Human Rights in its individual, collective, et… contexts.
    - Judicial or Non-Judicial Review; good governance, self-determination in its regional state, contexts.
    - Sustainable Development, protection/ enhancement of conducive, living environment,

Distributive justice: Advantages… rights… power…

1. Constitutional and Administrative Laws (including Administrative contract).
    1.1. Objectives and Principles.
        1.1.1. State, as an Institution.
            - The Ethiopian Multi-Nationalities' Federal State (Article 1).
            - The Head of State-as a corporate sole:-

[149] Id., pp. 23-43.

- Establishment (Article 70).
- Powers/Disabilities (Article 71)

1.1.2. The Federation (Article 45).

- Federal powers/Liabilities; Exclusive/Concurrent (Articles 5, 96).
- State powers/Disabilities-Residual; enumerated and shared (Articles 52, 96).
- Concurrent and Undesignated (Articles 98 and 99).

1.1.3. Governments – Federal and State; Doctrine- Parliamentary form of government.

1.1.3.1. Legislative Institutions (Article 53).

The House of Peoples' Representatives (H.P.R.);

- Establishment (Article 54).
- Powers/.disabilities ("Article 55), (H.P.R.);
  - Decision making, enforcing.
  - Investigatory/Judicial,
  - Regulatory,
  - Establishing Agencies,
- Policy Determination,
- Power of Intervention,
- Power of Appointment,
- Foreign Policy,
- Decree power-emergency,
- Military power,

1.1.3.2. The house of Federation

- Establishment 9Article 61).
- Powers (Liabilities (Articles 62).
- Interpretation: as a review/control mechanism.
- Intervention power.
- Mediation, Arbitration and Promotion.
- Decision making – on intervention, on making Federal Laws in spheres of Private Law.
- Law Making – with H.P.R.; including, internal rules.

- Appointment Powers of the president, Members of C.C.I.

1.1.3.3. Legislative Institutions at State Level.

- State councils
- Councils of Nationalities and State C,C,I.

1.1.4. Executive Institutions'; Federal and of the States.

The prime Minister and the P. Minister's Office – as a Corporate sole and in relation to the Council of Ministers. Operating on the basis of efficiency and expediency; yet upholding doctrine of Due process of law, and the role of Law, etc….

The powers of the prime Minister and the P. Minister's Office to,

- Lead the foreign relations.
- Issue Decrees of Emergency.

Liabilities in terms of,

- Specific conditions and terms.
- Natural and Collective Rights.
- Non-Derogable rights.
- Controlled by Emergency Board.

1.1.4.1. Establishment.

1.1.4.2. Powers;

- Commander-in chief of the Armed forces.
- Establishing, managing, leading and supervising.
- Enforcing and implementing
- Law-Making.
- Judicial power.
- Appointment and nomination.
- Dissolving parliament.
- Policy-Making.

1.1.4.3. Liabilities.

- Accountability, reporting, impeachment.
- Restraints put in place in the making of delegated legislations.

- Restraint put in place by Administrative Laws and Procedures (see Civil Service laws).
- Judicial power; Administrative Tribunals exercise of Due Process of Law and appeal.
- Discretion; controlled by Reasonable differentia.

Corrective (Remedial) justice Disadvantages …duties … liabilities…

- Injunctions; e.g., Habeas Corpus, petutory Actions (1206 of C.C.) and Possessory Actions (1149 of C.C.)
- Injunctions which may //
- Public Interest Litigations (Article 37(2) of F.D.E. Constitution, Class Action (38 of C.P.C))
- Non-Contractual Remedies.

1.1.4.4. State-Executive;

- Heads of executive bodies.
- Bureaus; as to whether bureaus exercise delegated powers and/or as to how they discharge executive functions.

1.1.4.5. Judicial Poser.

- Judicial Independence within the doctrine of 'Separation of power, as Operating in parliamentary Form of government'; i.e., separation of power, by not negation the supremacy of the parliament as well as parallel with 'Three Tier-System of court'.

1.1.4.6. The Supreme Court (within which exists Cassation Bench).

- Establishment.
- Judicial powers; with,
  - Limited competence; as a First Instance Court.
  - Final Appellate Court; with review p0ower from both, final decisions of Federal and Cassation.
- Administrative powers of,

- Power of nomination and appointment and approval power.
- Administration of judges, presidents and support services.
- Formulation and presentation of budget of the Judiciary to H.P.R.
- Budget disbursement, administration and auditing of finance.
- Procuring, disposition and administration and auditing of finance.

1.1.4.7. High and first Instance/Wereda, State courts.

- *See their respective Inherent powers under Proclamation 25.*
- *See delegated powers and as to which tier of State Court is empowered to entertain them.*

1.1.4.8. Quasi-judicial Bodies.

- See law defined as constituting proclamations, regulations and even directives under the proclamations issued to consolidate the powers and responsibilities of H. of F. and C.C.I.
- The doctrine of judicial Review envisaged under parliamentary form of Government; at least, scrutinizing,

a) State vis-à-vis Federal Laws.
b) Acts of the Executive vis-à-vis the Constitution.
c) Validity of Delegated Legisltions vis-à-vis their respective parent laws/enabling legislations/.

- Administrative Tribunals.
- Establishment.
- Competence and appeal.
- Disabilities.
- Appeal to Regular courts, Higher Tribunal or to final administrative official.

- Privileges-from the regular procedural laws.
- See civil service Tribunal, Tax Appeal Commission and in particular Election board.

d) City courts and other Bodies with Judicial power

i. City courts.
ii. Addis Ababa City Court with its Appellate and its Cassation Courts.
iii. Kebele social court.
iv. Other Bodies with Judicial power.
v. Labour Relation board.
vi. Civil Service Tribunal
vii. Urban Land Clearance Matters Appeals Commission.

e) *See Adds Ababa City Government Revised charter.*

1.1.5. Agencies of Control.

1.1.5.1. Ombudsman

- Establishment, accountability.
- Power/Liabilities

1.1.5.2. Human Right's Commission

- Establishment, accountability
- Powers/Liabilities.
- Remedies

1.1.5.3. The Auditor General.

- Establishment, accountability
- Powers/Liabilities
- Remedies.

1.1.5.4. Agency of Control of Defense.

- Parliamentary Oversight; parliamentary Defense Commission.
- Civilian Control; separation the office of the Chief Staff from that of the D. Minister.

- Budgetary Control; auditing.
- Judicial Functions; Martial Court- rules and procedure.
- Nationalities – is meant to refer to Nationalities and peoples, as well.

2. Laws of Public Nature.

2.1. Labour Law.

⇒ Labour Law: Its scope is limited to the law of labor relations, only; as distinct from Civil Service Law and other labour relations, administered by the Civil Code and the like.

2.1.1. Equal Opportunity and Treatment; facilitated by employment agencies, public/social service.

2.1.2. Freedom of Contract/Prohibition of Forced Labour.

2.1.3. Condition of Work;

- minimum wage, other benefits.
- hours of work, resting days, etc…
- condition of termination of contract and remedies thereof.
- social security schemes.

2.1.1.2. Employment of special Category of People.

2.1.1.2.1 Children.

- Minimum age.
- Work on night-shift.
- Hazardous works

2.1.1.2.2. Women.

- Equal opportunity and treatment.
- Maternal protection.
- Work in night-shifts.
- Underground work.

2.1.1.2.3. Persons with other incapacities.

2.1.2. Occupational safety: Health and Other Problems.

- Remedies for injury.
- Occupational health and other problems.

2.1.3. Freedom of Association.

- Trade Union, Federation, etc…

- Collective Agreement.
- Strikes.

2.1.4. Remedial Institutions.

- Labour Inspection.
- Labour Dispute Resolution Mechanisms such as,
- Non-Judicial,
- Judicial.

3. Laws of Private Nature.

3.1. The Law of Person, as subject of all Laws.

3.2. Personality –a Legal Fiction/Attribute/.

3.2.1. Physical Person.

- From birth to death; bearer of rights and duties (exception- the fetus; where its interest so requires)
- capacity as question of power/disability; applicable to classes of physical person.
- Other attributes.
- Nationality, residence, place of birth, ….

3.2.2. Human Beings (other than Physical Persons).

- E.g. Protection for being or connected to same; i.e., the fetus, dead body, cemetery, …
- Public and/ or private remedies by Criminal Law and the Law of Non-Contractual Obligations.

3.2.3. Animals; … (e.g., by Criminal Law.).

- Public/ Private Rights/Duties.

3.2.4. Things/Conceptual Institutions/, Juridical Persons.

- Properties with specific destinations; i.e., Trusts, Endowments, … (by enactment.).
- Churches, Mosques, … (by agreement.).
- States and Governments; and those connected to these same institutions (by the Constitution and enactments.).

3.2.5. Business Organizations – Civil (Non-Business Organizations), commercial Organizations, Partnerships of persons and/ or capital.

3.2.6. Civil Associations.

⇒ Non-Profit Organizations; regulated by Constitution and/ or enactments as well as by their own memorandum and articles of association.

- Professional Associations, Non Governmental Organizations (N.G.O s), etc…
- Those governed by specific enactments; i.e., trade unions, cooperatives,…

3.2.7. De facto Personality;

- Joint-Venture,
- Not registered collectives like 'Idir', 'Iqub', etc…
- The family; by contract, sui generi.

⇒ All these subjects of Right/Duty, Privilege/No-Right, Power/Disabilities, Immunities/Liabilities by Law and /or by the Articles (memorandum of association.).

Illustrations:

a) Law of Person

Personality is awarded to physical/juridical by and for domestic/international law to make them subject of laws. i.e. beneficiaries of right, liberty, power and immunity; and bearers of duties, lack of claim, disability and liability.

b) Law of Succession

The sole objective of the Law of Non-Contractual Liability/ Obligation is maintenance of order. It lays down the bed-rock to social, constitutional norms. The sanction to non-compliance to these norms would be civil liability.

Based on the same principle but in contra-distinction to this, criminal Law is accompanied by punishment.

- A conceptual institution; derivatives of the right of deceased and extension of that of heir's
- Succession by law
- Succession by will.

c) Property Laws;

Article *40,* of the Constitution awards right to the individual, groups or collectives the state, included.

- . Properties of Public domain by;

  - Their nature,
  - International customary law,
  - and/ or other laws.

- . Properties owned by State and Government for purposes of carrying out specific functions.
- . Nationalized Properties (urban and rural land); and public enterprises.

- Production and service rendering; public enterprises (see establishing legislations) and their finance regulation laws, Tax Laws, etc…
- Public Utilities.

⇒ See Urban and Rural Land-Holding, Lease and/or Use rights; land, dwelling houses and in business.

⇒ Private Ownership;

- Possession.
- ownership; personal ownership.
- breakdown of ownership which may include:-
- servitude,
- joint ownership,
- joint and collective ownership and
- holding rights.

d) The Law of Obligations and other Remedial Legislations.

- Contractual Law-General and specific.

⇒ The Law of contract is fundamentally designed to serve as an economic and social mechanism of distribution of goods ad services; including human resource.

As an order creating mechanism, it regulates human conduct by mandatory provisions and permissive ones. The remaining parts of contractual Law are

reflections of freedom/ liberty, power/liability and their corollary jural partners. Here, freedom is an aspect of liberty, power- and at times- capacity.

⇒ Contractual obligations;

– distributive institutions: contractual rights to specific performance to have a status of creditor.

– Corrective… duties… damages (compensation)…

⇒ Non-contractual Obligations;

- Essentially, an area of law, devoted to immunity/ liability Hence,
  - Corrective Institutions,
  - Fault –based liability and/ or exception, vicarious and strict liabilities,
  - unlawful enrichment.

e) Family Law

– The family is a social institution emanating from a marriage-contract validly entered into.

– Unlike General and special contracts, Marriage-contract is unique, *sui generi* for having not proprietary nature as its objective.

– In the Family Law, principles developed in "International Customary Law' find their expression in respect of, for example;

⇒ freedom of woman and man to enter into marriage-contract with their own, sole consent only.

⇒ in respect of the Child's right to:- Paternity, maternity, … to be brought up, cared for and maintained, …

Annex 1. Pro. No. 359/2003

SYSTEM FOR THE INTERVENTION OF THE FEDERAL GOVERNMENT IN THE REGIONS

WHEREAS, it is provided for in Article 5 (1) of the constitution that the Federal Government has power and responsibility to protect and defend the constitution;

WHEREAS, it is provided for in Article 51(14) of the Constitution that the Federal government deploy Defense forces at the request of State administration to arrest a deteriorating security situation within the requesting State when the Region is unable to arrest such situation;

WHEREAS, it is provided for in Article 55(16) of the Constitution that the House of peoples' Representatives request, on its own imitative, a joint session of the House of the Federation and of the House of peoples' Representatives to take appropriate measures when State authorities are unable to arrest violations of human rights within their jurisdiction, and give directives to the concerned Council of State;

WHEREAS, it is provided for in Article 62(9) of the constitution that the House of the Federation order the Federal intervention if any State, in violation of this Constitution, endangers the constitutional order;

WHEREAS, it has become necessary to prescribe by law the system that enable to implement the aforementioned provisions of the Constitution;

NOW, THEREFORE, in accordance with Article 55(1) of the constitution, of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows:

PART ONE

GENERAL

3. Short Title

This Proclamation may be cited as the "System for the Intervention of the Federal government in the Regions proclamation No.359/2003."

4. Definition

In this proclamation;

6. "Intervention" means a system for intervention in the Regions pursuant to Article 62(9) of the Constitution and includes measures to be taken in accordance with Article 51(14) or Article 55(16) of the Constitution.
7. "Person" means a natural or juridical person.

PART TWO

INTERVENTION IN CASE OF DETERIORATIONG SECURITY SITUATION

8. Principle

The security situation shall be deemed to have been deteriorated where there is an activity that disturbs the peace and safety of the public and the law enforemcement agency and the judiciary of the Region are unable to arrest the security problems in accordance with the law.

9. Request of the Region

The state Councilor the highest executive organ of the Region shall present its request to the Prime Minister through the Ministry of Federal Affairs where any Region faces a deteriorating security situation and unable to arrest it on its own.

10. Deployment of Force by the Federal Government

6. The Prime Minister shall deploy the Federal Police or defense force, or both to arrest the deterioration security situation taking into consideration the gravity of the situation. The force to be deployed shall be under the command of the concerned Federal organ;
7. The force to be deployed and the measures to be taken by same shall be proportionate to enable to arrest the deteriorating security situation and maintain law and order;
8. The Regional Government shall have the responsibility to provide information that enables to arrest the deterioration security situation and facilitate conditions;

9. The force shall take necessary legal measures to bring to justice those who participated in deteriorating the security situation.
10. The mission of the force deployed shall be terminated where the deterioration security situation has been arrested or where the high-test executive organ of the region or the regional council requests the Prime Minister for such termination;

6. Report

The prime Minister shall present periodic report to the House of peoples' Representatives on the activities carried out by the forces in the Region.

PART THREE

INTERVENTION N CASE OF VIOLATIONS OF HUMAN RIGHTS

7. Principle

An act of violations of human rights shall be deemed to have been committed where an act is committed in a Region in violation of the provision of the human rights stipulated in the Constitution and laws promulgated pursuant to the Constitution, and the law enforcement agency and the judiciary are unable to arrest such violations of human rights.

8. Investigating Team

4. The House of peoples' Representatives may send a team to the Region for investigation of a case when it receives information from the human Rights Commission, representatives of such Region or from any other person on the violations of human rights which require the Federal intervention and on the failure of the region to arrest the acts. The team shall consist of members from the House of Peoples' Representatives;
5. The team may, where necessary, request the assistance of the experts of the Federal Executive organs;
6. Any Regional organ shall have an obligation to cooperate with the team.

9. Report of the Team

3. The team shall compile and submit with its recommendations to the House of Peoples' Representatives information gathered within the Region where the alleged acts of the violations of the human rights are committed;
4. The report compiled pursuant to Sub-Article (1) of this Article shall specify concrete evidence that describes the act of the violations of human rights in the Region, the

sources of the problem and persons responsible for it, efforts made and measures taken by the Region to arrest such violations of human rights and whether or not such Region will be able to arrest the act.

10. ***Request and Report***

3. The House of Peoples' Representative shall, upon hearing a report submitted to it pursuant to Article 9 of this Proclamation, call a joint session of the House of Peoples' Representatives and the House of the Federation and submit the request to same where it finds that the matter requires the intervention of the Federal Government;
4. The house of Peoples' Representatives shall present a report with justification to the joint session of the necessity of the intervention of the Federal government.

11. Giving directive

Where the joint session is convinced by the report submitted to it pursuant to Article 10(2) the house of Peoples Representatives shall according to the decision of the joint session, give directives to the Region to arrest the acts of violations of human rights, and bring to justices those who violated such human rights and take other measures as may as maybe necessary.

PART FOUR

INTERVENTION WHEN THE CONSTITUTINAL ORDER IS ENDANGERED

12. Principle

An activity or act carried out by the participation or consent of a Regional Government involution of Constitution or the constitutional order and in particular:

5. Armed uprising;
6. Resolving conflicts between another Region or Nation, Nationality or People o another Region by resorting to non-peaceful mans;
7. Disturbance of pace and security of the Federal government; or
8. Violation of directives given pursuant to Article 11 of this proclamation;

Shall be deemed to have been an activity or act that has endangered the constitutional order.

13. Investigation and Decisions

5. The house of the Federation, on its own initative or when it receives information from the House of Peoples' Representatives or from an other body that any Region has endangered the Constiltutional order by violating the Constitution may, based on the

information submitted to tit and after having conducted a necessary investigation, give directives to the Council of Ministers or to other government organ to investigate and report to it in order to decide whether there is danger;

6. Without prejudice to Article 93 of the constitution, the council of Minister shall, when it receives information that any Region in violation of the constitution has endangered the constitutional order, present the matter to the House of the Federation after having carried out its investigation and where it finds it that such danger requires the intervention of the Federal Government;
7. The report to be submitted pursuant to sub-Article (1) and (2) of this Article shall indicate that the peaceful mans to settle the causes which endangered the constitutional order has been left out and the conditions provided for in Article 12 of this proclamation have been met;
8. The House of the Federation shall, after having examined forthwith the report submitted to it pursuant to Sub-Articles (1) and (2) of this Article, order the intervention of the Federal Government where it finds it necessary.

14. Measures to be taken by the Federal Government

7. The order to be given pursuant to Article 13(4) of this Proclamation shall be that which enables to arrest the situation that has endangered the constitution order;

8. Without prejudice to the generality of sub-Article (1) of this Article and Article and Article 93 of the constitution, the house of the Federation may take the following measures;

c) To give directives to the Prime Minister to deploy the Federal police or national defense force or both, depending on the seriousness of the problems, to enable arrest the danger;

d) to decide to set up provisional administration that is accountable to the Federal Government by suspending the State council and the highest executive organ of the Region.

9. The provisional Administration may take the following measures in the region;

c) To bring to justice the Regional Government officials, appointees, officials elected by the people, members of the police and security force, and other persons responsible for the danger of the constitutional order;

d) To speedily facilitate conditions for the regional Government to resume its office by restoring the constitutional order;

10. The prime Minister may, upon the recommendation of the Ministry of Federal Affairs, assign temporarily the Federal Government personnel for the resumption of regular activities of the region where the capacity of the executive organ of the Region is impaired by the measures taken pursuant to Sub-Article 3 (a) of this Article;
11. The measures to be taken by the Federal police or the defense force pursuant to sub-Article 2(a) of this Article shall be proportionate to enable to arrest the situation that has endangered the constitutional order;
12. The House of the Federation shall, where it believes that the situation that endangered the constitutional order has been arrested, give directives to the concerned organs determining the expiry period of the provisional Administration period to the period mensioned in Article 15(3)

15. ***Provisional Administration***

4. the provisional Administration shall take measures that enable to arrest the situation that has endangered the constitutional order;
5. Without prejudice to the generality of Sub-Article (10 of this Article, the Provisional Administration shall have powers and duties given to the highest executive organ of the Region, and shall in particular;
   g) Lead and coordinate the executive organ;
   h) Assign the Heads of the Provisional Administration;
   i) Ensure the enforcement of law and order;
   j) Facilitate conditions for conducting election in the Region in accordance with relevant law;
   k) Approve a plan and budget of the Region;
   l) Carry out other duties to be entrusted to it by the Federal Government.
6. The Provisional Administration shall stay in the region for a period not exceeding two years; however, the House of the Federation may, where necessary, expend the period for not more than six months.

16. Reporting and Follow-up

4. The Prime minister shall quarterly submit report on the conditions of the Region to the House of the federation;
5. Without prejudice to sub-Article (1) of this Article the Prime Minister shall, on request of the House of the Federation, present a report at any time;

6. The House of the Federation shall devise its own mechanism to conduct study and evaluation within the Region sending its own team, and given directives where there are matters that requires corrective measures based on the findings of the study and evaluation.

17. Publication

2. The House of the federation and the Prime Mister shall issue statements to the public about the situation that endangered the constitutional order, the order given by the House of the Federation and current situation of the Region;
3. Without prejudice to Sub-Article (1) of this Article, a forum shall be held periodically to enable the public within the Region to have access to information about the situation and give opinions hereon. The public opinions expressed on such forum shall be compiled and submitted to the House of the Federation and the Council of Ministers.

PART FIVE

MISCELLANEOUSE PROVISIONS

18. Duty to cooperate

Any authority of the region, worker or any other person has the obligation to cooperate for the implementation of this Proclamation.

19. Effective Date

This Proclamation shall enter into force at the date of its publicastion in the Negarit Gazeta.

Annex 2: Pro. No. 251/2001.

A PROCLAMATION TO CONSOLIDATE THE HOUSE OF THE FEDERATION OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA AND TO DEFINE ITS POWERS AND RESPONSIBILITIES

Whereas, the House of the Federation, in which the Ethiopian nations, nationalities, and peoples are represented, as per the constitution which is the supreme law of the land, is constituted as a governmental institution by the Constitution and the fundamental powers and responsibilities of which are specified in the Constitution.

WHEREAS, it has become necessary to clearly stipulate and specify the fundamental powers and responsibilities of the House in such a proclamation so that is shall successfully execute its functions;

NOW, THEREFORE, in accordance with Article 55/1/ of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows. (Emphasis added).

PART ONE

General Provisions

31. Short Title

This proclamation may be cited as the "Consolidation of the House of the Federation and Definition of its powers and Responsibilities Proclamation No. 251/2001".

32. Definitions

In this proclamation, unless the context otherwise requires:

1) "State" Shall mean the states formed in accordance with Article 47/1/ of the Constitution of the Federal Democratic Republic of Ethiopia and, includes the Addis Ababa city Administration and Dire Dawa Administrative Council;
2) "Law" shall mean proclamation 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;
3) "House" Shall mean the House of the Federation of the Federal Democratic Republic of Ethiopia;
4) "Constitution" shall mean the Constitution f the Federal Democratic Republic of Ethiopia;

5) A "Nation, Nationality or people" Shall mean a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, common or related belief of identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory;
6) "Council of Constitutional Inquiry" shall mean the Council of constitutional Inquiry of the Federal government;
7) "Court" Shall mean any court constituted hierarchically both at Federal and State levels;
8) "Speaker" and "Deputy Speaker" shall mean the speaker and the Deputy Speaker of the House of the Federation.

33. Powers and Responsibilities of the House The House Shall:

1) Interpret the Constitution;
2) Organize the Council of constitutional Inquiry;
3) Decide, in accordance with the Constitution, on issues relation to the rights of Nations, Nationalities, and peoples to self-determination, including the right to secession;
4) Promote the equality of the peoples of Ethiopia enshrined in the Constitution, and promote and consolidate their unity based on their mutual consent;
5) Strive to find solutions to disputes or misunderstandings that may arise between states;
6) Determine the division of revenues from joint Federal and State tax sources, and the subsidies that the Federal Government may provide to the States;
7) Determine civil matters which require the enactment of laws by the house of peoples' Representatives.
8) Order the federal government to intervene if any state threatens the Constitutional order in violation of the Constitution;
9) Determine on the draft proposal of electoral constituencies submitted by the National Election Board based on Article 103/5/of the Constitution;
10) Determine jointly with the House of peoples' Representatives the power of taxation on revenue sources, in accordance with Article 99 of the Constitution, of which neither the Federal nor the State governments have responsibility;
11) Elect the president of the country in a joint session with the House of peoples' Representatives in accordance with Article 70/2/ of the Constitution;

12) Participate in the process of the Constitutional amendment as stipulated in sub-Articles (1) and (2) of Article 105 of the Constitution;
13) In collaboration with others, offer education and training, and whenever necessary, carry out research in matters pertaining to its responsibilities;
14) Establish permanent and ad hoc committees of the House;
15) Elect the speaker and Deputy speaker of the house.

PART FIVE

Additional Responsibilities

34. Determining Civil Natters that Require the enactment of laws.

1) The house shall determine civil matters that require the enactment of laws to establish and sustain one economic community and refers to the Federal Legislative body.
2) The House may determine civil matters that are essential to create and sustain one economic community on its own initiatives or based on opinions and information submitted to it by other pertinent government institutions.
3) The house may prepare and submit a draft bill to the house of Peoples' Representatives if it is convinced of the case.

35. Determining subsidies and division of revenues derived from joint Federal and State tax sources.

1) The house shall set a reliable and an ongoing improvement formula f subsidies which the federal government may provide to the states, based on the information it secures from relevant executive or gans.
2) The relevant government institutions shall have the obligation to timely provide sufficient information to the house to execute its duties specified in sub-Article (1) of this Article.
3) The hose shall devise systems and mechanisms for the division of revenues derived from joint tax sources between the Federal government and the sharing State.
4) The house shall follow up the division of subsidies and joint revenues be effected in accordance with the systems and mechanisms devised.
5) The house shall undertake a series of studies on the impact of subsidies and division of revenues on states to achieve balance development among states and eventually

enable them be independent from subsidies. It shall therefore take or cause any corrective measure be taken to rectify defects.

36. Intervention of the Federal government

2) The House shall order the Federal Government to intervene in any State in which it believes the constitutional order is endangered.
3) The House shall take this measure having due regard to the general constitutional structure and division of powers. The following cases are, however, sufficient to say that the constitutional order is in danger:
    a. Suspension of government institutions recognized in the constitution directly or indirectly from their regular functioning or;
    b. The failure of any state to execute directives given to it by the House of Peoples' Representatives in accordance with Article 55/16/ of the constitution, or its unwillingness to do so or;
    c. Where the state fails to secure peace and security using its own regular peace keeping mechanism du to the fact that the problem is beyond its control and fails to call the Federal Government to intervene in such state of affairs

37. Promoting equality and unity Among peoples

1) The house shall, in collaboration wit pertinent bodies, prepare various programmers and forums at various times the enhance the peoples' democratic culture, and raise constitutional awareness.
2) The house shall follow up whether the curricula of educational institutions incorporate academic subjects that promote unity and equality among peoples.
3) The House shall also see to it that the government mass media give sufficient coverage to the purpose mass media give sufficient coverage to the purpose stipulated in sub-article (1) of this Article.
4) The House shall study and sort out possible obstacle attitude and trends for people; unity and cooperation and devise a solution to be executed by the concerned bodies.
5) To strengthen and consolidate the socio-economic relations, equality and unity among the peoples of the States; the house shall;
    a) Be engaged in capacity building so that states can properly implement their budget;

b) Take measure enabling to bring about balanced development in the socio-economic sectors among the states;
c) Ensure that the essential Federal infrastructures for investment in the economic sector are fairly distributed;
d) Based on the structure and division of power enshrined in the constitution, cerate conditions whereupon states shall cooperate and work for common benefits and assist their further consolidation;
e) Take measures, to instill the culture of tolerance, cooperation for a common benefits and assist their further consolidation;
f) Create special conditions in which less developed Nations, Nationalities, and Peoples can benefit in terms of human resource, training ad special support in various other sectors, and follow up the execution.

38. Constituencies

1) The House shall review and approve the recommendation, regarding delimitations of constituencies submitted to it by the National Electoral Board in accordance with Article 103/5/ of the constitution.
2) The House shall, before approval, examine the recommendation as to whether it does give due respect to people rights of equal representation.

PART SIX

Structure of the House of the Federation

39. Organization of the House

The house shall have a speaker, a deputy speaker, permanent and adhoc committees, and employees necessary to execute its powers and duties.

40. Secretariat

1) The House shall have its own secretariat which can ensure the expeditious execution of its responsibilities.
2) The secretariat shall be accountable to the Speaker of the House.

41. Legal Personality

The house shall have its own legal personality.

42. Powers and Duties of the Speaker

The speaker shall:

1) Administer the meetings of the house;

2) Manage all the House's administrative works;
3) Implement the disciplinary measures the House takes on its members;
4) Follow up the implementation of the decisions of the House;
5) Submit the House's work programmer and budget to the House of the peoples' Representatives, and implement same upon approval;
6) Execute other responsibilities as determined by law.

43. Powers and Duties of the Deputy speaker of the House the Deputy speaker shall:

1) Execute responsibilities directed to him/her by the Speaker of the House;
2) Act on behalf of the speaker in his absence.

44. Head of the Secretariat of the House

1) The head of the Secretariat of the house shall be appointed by the House upon presentation nominee by the speaker from professionals outside the members of the House;
2) The Head of the Secretariat shall, under guidance of the speaker, perform the administrative activities of the House.

45. Employment of workers

The Secretariat shall, employ and administer employees of the secretariat pursuant to regulations enacted by the House based upon the basic principles of the Federal Civil Service laws.

46. Meetings and Rules of Procedure

1) The House shall convene at least twice in a year;
2) There shall be a quorum where two-thirds of the members of the House are present;
3) Decisions of the house shall be passed by a majority vote of the members.

47. Nomination of Members of the House

1) Each Nation, Nationality, and people shall be represented in the house of the Federation by at least one member. Moreover, each Nation or Nationality shall be represented by one additional representative for each one million of its population.
2) The number of representatives shall be determined in proportion with the number of human population in each Nation, Nationality, and people in the whole country.

3) The House shall inform each state the number of representatives each Nation, Nationality, and People shall send to it pursuant to sub-article 1 and 2 of this Article six months before the beginning of the first joint session of the two Houses.
4) The Councils of States shall send the list of their representatives, in accordance with the list of representative's send back to them, to the House a month before the commencement of the joint session of the two Houses. The representatives shall be selected by the Council of States themselves or directly by the people.
5) States shall conduct elections in accordance with the pertaining election laws if they wish to directly draw their representatives from the people.
6) If the people to be represented in the house have their own Zonal and Wereda administration, the representative shall be elected with the full participation of the councils, and the election procedure shall be arranged by the State Councils.

48. Immunity of Members of the house

1) No member of the house may be prosecuted on account of any vote or opinion raise in any meetings of the House nor any administrative measures taken against any member on such ground.
2) No member of the House shall be charged with or arrested on grounds of felony without the permission of the House except in the case of flagrante delicto.

49. Disciplinary Measures

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.

50. Removal of member from the House

No member of the house shall be removed except on the following grounds:

a) Where the 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.

51. Substitution

1) Where a member of house is deceased or resigns or removed on the ground specified under Article 50 of this proclamation the House shall communicate to the concerned state;
2) Upon the receipt of the communication, the State Council shall, in short period, send a substitute after nominate or cause the constituency to nominate by direct vote.

PART VII

Committees

52. Committee Formation

1) The house shall establish standing and ad hoc committees from its members and define their powers and duties.
2) Each committee shall have a chairman, dupty chairman and a secretary;
3) The house may assign three members selected from each standing committee to work permanently thereon;
4) Without prejudice to the provisions of sub-article (3) of this Article, the house may raise the number of members of the standing committee to be assigned permanently, if it deemed it necessary.

53. Committee Leadership

1) The Chairman shall:
   a) Call and Chair committee meetings;
   b) Organize and distribute the agenda of the meeting to the committee members;
   c) Verify that a quorum is attained;
   d) Communicate the decision of committee to concerned bodies;
   e) submit periodically the committee's performance report to the speaker.
2) Deputy Chairman
   a) shall act on behalf of the chairman in the absence of the later;
   b) shall perform other functions as instructed by chairman.
3) Secretary

   The secretary shall record the minutes of the committee, oversee the orderly documentation of files and discharge other duties as instructed by the chairman.

54. Qurorum

1) There shall be a quorum where half of committee members are present.
2) Unless the House issues regulations otherwise, the committee's decision shall be passed by majority vote.

PART VIII

Miscellaneous Provisions

55. Budget

1) The budge of the House

   The budget of the House be drawn from the following sources:

   a) Budget appropriated by the Government
   b) Donations and aid;
   c) Any other lawful source.

3) The funds stated under sub-article 1 of this Article shall be deposited in the bank account and shall be usable only for the conduct of the House operations.
4) The House shall keep a verifiable balance sheet indication its expenditures.
5) Books of accounts and financial documents of the Secretariat shall be audited by the Auditor General annually.

56. Finality and enforceability of Ruling

1) Decisions of the House on matters submitted to it shall be final.
2) The concerned parties are required to observed and executed decision of the House.

57. Power of Submitting Bills

The House shall have the power to submit bills, to the House of Peoples' Representatives on matters within its jurisdiction.

58. Power to issue regulation

The House may issue regulations for the implementations of this proclamation.

59. Repealled laws

1) Proclamation no. 13/88 shall not have effect on matters pertaining to this proclamation.
2) No laws, regulations, directives or rulings which are inconsistent with this proclamation shall have effect with respect to matters provided for herein.

60. Effective Date

This proclamation shall enter into forces as of the 6th day of July.

[Council of Constitutional inquiry Proclamation No .250/2001]

Annex 3: Pro. No. 250/2001.

COUNCIL OF CONSTITUTION INQUIRY PROCLAMATION

WHEREAS, the Council of Constitutional Inquiry has been established by the Federal Constitution to give professional support to the House of the Federation which has been given the power to interpret the Federal Constitution and to tender professional services of due efficiency and effectiveness to the House of Federation;

WHEREAS, it has been deemed necessary to specify the term of office and define the rights and responsibilities of members of the Council of Constitutional Inquiry,

NOW, THEREFORE, in accordance with Article 55/1/of the constitution of the federal democratic republic of Ethiopia, it is hereby proclaimed as follows. (Emphasis added)

Part one

General

1. Short:

Title this proclamation may be cited as the "council of constitutional inquiry proclamation No.250/2001."

2. definitions : in this proclamation unless the context other wise requires:

1) " constitution" shall mean the constitution of the federal democratic republic of Ethiopia;
2) "House of the federation" shall mean the house of the federation established in accordance with article 53 of the constitution.
3) " council of inquiry shall mean the council of constitutional inquiry of the federal government
4) " state" shall mean states formed in accordance with article 47/1 of the constitution of the federal democratic republic of Ethiopia and, for the purposes of this proclamation, includes the Addis Ababa and Dire Dawa city Administrations;
5) " law" shall mean the proclamations and regulations issued by the federal government or the states as well as international agreements which Ethiopia has endorsed and accepted;

6) " sate organ" shall mean the federal and state legislative bodies, executives' judiciary or a body give a judicial power ;
7) " court" shall mean the federal or state courts at any level

3. organization of the council of inquiry the council of inquiry shall have a chair person, deputy chair person, members, head of the secretariat, and employees necessary to execute its duties and responsibilities
4. Members of the council of inquiry the council of inquiry shall have the following eleven members:

1) The president of the Federal supreme Court… Chair person.
2) The vice-president of the Federal supreme court-……deputy chair person.
3) Six legal experts appointed by the president of the Republic on recommendation by the House of Peoples' Representatives, who shall have proven professional competence and high moral standing ……. Members.
4) Three persons designated by the House of the Federation from among its members …… members.

5. Establishment
   1) Secretariat of the Council of Inquiry (hereinafter referred to as "the secretariat") is here by established as an autonomous organ having its own juridical personality.
   2) The Secretariat shall be accountable to the Council and to the chair person of the Council.
6. Powers and Duties of the Council of Inquiry

   The Council of Inquiry shall have the following powers and duties.
   1) Investigate constitutional disputes and should the council, upon consideration of the matter, find it necessary to interpret the constitution, it shall submit its recommendations thereon to the House of the Federation;
   2) Where any Federal or State law is contested as being unconstitutional and such a dispute is submitted to it by any court or interested party, the council shall consider the matter and submit it to the House of the consider the Federation for a final decision.
   3) When issues of constitutional interpretation arise in the courts, the council shall:
      a) remand the case to the concerned court if it finds that there is no need for constitutional interpretation;

b) Submit its recommendations to the House of the Federation for a final decision if it believes that there is need for constitutional interpretation.

7. term of office of the members
    1) the term of office of the members designated by the House of the Federation shall be consistent with that of the House of the Federation
    2) the term of office of members appointed by the president of the republic shall be six years
    3) Notwithstanding the pro visions of sub-Articles (1) and (2) of this Article, members of the council of inquiry may be re-nominated.
8. Removal of Members
    1) With the exception of the Chair person and the Deputy Chair person, other members of the council of inquiry may subject to good causes, be removed by the body that nominated them.
    2) The decision given pursuant to sub-Article (1)of this Article shall, however, be effected upon approval by the majority vote of the House of the Federation.
9. working conditions and Remuneration
    1) Members of the council of inquiry shall be entitled to allowance or salary; as may be determined by the House of the Federation, for the service they render.
    2) When it is found necessary some members of the council of inquiry may be assigned to work at he head office permanently
10. powers and Duties of the chair person the Chair person shall:
    1) call and convene meetings of the Council of Inquiry
    2) organize matters presented to the Council of Inquiry and communicate same to the members;
    3) ensure the quorum is attained;
    4) cause the preparation of recommendation or appropriate suggestion be made, by some of the members, on matters presented to the Council of inquiry;
    5) communicated decisions of the council of Inquiry to the concerned organs;
    6) manage and monitor the Secretariat of the Council of Inquiry;
    7) observe and cause the observance of the regulations and rules of the Council of Inquiry;
    8) submit reports, to the House of the Federation, on the activities of the Council of Inquiry of every six months.

11. Powers and Duties of the Deputy Chair person The Deputy Chair person shall:
    1) Undertake the activities of the chair person, in the absence of the latter;
    2) Carry out such other activities as may be assigned to him by the Chair person.
12. Powers and duties of the Members Any member of the council of Inquiry shall:
    1) attend any meeting of the council of Inquiry unless prevented by reasons beyond his control;
    2) inform the chair person, in advance where he has a reason beyond his control, and unable to attend a meeting;
    3) take part in and be active participant in meetings of the Council of Inquiry and committees and make his best efforts for the successfulness of the Council;
    4) abide by rules and regulations of the Council of Inquiry.
13. Meetings of the Council of Inquiry
    1) The council of Inquiry shall hold regular quarterly meetings.
    2) The council may call extra-ordinary meetings when it deems it necessary
14. Powers and Duties of the Secretariat The secretariat shall have the following powers and duties:
    1) render secretarial service to the Council of Inquiry;
    2) arrange for halls required for sessions of the Council of Inquiry and meetings of its various committees;
    3) see to it that the minutes, decisions and other documents of the Council of Inquiry are recorded and kept properly;
    4) follow up publication and circulation of periodicals and newsletters issued by the Council of Inquiry;
    5) cause services of cordial reception to be extended to visitors to the council of Inquiry;
    6) render research services to members of the council of Inquiry.
    7) Own property, enter into contracts, sue and be sued in its own name;
    8) Perform such other duties as are conducive to the fulfillment of the activities of the Council of Inquiry.
15. Organization of the Secretariat The secretariat shall have:
    1) A Head appointed by the house of the Federation, on recommendation of the Council of Inquiry; and
    2) The necessary staff.

3) The Head office of the Council of Inquiry shall be in Addis Ababa.

16. Powers and Duties of Head of the Secretariat The Head of the Secretariat shall:
    1) direct and administer the activities of the secretariat;
    2) prepare the budget and work programe of Council of Inquiry, and implement same upon approval;
    3) exercise the powers and duties of the secretariat specified in Article 14 of this proclamation;
    4) represent the secretariat in its dealings with third parties;
    5) employ and administer personnel of the secretariat in accordance with the Federal Civil Service law;
    6) Prepare and submit to the Chair person of the council of Inquiry reports on the activities and financial accounts of the secretariat;
    7) Perform such other functions as are assigned to him by the Council of Inquiry and the Chair person.

Part Two

Interpretation of the Constitution

17. Principle
    1) The Council of Inquiry shall have the power to investigate constitutional issues.
    2) 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.
    3) If the Council, after investigating the case submitted to it, finds that there is no need for constitutional interpretation, it may reject the case and inform of its decision there of to the concerned party.
18. Appealing to the House of the Federation
    1) Any party who is dissatisfied with the decision of the council, given pursuant to Article 17(3) of this proclamation, may Appeal to the House of the Federation.
    2) An appeal under sub-Article (1) of this Article shall be submitted within 60 days from receipt of the decision of the Council.
19. Submitting Recommendations

1) Where the council, upon consideration of the matter, find it necessary to interpret the constitution, it shall submit its recommendations thereon, together with testimonies and documents relating thereto, to the House of the Federation.
2) The council shall submit its recommendations and documents related to the matter, to the House of the Federation, within a month time from the day it has approved its recommendations.

20. Principles Applicable for Constitutional Interpretation
    1) The Council of Inquiry may develop and implement principles of constitutional interpretation which it believes to be helpful to investigate and decide on constitutional matters submitted to it.
    2) Where the constitutional matters, submitted to the council of Inquiry, are relating to the fundamental rights and freedoms enshrined in the constitution, such matters shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human rights, International Covenants on Human Rights and International Instruments adopted by Ethiopia.
21. Constitutional Interpretation Inquired by the Courts.
    1) When issues of constitutional interpretation arise cases handled by courts, such issues may be submitted to the council of Inquiry, by the court or the interested party.
    2) The court handling the case shall submit it to the council of Inquiry only if it believes that there is need for constitutional interpretation in deciding the case.
    3) It is only the legal issue necessary for constitutional interpretation that the court forwards to the Council of Inquiry.
    4) The court shall keep the case before it pending until it receives response of the council of Inquiry with respect to the legal issue of the case forwarded to it.
22. Constitutional Interpretation Enquired by Disputants in Court.
    1) Any party having a case before a court may, where he believes that there is a need for constitutional interpretation in deciding the case, submit his case to the Council of Inquiry.
    2) Notwithstanding with the generality of sub-Article (1) of this Article, the concerned party shall, before submitting the case to the case to the council of Inquiry, present his request to the court that has handled the case.

3) Where the court rejects the case, the party concerned shall submit his case to the council of Inquiry within 90 days from receipt of the decision of the court.
4) It is only the legal issue necessary for constitutional interpretation that the party concerned shall submit to the council.
5) The Council of Inquiry may order the court to keep the case before it, pending, until it decides on the enquiry for constitutional interpretation of the case.

23. Inquiring for constitutional interpretation of cases outside of the courts.
    1) 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.
    2) Any appeal, under sub-Article (1) of this Article, may be made to the council only if the case has been exhausted by the government institution having the power with due hierarchy to consider it.
    3) Final decision, under sub-Articles (1) and (2) of this Article, shall mean an adjudication that has been exhausted and against which no appeal lies on the same path-way.
    4) A case requiring constitutional interpretation which may not be handled by courts may be submitted to the Council of Inquiry by, at least, one-thirds of members of the Federal or State Councils, or the Federal or state executive bodies.
24. Query

    Questions of inconsistency of laws with the constitution or issues relating to interpretations of the constitution to be submitted to the Council of Inquiry shall be in an elaborate writing.
25. Rejoinder

    If a case submitted by one of the disputants, to the council of Inquiry, bears a relationship with a case simultaneously being handled by a court of law, the other disputant may be allowed, as may be appropriate, to submit his version or evidence pertaining to the case at issue
26. Explanatory Body

    Where the constitutionality of a law is found to be controversial, a governmental body which has the power to consult the federal or state governments, as the case may be, shall have the obligation to explain.

27. Gathering Professional Opinions

    The council of Inquiry may, before it gives constitutional interpretations, call upon pertinent institutions or professionals, to appear before it and give opinions.

28. Deliberations

    1) The Council of Inquiry shall deliberate on cases submitted to it as per the order in which they are presented.
    2) Not withstanding with Sub-Article (1) of this Article, the Council of Inquiry may deliberate on cases which it belies are of top priority.

29. Working Conditions of the council of Inquiry

    The council of Inquiry may handle issues at its disposal in a manner publicly transparent, in accordance with Article 12 (1) of the Constitution,

30. Meetings and Rules of Procedure

    1) The council of Inquiry shall have a quorum if two thirds of the members are in attendance.
    2) The ruling of the council may be given by a unanimous vote after the Council has thoroughly examined the case submitted to it.
    3) If no objections are raised on the ruling of the council of Inquiry, it may be regarded as a unanimous vote.
    4) If the Council of Inquiry can not decide on a case with a unanimous vote, the opinion of the majority vote of the members attending the meeting shall be consid3red for a ruling. Opinions of the minority vote or proposals for compromise shall be appended to the decision of the Council of Inquiry.
    5) If equal number of votes are taken on both sides, the side the chair person votes for shall prevail.

31. Contents of a Ruling

    The text of the ruling of the council of Inquiry shall consist of details of the constitutional issue, justification as to why it held the view that constitutional interpretation was necessary or not and the ruling it has finally made.

32. Speedy Ruling

    The Council shall make a speedy decision on matters referred to it.

33. Service Charges

    1) Any constitutional query submitted to the Council of Inquiry shall be exempt from a from a service charge.

2) Notwithstanding the Provisions of sub-Article /1/ of this Article, the applicant may be required to effect a payment in accordance with the regulations by which the Council of Inquiry is guided.

Part Three

34. Budget

1) The budget of the Council of Inquiry shall be drawn from the following sources:
   (a) Government budgetary allocations
   (b) Donations and aid
   (c) Any other lawful source
2) The budget stated under Sub-Article /1/ of this Article shall be deposited in the bank account of the Council of Inquiry and shall be used only for the operations there of.
3) The Council of Inquiry shall keep accurate records of its financial allocations.
4) The book of accounts and financial records of the Secretariat shall be audited by the Auditor General annually.

35. Duty to Cooperate

Any Government body or official is duty bound to execute the orders given by the council of Inquiry on matters within its jurisdiction.

36. Effective Date

This Proclamation shall enter into force as of the 6th day of July, 2001.

Done at Addis Ababa, this 6th day of July, 2001.

NEGASO GIDADA (DR.)

PRESIDENT OF THE FEDERAL

DEMOCRATIC

REPUBLIC OF ETHIOPIA`

Annex 4: SFS 1994: 134/Printed on 19 April 1994 Act.

SWEDISH CODE OF STATUTES

Against Ethnic discrimination;

Issued on 7 April 1994

In accordance with the decision of the Parliament the following is enacted;

Purpose of the Act

Section 1

The Purpose of this act is to counteract ethnic discrimination. Ethnic discrimination occurs when a person or a group of persons is treated unfairly in relation to others or is subjected to in any other way unjust or insulting treatment because of race, colour, national or ethnic origin or religious creed.

Ombudsman Against Ethnic Discrimination

Section 2

the Government shall appoint an Ombudsman who shall strive to ensure that ethnic discrimination does not occur in working life or in other areas of society.

Section 3

By advice and in other ways the Ombudsman shall assist anyone subjected to ethnic discrimination to safeguard his or her rights. The Ombudsman shall, by means of consultations with authorities, companies and organizations and by influencing public opinion, information and other similar means initiate measures against ethnic discrimination.

Section 4

The Ombudsman shall make special efforts to prevent job applicants from being subjected to ethnic discrimination. The Ombudsman shall also, in contact with employers and the relevant labour market organizations, promote good relationships between different ethnic groups in working life.

Provisions on the Ombudsman's right to conduct actions relating to disputes concerning unfair special treatment of job applicants and employees are given in Section 17.

Board against Ethnic discrimination

Section 5

The government shall appoint a Board against Ethnic Discrimination which shall consist of three members. The chairman shall be legally qualified and have experience as a judge.

The functions of the Board are to give the Ombudsman advice on important issues of principle concerning the application of this Act and to propose to the government legislative changes or other measures aimed at counteracting ethnic discrimination. The Board shall also determine cases under Section 7.

Procedures for the Ombudsman and the Board

Section 6

An employer is required, when so directed by the Ombudsman, to attend meetings and supply any information pertaining to the employer's relationship to job applicants and employees and which is required for the Ombudsman's activities in the field of working life. In addition, an employer is also required to furnish information when the Ombudsman supports a request from an individual job applicant or employee under Section 10. The employer must not be unnecessarily burdened by the duty to furnish information. The employer is not required to furnish information if there are special reasons for not doing so.

Furthermore, employers and others must attend meetings and furnish the Ombudsman with information if the Ombudsman so requests.

Section 7

If an employer fails to comply with the Ombudsman's directive under Section 6, Paragraph 1, the Ombudsman may prescribe a default fine. An appeal against the Ombudsman's decision to prescribe a default fine may be lodged with the board against Ethnic Discrimination. There is no appeal against a Board decision.

An action to require payment of a default fine shall be brought in the district court by the Ombudsman.

Prohibition of unfair special treatment of job applicants and employees

Section 8

When engaging an employee an employer may no subject a job applicant to unfair special treatment by disregarding that applicant because of his or her race, colour, national or ethnic origin or religious creed.

Section 9

An employer may not unfairly subject an employee to special treatment because of his or her race, colour, national or ethnic origin or creed by

1. Applying unfavourable terms of employment or other working conditions,
2. Directing and assigning work in a way which is clearly unfavourable to the employee, or
3. Giving notice, dismissing, laying-off or taking any other comparable action against the employee.

Information on Qualifications

Section 10

A job applicant who was not employed or an employee who was not promoted or selected for training and who suspects that he or she has been subjected to unfair special treatment is entitled, on request, to receive written information from the employer on the nature and scope of the training, occupational experience and other comparable qualifications of the person who received the job or training position instead.

Invalidity and damages

Invalidity

Section 11

An agreement is invalid insofar as it prescribes or permits special treatment prohibited under Section 8 or Section 9.

Section 12

If an employee is subjected to special treatment in some way which is prohibited under Section 9 by means of some stipulation in an agreement with the employer, the stipulation shall be modified or declared invalid if the employee so requests. If the stipulation is of such significance to the agreement that it is unreasonable to require that

the agreement otherwise apply unamended, the agreement may be modified in other respects or be declared completely invalid.

If an employee is subjected to special treatment in a manner prohibited under Section 9 by employer giving notice termination an agreement or taking other such legal steps, that legal action shall be declared invalid if the employee so requests.

This does not apply when Section 11 is applicable.

Damage

Section 13

If a job applicant is subjected to discrimination by the employer's violation of the prohibition under section 8, the employer shall pay damages to the discriminated person or persons for the infringement the discrimination represents.

If in such a case ore than one discriminated party demands damages, the damages shall be set as if only one party had been subjected to discrimination and divided equally among them.

Section 14

If an employee is subjected to discrimination by the employer's violation of the prohibition is section 9, the employer shall pay damages to the employee for the loss incurred and for the infringement the discrimination represents.

Section 15

If it is reasonable, damages under Sections 13 and 14 may be reduced or lapse entirely.

Litigation in discrimination disputes

Applicable rules

Section 16

Cases concerning the application of Sections 8,9 and 11-15 shall be dealt with in accordance with the Act on Litigation in Labour Disputes (1974:371). In that connection, a job applicant is to be regarded as an employee, and a person with whom an employment has been sought is t be regarded as an employer.

The second paragraph also applies to disputes, under this Act, concerning the application of the provisions on dispute negotiations in the Act on codetermination at Work (1976:580).

The Right to conduct Proceedings

Section 17

In a dispute under section 16, the Ombudsman against Ethnic discrimination is entitled to conduct the case for an individual employee or job applicant if the individual so permits and if the Ombudsman deems that a judgment in the dispute is important for the application of law or if there are other special reasons for so doing.

If the Ombudsman deems it appropriate, he or she may in the same proceedings also appeal other claims for he individual.

There is no against the Ombudsman's decisions in matters referred to in the first paragraph.

Actions by the Ombudsman under the first paragraph shall be brought in the Labour Court.

Section 18

When a labour market organization has the right to bring an action for an individual under Section 4, fifth, paragraph, of the Act on Litigation in Labour Disputes (1974:371), the Ombudsman against Ethnic Discrimination is only entitled to bring the action if the organization does not do so.

The provisions of that Act concerning the individual's standing in legal proceedings shall also be applied when the Ombudsman brings proceedings.

Joint Proceedings

Section 19

When more than one job applicant institute an action for damages against the same employer and the employer considers that the damages should be shared between the plaintiffs under Section 13, second paragraph, the cases shall, on the request of the employer be dealt with in the same legal proceedings.

Section 20

If actions for damages of the kind referred to in Section 19 are instituted in different courts, the Labour shall with such cases if any of the cases is subject to its jurisdiction. Otherwise the cases shall be dealt with by the district court at which the action was first instituted or, if the action was instituted at the same time in more than one district court, by the district court chosen by the employer.

Section 21

Cases instituted in some court other than the court at which they are to be jointly heard shall be transferred to the latter court.

Section 22

If several persons have brought actions before the same court, Section 19 shall apply unless the cases are nevertheless being dealt with jointly according to some other Act.

Section 23

The proceedings in a case concerning damages under Section 13 shall be adjourned at the employer's request to the extent that this is necessary to permit the case to be dealt with jointly whit some other such action of damages which has already been instituted or which will be instituted.

An action for damages under Section 13 because of a decision on a job appointment made by a public employer may not be considered by a court until the decision on the job appointment has obtained legal force.

Limitation of Actions etc.

Section 24

If anyone brings an action because he or she has been given notice or has been dismissed, Section 34, second and third paragraphs, Section 35, second and third paragraphs, Section 37, Section 38, second paragraph, second sentence, Sections 39 – 42 and Section 43, first paragraph, second sentence and second paragraph, of the Job Security Act (1982:800 shall apply.

Section 25

In respect to any other action than those referred to in Section 24, Sections 64-66 and 68 of the Act on Co-determination at Work (1976:580) shall apply with the distinction that the time limit provided by Section 66, first paragraph, fist sentence, shall be two months. However, no action for damages as referred to in Section 13, may be instituted more than eight months after the employment decision. When an organization has allowed this time to lapse, a person who is or has been a member of the organization may institute proceedings within two months after the expiry of the eight-month limit.

Section 26

As regards an action for damages because of a decision made on a job appointment by a public employer, the time under Section 25 shall be counted from the day the decision concerning the job appointment obtained legal force.

Section 27

An action brought by the Ombudsman against Ethnic discrimination shall be dealt with as if it were an action brought by the employee or job applicant on his or her own behalf.

Annex 5: Pro. NO. 211/2000

A PROCLAMATION TO PROVIDE FOR THE ESTABLISHMENT OF THE INSTITUTION OF THE OMBUDSMAN.

WHEREAS, the immense sacrifice paid by the people of Ethiopia, in the protracted struggle they waged with a view to securing political power and to realizing the rule of law, calls for taking the due measure of laying foundation for good governance, by way of setting up an easily accessible means for the prevention or rectification of administrative abuses arbitrarily committed against citizens;

WHEREAS, the interlinkage of the activities, and of the decision-making power, of executive organs of government with the daily lives and the rights of citizens is an ever-in-creasing and widening circumstance;

WHEREAS, it is necessary to duly rectify or prevent the unjust decision and orders of executive organs and officials thereof, given under said circumstance;

WHEREAS, in order that citizens, having suffered from maladministration, are not left without redress, their want for an institution before which they may complain and seek remedies with easy access needs to be fulfilled;

WHEREAS, the legislature, as a representative of the people, has the responsibility to ensure that the executive organ carries out its functions in accordance with the law and that its administrative decision are not rendered in violation of citizens' rights;

WHEREAS, with a view to enhancing the principle thereof, it is found necessary to establish, and to determine the powers and duties of, the Office of Ombudsman, as one of the parliamentary institutions instrumental in the control of the occurrence of maladministration.
NOW, THEREFORE, in accordance with of Article 55 (1) and (15) of the Constitution, it is hereby proclaimed follows;

PARRT ONE

GENERAL PROVISIONS

1. ***Short title***

This proclamation may be cited as the "Institution of the Ombudsman Establishment proclamation No. 211/200".

2. Definitions

Unless the context requires otherwise, in this proclamation:

1) "Appointee" means the Chief Ombudsman, the deputy Chief Ombudsman or an Ombudsman, at the level of a branch office or who follows up the affairs of children and women appointed in accordance with this Proclamation;
2) "Staff" includes department heads, professionals and the support staff of the Institution;
3) "Family Member" means a person of relation by consanguinity or affinity, in accordance with the Civil Code of Ethiopia;
4) "House" means the House of Peoples' representatives of the Federal Democratic Republic of Ethiopia;
5) "Maladministration" includes acts committed, or decisions given, by executive government organs, in contravention of administrative laws, the labour law or other laws relating to administration;
6) "Official" means elected representative or an appointee or official of an executive government organ;
7) "Person" means any natural or juridical person;
8) "Region" means any of those specified under Article 47(1) of the Constitution of the Federal democratic Republic of Ethiopia and, for the purposes of this proclamation, includes the Addis Ababa city Administration and the Dire Dawa Administration,
9) "Government" means a production, distribution, service rendering or other enterprise, under the ownership of the Federal or a Regional government;
10) "Public enterprise" means a production, distribution, service rendering or other enterprise, under the ownership of the Federal or a Regional government;
11) "Government Office" means a Ministry, a commission, an Authority, an Agency, an Institute or any other government office;

12) "Investigator" means a staff assigned, by the Chief Ombudsman, to conduct an investigation;
13) "Executive Organ" includes a government office or a public enterprise as well as organs rendering administrative or related services within the judiciary or the legislature;
14) "Law" includes the Constitution of the Federal Democratic Republic of Ethiopia, the Constitution of a Region as well as federal or regional laws and regulations.

3. Establishment

1) The Institution of the Ombudsman (hereinafter referred to as "the Institution") is hereby established as an autonomous organ of the Federal government having its own juridical personality.
2) The Institution shall be accountable to the House.

4. Scope

1) The provisions of this Proclamation set out in the masculine gender shall also apply to the feminine gender.
2) This Proclamation shall also apply to maladministration committed by the executive organs, and officials thereof, of a Regional government.

5. Objective

The objective of the institution shall be to see to bringing about good governance that is of high quality, efficient and transparent, and are based on the rule of law, by way of ensuring that citizens' rights and benefits provided for by law are respected by organs of the executive.

6. Powers and Duties

The Institution shall have the powers and duties to;

1) Supervise that administrative directives issued, and decisions given, by executive organs and the practices thereof do not contravene the constitutional rights of citizens and the law as well;
2) Receive and investigate complaints in respect of maladministration;
3) Conduct supervision, with a view to ensuring that the executive carries out its functions in accordance with the law and to preventing maladministration;
4) Seek remedies in case where it believes that maladministration has occurred;
5) Undertake studies and research on ways and means of curbing maladministration;

6) Make recommendations for the revision of existing laws, practices or directives and for the enactment of new laws and formulation of policies, with a view to bringing about better governance;
7) Perform such other functions as are related to its objective.

7. Limitation of power

The Institution shall have no power to investigate:

1) Decisions, given by Councils established by election, in their legislative capacity;
2) Cases pending in courts of Law of any level;
3) Matters under investigation by the Office of the Auditor-General; or
4) Decisions given by Security Forces and units of the Defence Forces, in respect of matters of national security or defence.

8. Organization of the Institution

1) A council of the Ombudsman
2) a) a Chief Ombudsman;
   b) a Deputy Chief Ombudsman;
   c) an Ombudsman heading the children and women affairs;
   d) Ombudsmen heading branch offices; and
   e) the necessary staff.

9. Head Office

The Institution shall have its Head Office in Addis Ababa and it may have branch offices in other places to be determined by the House.

10. Appointment

1) The Chief Ombudsman, the Deputy Chief Ombudsman and other Ombudsmen shall be appointed by the House.
2) The appointment of the Chief Ombudsman, the Deputy Chief Ombudsman and of other Ombudsmen shall be made as under the following procedure:
   a. The appointees shall be recruited by a Nomination committee to be formed pursuant to Article 11 hereunder;
   b. The nominees shall have to receive the support of a two-thirds vote of the members of the Committee;
   c. The list of nominees shall be presented to the House, by the Speaker, to be voted upon;

d. The nominees shall be appointed upon receipt of a two-thirds vote of the House.

11. ***Composition of the Nomination Committee***

The Nomination Committee shall have the following members:

1) The Speaker of the House……..Chairperson
2) The Speaker of the House of the Federation…… Member(s)
3) Five members to elected by the House From among members…….. "
4) Two members of the House to be elected By joint agreement of opposition parties Having seats in the House…… "
5) The president of the Federal Supreme Court…….. "

12. Criteria for Appointment

Any person who:

1) Is loyal to the Constitution of the Federal Democratic Republic of Ethiopia;
2) Is trained in law, administration or other relevant discipline or has acquired adequate knowledge through experience;
3) Is reputed for his diligence, honesty and good conduct;
4) Has not been convicted for a criminal offence other than petty offence;
5) Is Ethiopian National
6) Is of enough good health to assume the post; and
7) Is above thirty-five years of age;

May be appointed as an Ombudsman

13. Accountability

1) The Chief Ombudsman shall be accountable to the House.
2) The Deputy Chief Ombudsman and other Ombudsmen shall be accountable to the Chief Ombudsman.

14. Term of Office

1) the term of office of an appointee shall be five years.
2) Upon expiry of the term of office specified under sub-Article (1) of this Article, an appointee may be re-appointed.

3) An appointee discharged from responsibility or removed from office, as under Article 15(1) hereunder, shall not, unless reappointed, assume a post in legislative, executive and judicial organs for about six months thereafter.

15. Grounds for Removal of an Appointee

1) An appointee may be removed from office or discharged from responsibility upon the following circumstances;
    a) Upon resignation, subject to a three-month prior written notice.
    b) Where it is ascertained that he is incapable of properly discharging his duties due to illness;
    c) Where he is found to be corrupt or to have committed other unlawful act;
    d) Where it is ascertained that he is of manifest incompetence;
    e) Upon termination of his term of office.
2) Within six months of the removal or discharge of an appointee, as under Sub-Article (1) of this Article, another appointee, as under sub-Article (1) of this Article, another appointee shall be made to replace him.

16. Procedure for removal of an Appointee

1) An appointee shall be removed from office, upon the grounds specified under Article 15 Sub Article (1) (b)-(d) herein, subsequent to investigation of the matter by a Special Inquiry Tribunal to be formed under Article 17 hereof
2) An appointee shall be removed from office where the House finds that the recommendation submitted to it, as supported by the majority vote of the Special Inquiry Tribunal, is correct and where it upholds same by a two-thirds majority vote.

17. Composition of the Special Inquiry Tribunal

The special Inquiry Tribunal shall have the following members;

1) The Deputy Speaker of the House…… Chairperson
2) The Deputy speaker of the house of Federation…….. Member(s)
3) Three members to be elected by the House……. “
4) A member of the House to be elected by joint agreement
   Of opposition parties having seats in the House ……. “
5) The vice-president of the Federal Supreme Court……. “

18, Prohibition to Engage in Other Employment

1) The Chief Ombudsman shall be the superior head of the Institution and, as such, shall exercise the powers and duties of the Institution provided for under this proclamation.
2) Without prejudice to the generality stated under sub-Article (1) of this Article, the Chief Ombudsman shall;
   a) Employ and administer the staff, in accordance with the directive to be adopted by the Council of the Ombudsmen.
   b) Prepare and directly submit, to the House, the budget of the Institution and implement same upon approval;
   c) Transfer a case, where he has sufficient grounds, from one investigation section or investigator to another or to himself, or/and investigate a case of maladministration occurring anywhere;
   d) Undertake study of recurrent cases of maladministration and forward together with remedial proposals to the house;
   e) Prepare and submit draft administrative legislations, give his opinion and on the activities of the Institution;
   f) Take part in meetings by way of representing the Institution, establish working relations with Federal and Regional government organs as well as with non-governmental organizations;
   g) Organize, as well as coordinate, and follow up the activities of branch offices;
   h) Undertake such other activities as are assigned to him by the House;
3) The chief Ombudsman may, to the extent necessary for the efficient performance of the Institution, delegate part of his powers and duties, other than those specified under Sub-Article (2) (b), (e) and (f) of this Article, and Article 35(2), to Ombudsmen or to other officials of the Institution.

20. Powers and Duties of the Deputy Chief Ombudsman

Pursuant to directives given from the Chief Ombudsman, the Deputy Chief Ombudsman shall:

1) Assist the Chief Ombudsman in planning, organizing, directing and coordination the activities of the head office of the Institution.
2) Undertake the activities of the Chief Ombudsman in the absence of the latter;
3) Carry out such other activities as may be assigned to him by the Chief Ombudsman.

21. Powers and Duties of Ombudsmen of Branch Offices

In addition to exercising the powers and duties of the Institution specified under Article 6 of this Proclamation within the local jurisdiction of a branch office, and Ombudsman shall, as the superior head of a branch office, have the following powers and duties:

1) To ensure that administrative and other laws, regulations, and directives, are observed;
2) To transfer an administrative case form one investigation section or investigator to another or to conduct the investigation himself, where it has a good cause;
3) To submit, to the Chief Ombudsman and to the government of the Region wherein it is situate, a detailed report on matters of maladministration;
4) To forward proposals for the revision of laws and practices inconsistent with principles of good governance;
5) To direct the branch office, in accordance with directives given from the Institution;
6) To effect payments in accordance with the budget allocated to the branch office;
7) To establish working relations, as a representative of the branch office, with Regional government organs and non-governmental organizations operating within its local jurisdiction;
8) To perform such other functions as are assigned to him by the Chief Ombudsman.

PART THREE

RULES OF PROCEDURE OF THE INSTITUTION

22. ***The Right to Lodge Complaints***

1) A complaint may be lodged by a person claiming to have suffered from maladministration or, by his spouse, family member, his representative or by a third aprty.
2) The Institution may, in consideration of the gravity of the maladministration committed, receive anonymous complaints.
3) Prior to lodging a complaint with the Institution in respect of an act of maladministration from which he has suffered, any person shall bring the complaint before the relevant organs.
4) Without prejudice to the provisions of Article 7 hereof, the right to lodge complaints, as under this criminal or civil proceedings over the same case.
5) The Institution shall receive and investigate complaints free of any charge.

23. Lodging Complaints

1) a complaint may be lodged with the Institution orally, in writing, or in any other manner.

2) Complaints shall, to the extent possible, be submitted together with supporting evidence.

3) Complaints may be made in Amharic or in the working language of the Region.

24. Investigation

1) The Institution may conduct investigation on the basis of complaints submitted to it.
2) The Institution shall have the power to conduct investigation on its own initiation, where it so finds it necessary.

25. Ordering the Production of Evidence

In order to undertake necessary examination within a reasonable time, the Institution may order that:

1) Those complained against appear for question or that they submit their defence;
2) Witnesses appear, and give their testimony;
3) Any person in possession of evidence relevant to the case, produce same.

26. Remedies

1) The Institution shall make all the effort it can summon to settle, a complaint brought before it amicably.
2) It shall notify, in writing, the findings of its investigation and its opinion thereon, to the superior head of the concerned organ and to the complainant.
3) The remedy proposed by the Institution, pursuant to Sub=-Article (2) of this Article, shall expressly state that the act or practice having caused the maladministration be discontinued, or that the directive having caused same be rendered inapplicable, and that the maladministration committed be rectified, or that any other appropriate measure be taken.
4) Complaints submitted to the Institution shall be accorded due response, within a short period of time.

27. The Right of Object

1) Any Complainant or accused shall have the right to object to the appointee or official next in hierarchy where he is aggrieved by a remedy proposed by a subordinate

appointee, or official of the Institution, within one month from the time he is notified, in writing, of such proposed remedy.

2) An official who receives an objection, pursuant to sub-Article (1) of this Article, may modify, stay the execution of, reverse or confirm the remedy having been proposed.
3) A decision rendered by the Chief Ombudsman shall be final.

28. Duty to notify a Fault

Where the Institution, in the process of conducting investigations, believes that a crime or an administrative fault has been committed, it shall have the duty to, forthwith, notify in writing, immediately to the concerned organ or official.

29. Overlap of Jurisdiction

1) Where cases falling both under the jurisdiction of the Institution and of the Ethiopian Human Rights Commission materialize, the question of which of them would investigate shall be determined upon their mutual consultation.

2) Failing determination of the matter as under sub-Article (1) of this Article, the organ before which the case is lodged shall undertake the investigation.

PART FOUR

THE COUNCIL OF OMBUDSMEN AND ADMINISTRATION OF THE STAFF OF THE INSTITUTION

30. Council of Ombudsmen of the Institution

The Council shall have the following powers and duties;

1) To adopt directives and by-laws necessary for the implementation of this proclamation;
2) To discuss on draft budget of the Institution.
3) To adopt staff regulations in conformity with the basic principles of Federal Civil Service laws;
4) To appoint department heads;
5) To examine and render a final decision, within a short period of time, on cases, petitions or complaints submitted to it within short period of time in relation to staff administration;
6) To hear disciplinary cases relating to department heads.

32. The Right to Appeal

1) Any department head of the Institution aggrieved by administrative decisions rendered by the Council may appeal to the Speaker of the House within one month from the date such decision has been made.
2) Decisions rendered pursuant to Sub-Article (1) of this Article shall be final.

33. Utilization of Outside Professionals

The Institution may utilize, for a specific task and for a definite duration, outside professionals necessary for its functions, subject to making appropriate remunerations.

34. Observance of Secrecy

Unless ordered by a court or otherwise permitted by the Chief Ombudsman, any appointee, or staff, or Professional employed pursuant to Article 33 of this proclamation shall have the obligation not to disclose, at all itmes, any secret known to him in connection with his duty.

35. Immunity

No:

1) Appointee, or
2) Investigator

Of the Institution may be detained or arrested without the permission of the House or the Chief Ombudsman, respectively, except when caught in flagrante delicto. For a serious offence.

PART FIVE

MISCELLANEOUS PROVISIONS

36. Budget

1) The budget of the Institution shall be drawn from the following sources;

a) Budgetary subsidy to be allocated by the government;

b) Assistance, grant and any other source.

2) From the budget allocated to the Institution an amount equivalent to a quarterly portion of its recurrent budget shall, in advance, be deposited at the National Bank of Ethiopia, or at another bank designated by the Bank, and shall be utilized, in accordance with financial regulations of the government for purposes of implementing the objective of the Institution.

37. Books of Accounts

1) The Institution shall keep complete and accurate books of accounts.
2) The accounts of the Institution shall be audited annually, by an organ to be designated by the House.

38. duty to Cooperate

Any person shall provide the necessary assistance, with a view to helping the Institution exercise its powers and duties.

39. Reporting

1) The Institution shall issue an official report, as may be necessary.
2) The Institution shall exercise transparency in respect of its mode of operation, including issuance of regular reports.
3) notwithstanding the provisions of Sub –Article (2) of this Article, the Institution shall have the duty to exercise caution in respect of matters to be kept secret, with a view to not endangering national security and well-being or to protecting individual lives.

40. Non-Answerability for Defamation

1) No complaint lodged pursuant to this proclamation shall entail liability for defamation.
2) No report of the Institution submitted to the House, on the findings of an investigation undertaken, nor any other correspondence of the Institution relating to its activities shall entail liability for defamation.

41. Penalty

1) Any person how, having received summons from the Institution, or been called upon by it otherwise, does not appear or respond without good cause, within the time fixed, or is not willing to produce a document or to have same examined shall be punishable with imprisonment from one month to six months or with a fine from two hundered to one thousand Birr or with both.

2) Unless punishable with more severe penalty under the penal, law, any person who causes harm to persons who have witnessed before the Institution, or to persons having produced a document before it, or who, without good case, fails to take measures within three months from receipt of reports, recommendations, and suggestions of the Institution, or does not state the reasons for such failure, shall be

punishable with imprisonment from three to five years or with a fine from six thousand to ten thousand Birr or with both;

42. Transitory Provision

Complaints on maladministration that are under investigation by the House prior to the enactment of this proclamation shall be investigated by the Institution.

43. Inapplicable Laws

No law or practice, inconsistent with this proclamation, shall be applicable in respect of matters provided for in this proclamation.

44. Effective Date

This proclamation shall enter into force as of the 4th day of July, 2000.

Annex 6: Pro. NO. 210/200.

A PROCLAMATION TO PROVIDE FOR THE ESTABLISHMEENT OF THE HUMAN RIGHTS COMMISSION

WHEREAS, the goal to jointly build one political community founded on the rule of law, as one of the basic objectives of the nations/nationalities and peoples of Ethiopia, is to be achieved by guaranteeing respect for the fundamental rights and freedoms of the individual and of nations/nationalities and peoples;

WHEREAS, the immense sacrifices paid by the people of Ethiopia, in the protracted struggle they waged with a view to bringing about a democratic order and to enhancing their socio-economic development, calls for paving the way for the unfettered protection of human rights;

WHEREAS, the Constitution of the Federal Democratic Republic of Ethiopia guarantees respect for peoples' rights and freedoms and provides that Federal and Regional government organs, at all levels, and their respective officials shall have the responsibility and duty to respect and enforce said rights and freedoms;

WHEREAS, it is found necessary to establish a Human rights Commission, as one of the organs that play a major role in enforcing such rights and freedoms, and to determine its powers and functions, by law, in conformity with the provisions of the Constitution.
NOW, THEREFORE, in accordance with sub-Articles (1) and (14) of Article 55 of the Constitution, of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows:

PART ONE
GENERAL PROVISION

1. ***Short Title***

   This Proclamation may be cited as the "Ethiopian human rights Commission Establishment Proclamation No. 210/200."

2. ***Definitions***

Unless the context requires otherwise, in this proclamation:

1) "Appointee" means the Chief Commissioner for human rights, the Deputy Chief Commissioner or Commissioner heading the Children and women affairs, and commissioners at the level of branch offices, appointed by the house, in accordance with this proclamation.
2) "Staff" includes department heads, professionals and other support staff of Commission;
3) "Family Member" means a person of relation by consanguinity or affinity, in accordance with the Civil Code of Ethiopia;
4) "House" means the house of peoples' Representatives of the Federal Democratic Republic of Ethiopia;
5) "Human right" includes fundamental rights and freedoms recognized under the Constitution of the Federal Democratic Republic of Ethiopia and those enshrined in the international agreement ratified by the country;
6) "Person" means any natural or juridical person;
7) "Region" means any of those specified under Article 47 (1) of the Constitution of the Federal Democratic Republic of Ethiopia and, for the purposes of this Proclamation, includes the Addis Ababa City Administration and the Dire Dawa Administration;
8) "Government" means the Federal, or a Regional Government;
9) "Third party" means a deputy, an association or a non-governmental organization representing an individual or a group;
10) "Investigator" means a staff assigned, by the Chief Commissioner, to conduct investigation.

3. Establishment

1) The human Rights Commission of Ethiopia (hereinafter referred to as "the Commission") is hereby established as an autonomous organ of the Federal Government having its own juridical personality.
2) The Commission shall be accountable to the House.

4. Scope

1) This Proclamation shall also apply to violation of human right committed in any Region.

2) Provisions of this proclamation set out in the masculine gender shall also apply to the feminine gender.

3)

5. Objective

The objective of the Commission shall be to educate the public be aware of human rights see to it that human rights are protected, respected and fully enforced as well as to have the necessary measure taken where they are found to have been violated.

6. Powers and duties

The Commission shall have the powers and duties to:

1) Ensure that the human rights and freedoms provided for under the Constitution of the Federal Democratic Republic of Ethiopia are respected by all citizens, organs of state, political organizations and other associations as well as by their respective officials;
2) Ensure that laws, regulations sand directives as well as government decisions and orders do not contravene the human rights of citizens guaranteed by the Constitution;
3) 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;
4) Undertake investigation, upon complaint or its own initiation, in respect of human rights violations;
5) Make recommendations for the revision of existing laws, enactment of new laws, and formulation of policies.
6) Provide consultancy services on matters of human rights;
7) Forward its opinion on human rights reports to be submitted to international organs;
8) Translate into local vernaculars, international human rights instruments adopted by Ethiopia and disperse same;
9) Participate in international human rights meeting, conferences or symposia;
10) Own property, enter into contracts, sue and be sued in its own name;
11) Perform such other activities as may be necessary to attain its objective.

7. Limitation of power

The commission shall have full powers to receive and investigate all complaints on human rights violations made against any person, save cases brought before the house, the house of the federation, regional council or before the courts of law, at any level.

8. Organization of the commission

The commission shall have;

1) A council of commissioners;
2) (a) a chief commissioner;
   (b) a deputy chief commissioner;
   (c) a commissioner heading the children and women affairs;
   (d) others commissioners and
   (e) the necessary staff.

9. Head office

The commission shall have its head office in Addis Ababa and it may have branch offices at any place as may be determined by the house.

10. Appointment

1) the chief commissioners, the deputy chief commissioner and other commissioner shall be appointed by the house.
2) the appointment of the chef commissioner, the deputy chief commissioner and of other commissioners shall be made as under the following selection procedure;
   a) the appointees shall be recruited by a nomination committee to be formed by a nomination committee to be formed pursuant to article 11 hereunder;
   b) the nominees shall have to receive the support of a two-thirds vote f the members of the committee;
   c) the list of nominees shall be presented to the house, by the speaker, for it to vote upon;
   d) the nominees shall be appointed upon receipt of the support of a two-thirds vote of the house.

11. Composition of the nomination committee

The nomination committee shall have the following members;

1) the speaker of the House……Chairperson
2) the speaker of the House of Federation…… Member(s)
3) seven members to be elected from among members of the House the Federation…….. Members

4) two members of the house to be elected by joint agreement of opposition parties having seat in the House…… "

5) The President of the Federal Supreme Court……. "

6) A representative of the Ethiopian Orthodox Church… "

7) A representative of the Ethiopian Islamic Council…. "

8) A representative of the Ethiopian Evangelical Church… "

9) A representative of the Ethiopian Catholic Church…… "

12. Criteria for appointment

1) Is loyal to the Constitution of the Federal Democratic Republic of Ethiopia;
2) Upholds respect for human rights;
3) Is trained in law or other relevant discipline or has acquired extensive knowledge through experience;
4) Is reputed for his diligence, honesty and good conduct;
5) Has noit been convicted for a criminal offence;
6) Is an Ethiopian national;
7) Is of enough good health to assume the post;
8) Is above thirty-five years of age

May be an applointee.

13. Accountability

1) The Chief Commissioner shall be accountable to the house.
2) The Deputy Chief Commissioner and other Commissioners shall be accountable to the Chief commissioner.

14. Term of the Office

1) The term of office of an appointee shall be five years.
2) Upon expiry of the term of office specified under sub-Article (1) of this Article, the appointee may be re-appointed.
3) A person discharged form responsibility or removed from office, as under Article 15, shall not, unless re-appointed, assume a post in legislative, executive and judicial organs for about six months thereafter.

15. Grounds for Removal of an Appointee

1) An appointee may be removed from office or discharged from responsibility upon the following circumstances:

a. Upon resignation, subject to a three-month prior written notice;
b. Where it is ascertained that he is incapable of properly discharging his duties, due to illness;
c. Where he is found to have committed an act of human rights violation;
d. Where he is found to be corrupt or to have committed other unlawful act;
e. Where it is ascertained that he is of manifest incompetence;
f. Upon termination of his term of office.

2) Within six months of the removal or discharge of an appointee, as under Sub-Article (1) of this Article, another appointee shall be made to replace him.

16. Procedure for Removal of an Appointee

1) An appointee shall be removed from office, upon the grounds specified under Article 15(1) (b-e) hereof, subsequent to investigation of the matter by a special Inquiry Tribunal to be formed pursuant to Article 17.
2) An appointee shall be removed from office, where the House finds that the recommendation submitted to it, as supported by the majority vote of the Special Inquiry Tribunal, is correct and where it upholds same by a two-thirds majority vote.

17. Composition of the Special Inquiry Tribunal

The special Inquiry Tribunal shall have the following members;

1) The Deputy speaker of the House ……. Chairperson
2) The deputy Speaker of the house of the Federation. Members(s)
3) Three members to be elected by the House…… "
4) A member f the house to be elected by joint agreement
   Of opposition parties having seats in the House "
5) The Vice-President of the Federal Supreme Court……. "

18. Prohibition to engage in Other Employment

1) An appointee shall not be allowed to engage in other gainful, public or private employment during his term of office.
2) Notwithstanding the provisions of sub-Article (1) of this Article, the house may allow otherwise in consideration of the particular profession in which the appointee is required to make contribution.

PART TWO

POWERS AND DUTIES OF APPOINTEES

19. Powers and Duties of the Chief Commissioner

1) The Chief Commissioner shall be the top executive of the Commission and, as such, shall exercise the powers and duties of the Commission provided for herein.
2) Without prejudice to the generality stated under sub-Article (1) of this Article, the Chief Commissioner shall:
    a. Employ and administer the staff, in accordance with directive to be adopted by the Council of Commissioners.
    b. Prepare and submit to the house, the budget of the Commission dealt upon by the Council of commissioners; and implement same upon approval;
    c. Transfer a case where he has sufficient grounds, from one investigation section or investigator to another; or investigate, himself, a case of human right violation committed anywhere;
    d. Undertake study of recurrent cases of human right violations and forward together with remedial proposals to the house;
    e. Give his opinion on reports prepared by the Federal government in respect of human rights protection;
    f. Prepare, and submit to the house, draft legislation on human rights; given his opinion on those prepared otherwise;
    g. Submit a report, to the House, on matters of human rights and on the activities of the Commission;
    h. Take part in meetings by way of representing the Commission, establish working relations with Federal and Regional government organs as well as with non-governmental organizations;
    i. Organize, coordinate and follow up branch offices;
    j. Perform such other activities as may be assigned to him by the house.
3) The Chief Commissioner may, to the extent necessary for the efficient performance of the Commission, delegated party of his powers and duties,

other than those specified under sub-Article 2 (b), (f) and (g) of this Article and Article 35(2), to Commissioners or other officials of the Commission.

20. Powers and Duties of the Deputy

Chief Commissioner

The Deputy chief commissioner shall:

1) assist the chief commissioner in planning, organizing, directing and coordinating the activities of the head office of the chief commissioner,
2) undertake the activities of the chief commissioner, in the absence of the latter;
3) carry out such other activities as may be assigned to him by the chief commissioners

21. Powers and duties of the commissioned of Branch Offices

In addition to exercising, within the local jurisdiction of a branch office, the powers and duties vested in the commission, other than those specified under sub articles (7)and (9)of article 6 of this proclamation, the commissioner shall, a the superiors head of a branch office, have the following powers and duties:

1) To transfer a case form one investigation section or investigator to another or to conduct investigation himself, where it has a good cause;
2) To submit, to the Chief Commissioner, a detailed report on matters of human rights;
3) To direct and organize the branch office as well to administer its professionals and support staff, in accordance with directive issued bys the commission,
4) To effect payments in accordance with the budget allocated to the branch office;
5) To establish working relations, as representative of the branch office, with Regional government organs and non-governmental organizations operating within the Region;
6) To perform such other activities as may be assigned to him by the Chief Commissioner.

PART THREE

Rules of procedure of the Commission

22. The right to Lodge Complaints

1) A complaint may be lodged by a person claiming that his rights are violated or, by his Spouse, family member, representative or by a third party.
2) The commission may, in consideration of the gravity of the human right violation committed, receive anonymous complaints.
3) Without prejudice to provisions of Article 7 of this proclamation, the right to lodge complaints, as under this proclamation, shall be no bar to the institution of criminal or civil proceedings over the same case.
4) the Commission shall receive and investigate complaints, free of any charge.

23. Lodging Complaints

1) A complaint may be lodged, with the Commission, orally, in witting or in any other manner.
2) Complaints shall, to the extent possible, be submitted together with supporting evidence.
3) Complaints may be made in Amharic or in the working language of a Region.

24. Investigation

1) The commission may conduct investigation on the basis of complaints submitted to it.
2) The Commission shall have the power to conduct investigation, on its own initiation, where it so finds necessary.

25. Ordering the Production of Evidence

In order to undertake necessary examination, within a reasonable time, the Commission may order that:

1) Those complained against appear, for questioning or that they submit their defence.
2) Witness appear, and give their testimony;
3) Any person in possession of evidence, relevant to the case, produce same,

26. Remedies

1) The commission shall make all the effort it can summon to settle, amicably, a complaint brought before it.

2) It shall notify, in writing, the findings of its investigation, and its opinion thereon, to the superior head of the concerned organ and to the complainant.
3) The remedy proposed by the Commission, pursuant to this Article, shall expressly state that the act having caused the grievance be discontinued, that the directive having caused the grievance be rendered inapplicable and that the injustice committed be redressed or that any other appropriate measure be taken.
4) Complaints submitted to the Commission shall be accorded with due response, within a short period of time.

27. The right to Object

1) Any complainant or accused shall have the right to object to the official, next in hierarchy, where he is aggrieved by a remedy proposed by a subordinate appointee or official of the Commission, within on month from the time he is notified, in writhing, of such proposed remedy.
2) An appointee or official who receives an objection, pursuant to Sub-Article (1) of this Article, may modify, stay the execution of, reverse or confirm the remedy having been proposed.
3) The decision to be rendered by the chief commissioner shall be final.

28. Duty to notify of Fault

Where the commission, in the process of conducting investigations, believes that a crime or an administrative fault is committed, it shall have the duty to, forth with, notify in writing immediately to the concerned organ or official.

29. Overlap of Jurisdiction

1) Where cases falling both under the jurisdiction of the Commission and of the Institution of the Ombudsman materialize, the question of which of them would investigate shall be determined upon their mutual consultation.
2) Failing determination of the matter, as under sub-Article (1) of this Article, the organ before which the case is lodged shall undertake the investigation.

PART FOUR

Administration of the Council of Commissioners and Staff of the Commission

30. Council of the Commissioners

1) Council of the Commissioners (hereinafter referred to a "the Council") is hereby established.
2) The Council shall have the following members;

a. The Chief Commissioner……..Chairperson
b. The Deputy chief Commissioner……..Deputy Chair person
c. Other Commissioners ……..Members

3) The Council shall elect its secretary from among its members.
4) The Council may draw-up its own rules of procedure.

31. Powers and duties of the council

The council shall have the following powers and duties:

1) To adopt shall the following powers and duties: implementation of this proclamation.
2) To discuss on the draft budget of the commission:
3) To adopt staff regulations in conformity with the basic principles of federal civil service laws;
4) To appoint department heads of the Commission and branch offices of same;
5) To examine, and decide on, cases, petitions or complaints submitted to it in relation to staff administration, within short period of time;
6) To appoint heads, at the level of branch offices, of the children and women affairs department;
7) To hear disciplinary cases, relating to department heads.

32. The Right to Appeal

1) Any department head of the Commission aggrieved by administrative decisions rendered by the Council may appeal to the Speaker of the House within one month from the date such decision has been made.
2) The decision rendered pursuant to Sub-Article (1) of this Article shall be final.

33. Utilization of Outside Professionals

The Commission may utilize, for a specific task and for a definite duration, outside professionals necessary for its functions, subject to making appropriate remunerations.

34. Observance of Secrecy

Unless ordered by a court or otherwise permitted by the Chief Commissioner, any appointee or staff of the Commission or any professional employed pursuant to Article 33 of this Proclamation, shall have the obligation not to disclose, at all times, any secret known to him in connection with his duty.

35. Immunity

No:

1) Appointee, or
2) Investigator

Of the Commission may be arrested or detained without the permission of the House or the Chief Commissioner, respectively, except when caught in Flagrante delicto, for a serious offence.

PART FIVE

MISCELLANEOUS PROVISIONS

36. Budget

1) The budget of the Commission shall be drawn from the following sources:
   (a) Budgetary subsidy to be allocated by the government;
   (b) Assistance, grant and any other source.
2) Of the monies obtained from the sources mentioned under sub-Article (1) of this Article, an amount equivalent to a quarterly portion, shall, in advance, be deposited at the National Bank of Ethiopia, or at another bank designated by the Bank, and shall be utilized, in accordance with financial regulations of the government, for purposes of implementing the objectives of the Commission.

37. Books of Accounts

1) The Commission shall keep complete and accurate books of accounts.
2) The accounts of the Commission shall be audited, annually, by an organ to be designated by the House.

38. Duty to Cooperate

Any person shall provide the necessary assistance, with a view to helping the Commission exercise its powers and duties.

39. Reporting

1) The Commission shall issue an official report, as may be necessary.
2) The Commission shall exercise transparency in respect of its mode of operation, including issuance of regular reports.
3) Notwithstanding the provisions of sub-Article (2) of this Article, the Commission shall have the duty to exercise caution in respect of matters to be kept secret, with a view to not endangering national security and well-being or to protecting individual lives.

40. Non-Answerability for Defamation

1) No Complaint lodged pursuant to this proclamation, shall, entail liability for defamation.
2) No report of the Commission submitted to the House, on the findings of an investigation undertaken, nor any other correspondence of the Commission, relating to its activities, shall entail liability of defamation.

41. Penalty

1) Any person who, having received summons from the Commission, or been called upon by it otherwise, does not appear or respond, without good cause, within the time fixed or is not willing to produce a document or to have same examined, shall be punishable with imprisonment from one month to six months or with a fine from two hundered to one thousand Birr or with both.
2) Any person who causes harm to witnesses before the Commission or to persons having produced a document before it or who, without good cause, fails to take measures within three months from receipt of reports, recommendations and suggestions of the Commission or does not state the reasons for such failure shall be punishable with both; unless punishable with more severe penalty under the penal law.

42. Transitory provisions

Complaints on violation of human rights that are under investigation by the House, prior to the enactment of this proclamation, shall be investigated by the Commission.

43. Inapplicable Laws

No law or practice, inconsistent with this Proclamation shall be applicable in respect of matters provided for in this proclamation.

44. Effective Data

This proclamation shall enter into force as of the 4th day of July, 2000

Done at Addis Ababa, this 4th day of July, 2000.

Annex 7: Illustrations of Interpretation

Part: II. Constitutional Interpretation: Illustrations of;

The following examples are just hypothetical and do not want to express a legal opinion of the author. The examples should just show how the above mentioned theories and methods of constitutional interpretation could be used.

12. Illustrations for literal interpretation or definitions

13. The literal interpretation has to be used in cases, where there is no doubt, or where there is a definition given by law itself. For example Art.7 clears, that regulations of the constitution, which prefer to the male gender are equally applicable for the female sex (this provision refers to the Amharic version of the Constitution and not to the English one). In the same way art. 106 of the Constitution describes the use of Amharic Version. However in cases of unclear Amharic word or rule, the use of the English Expression, of the English Version could be of advantage. Also important for the understanding of the new formula of the Ethiopian Constitution is the definition of:
14. "Nations, Nationalities and Peoples". Art. 39 Sub. 5 gives a clear definition, what the Constitution wants to express by these three notions: "Nationals, Nationalities and peoples".
15. The interpretation of the constitution is a literal one and bound to the wording of the constitutional law. It is interesting to see how the literal interpretation of the wording "nations, nationalities and peoples" gets a new direction together with the notion "to respect" in art. 86, which has the following wording: "To promote policies of foreign relations based on the protection of national interests and respect for the sovereignty of the country". The objective of respect must be interpreted in a way, by which the cultural, social and historic identities are improved. Therefore Fasil Nahum gives the following example of a purposive interpretation.
16. "Another political objective laid down is for the government to respect the identity of the Nations, Nationalities and Peoples. Since the construction already in its preamble presents the Nations, nationalities, and Peoples of Ethiopia as the authors and beneficiaries of the political system that is installing, government would naturally have to respect their identity and all the rights flowing from it. But it is interesting that the government's obligation with respect to the Nations, Nationalities and Peoples is not

limited to respecting their identify but extends to strengthening the ties of equality, unity, and fraternity among them. This is not a status quo-oriented respect of national dandify intended to hermetically seal and separate one from the other; rather, it is a respect of nationality as recognition of their human worth and thereby strengthening their consciousness and the objective reality of their need to work together and support one another as members of a close-knit family, on the basis of equality and fraternity.

17. With regard to Art. 8 of the Constitution we have a special case of an interpretation problem, because it seems to be necessary to use the preamble of the constitution. In some countries we are normally not allowed, to use preamble as a constitutional rule in the process of interpretation of the constitution, because the preamble is not legal, but a political formula.
18. However they are exemptions and in those exemptions we can also the use the wordings of the preamble of a constitution. Sometimes the constitution has two different wordings for one legal rule:
19. For instance the wording "Law of the Land" (Ye'hagerity hig) in Art.9. with regard to the English Version there is no obvious reason, why the two different notions are used, therefore both notions have to be interpreted identically.
20. **Illustrations for the interpretation according to the intention of the lawgiver (intentional interpretation) or according to the systematic method**
21. Art. 11 sub. 1 of the constitution guarantees the separation of state and religion. They are however some different forms of the separation, so for instance the laicistic separation (France) or the co-operation (Germany) or the so called Limping-Separation in some other European countries. Literally interpretation of "Separation of State and Religion" (Ye'mengistna Ye'haymanot meleyayet) can't give a clear answer, what is meant by Art. 11 sub. 1 of the Constitution. Neither the intentional interpretation or the purposive interpretation gives an important hint by Art. 11 sub. 2 which says, that there is no "established Religion". In the Ethiopian constitution 1931/55 the Ethiopian Orthodox Church was such an established church. Therefore Art. 1 sub. 1 could mean just to rule out this form of established religion. We use here the historic and comparative method of systematic interpretation, which is also called idea, which kind of separation is really prescribed by the constitution. But Art. 11 Sub. 3 tells us, that there should be no interference into state affairs by the religion and no interference into religion by the state. This rule together with the regulation of Art. 34 sub. 5 and Art. 78 sub. 5, where religious

courts are permitted, show that there might be a kind of co-operative separation envisaged. Therefore the idea of laicistic-separation must be refused by using the method of systematic interpretation. Whether we call this model of separation the neutral separation model or the co-operative model can not be further discussed here. Anyway this means, that the Ethiopian State has a positive attitude towards religious marriage or religious courts in general, provided that the procedural rule are established by state law. Neither a literal interpretation nor an intentional interpretation but a systematic (or purposive?) discloses the real meaning of the constitutional provision.

22. **Illustrations for a combination of contextual (intentional) and purposive method.**
23. Also Art. 12 must be interpreted according to the principles of constitutional interpretation, because the notion of "transparent" in the English Version is open to different things. The codntext of Art. 122 Sub. 1 gives the impression, that the transparency is demanded to make the administration responsible and open. However sub. 2 of this article makes it clear, that also penal sanctions are possible. On the other hand Art. 12 sub. 3 gives room to the interpretation, that the "recall" of the civil service agent should be only the sanction. A systematic interpretation would have to try to link the notion of "transparent" in Art. 12 together with other articles, in which this notion is used.
24. This might be necessary, because the intent of the legislator can't be clearly identified in using Art. 12 Sub. 2 and 3 of the constitution. Using only the interpretation according to the purpose this article could be understood as a means against corruption. In such a case the violation of being transparent would also allow penal sanctions. It is therefore obvious, that only an interpretation is possible and justified, by which all methods especially the contextual and the purposive method are combined (in continental law this method is called systematic method of interpretation)
25. **Illustrations for the importance of the language to be used**
26. Art. 13 sub. 2 needs a specific constitutional interpretation because the guaranties of human rights in chapter 3 have to be interpreted in conformity with those international conventions or declaration which are mentioned in Art. 13 sub. 2. The first problem would be whether the Amharic language has to be used or the English language, because art. 5 of the constitution can only be applied with regard to mere Ethiopian enactments. The international conventions or declarations mentioned in Art. 13 sub. 2 however are established in English. Another problem would be where the four different categories of

international guaranties of human rights should be interpreted according to the principles of statutory interpretation or according to the principles of constitutional interpretation. It should be remarked, that we stated above, that the difference between the two methods of interpretation is not anymore so important as some decades before.

27. **Illustration for Practical harmony (comparative method)**
28. Art. 34 protects marriage and family as individual rights but also as an constitutional institution. Therefore within the same article of the Ethiopian constitution (Art. 34) there are two different concepts implanted with regard to marriage and family. A law limiting divorce or excluding divorce could violate the guarantee of the individual right of marriage, but we supported by the idea of marriage as an institutional guarantee. Those tensions within a constitution or even within the same constitutional provision could be interpreted according to the principle of "Practical concordance" (a case of systematic method). This means, that both aspects (the individual and the institutional aspect) must be harmonized and can not be used against each other. The institutional guarantee of marriage and family is a special safeguard for the children, who naturally should not only be protected after divorce, but also during the time of marriage. Here also the international convention on the protection of children, to which Ethiopia has agreed, must be used as an instrument of interpretation. The interpretation of the protection of family and marriage in Art. 34 therefore has to take into consideration the convention on the protection of children according to Art. 13 sub. 2 and eventually also the other provisions of the chapter 3 of the Constitution, by which women or children are protected. Therefore the systematic interpretation as a combination of the intentional and purposive method lead finally to the exact construction of Art. 34 of the constitution. The "Practical harmonization" is nothing else than an application of the systematic method of interpretation.
29. **Illustration fro purposive method**
30. According to Art. 83 a court or an interested party to a dispute has to present the caser to the council, when a federal or regional law is violation the counstitution. The meaning of law in this article was already discussed above. The application of the purposive theory made it necessary to limit the notion of law to enactment by parliament or to similar rules like the regulations. If we compare this notion with the notion of law in Art. 9 sub.1 and 2 we realize, that there are all legal enactments or statutes from parliamtentary enactments down to local regulations are included. Again from the purpose of this regulation we

should draw the conclusion, that no legal formulation should remain in force, which is violating the constitution. Do we so violate the principle of uniform interpretation of the same words of the constitution (unity of constitutional law)? This principle is valid, but has to be neglected in those cases and which the attention or purposive systematic theory demands a different interpretation of identical words. This is here the case.

31. Art. 9 and Art. 83 have completely different purposes
32. Art. 9 sub 1 and 2 wants to protect the Constitution. Art. 83 has the intention, to protect the federal or regional parliaments from judicial interpretation by the courts and demands suspension and presentation of the case to he council of constitutional inquiry.

33. Illustrations for teleological method (value –oriented)

34. Art. 86 sub. 1 of the Constitution demands respect with regard to equality and sovereignty of other states and non-intervention in their internal affairs. Starting from art. 85 the Constitution contains objective principles. They are also objective law and all legal enactments must be in conformity with these directives. The notion "respect" in this article however needs an interpretation according to the teleological method. The sub art. 2 speaks of "mutual respect". This common interest can not be just a commercial, because the terms: "equality", "sovereignty" and non-intervention have a value oriented meaning.
35. Following Art. 86 to 92 are also directives of the constitution with regard to the application (environment, defence and others). Therefore the real meaning of these articles can only be found by using the teleological, value-oriented method of interpretation.

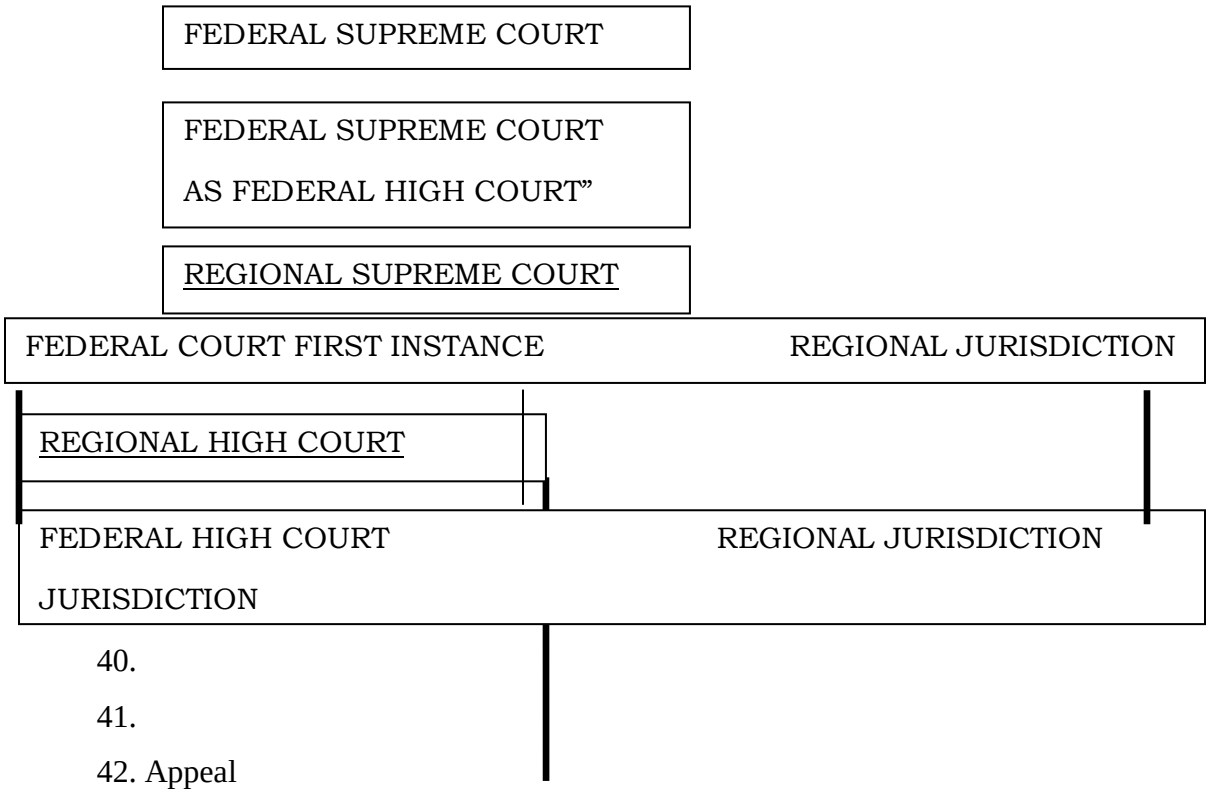
36. Conclusion

37. Ethiopia has a very special regulation for the process of constitutional interpretation, which leads the case in question from the concerned judge to the council of constitutional Inquiry and possibly to the House of federation. The basic principles of constitutional interpretation however are more or less the same as for countries with Civil Law or with Common Law. With regard to the purposive method or to the teleological method differences of interpretation might be possible because the purpose might be a very specific Ethiopian one or the value, to which the constitutional norm is oriented, might be also very specific. With this manual all those members of different councils or houses concerned with constitutional interpretation should have an easier access to the instruments and operations of this special kind of interpretation. The footnotes and the

annex should give further information, especially for lawyers to follow up the one or the other issue, which I could only briefly mention in this manual. Also the information about special publications on legal and constitutional publication should give more information, if wanted. Finally want to mention that the examples presented in VIII. (Examples for constitutional Interpretation in Ethiopia) just the personal opinion of the author. At the end of this manual the author wants to express he hope that the information might help all the concerned personalities to make the Ethiopian way of constitutional interpretation a full success in realizing and enforcing the Constitution and creating living law.

38. Appendix 1:

39. Table 1: Central Courts & Regional Courts



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42. Appeal

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