Constitutional Authority to Enact Civil Substantive and Procedural Laws in Ethiopia

The Nature of the Draft Asset Recovery Proclamation of Ethiopia: Criminal or Civil?

Setting aside the question of whether the draft Asset Recovery Proclamation of Ethiopia is criminal or civil in nature for the time being, does the federal government have the constitutional authority to enact civil substantive and procedural laws if the draft proclamation is deemed to be civil in nature?

It is important to assess the relevant constitutional provisions to determine whether the federal government has the constitutional power to enact civil asset recovery legislation.

While the FDRE Constitution primarily assigns the power to enact civil substantive and procedural laws to regional states, some jurists might argue that there are exceptional circumstances under which the federal government might have the authority to legislate in this area, particularly if the law serves a significant federal interest or ensures national uniformity in critical areas such as asset recovery from criminal activities.

However, the relevant provisions of the FDRE Constitution read as follows:

- Article 62(8) of the FDRE Constitution: "The House of Federation shall determine civil matters which require the enactment of laws by the House of Peoples' Representatives."

- Article 52(1) of the FDRE Constitution: "All powers not given expressly to the Federal Government alone, or concurrently to the Federal Government and the States, are reserved to the States."

Analysis

The FDRE Constitution does not explicitly list civil substantive laws as within the exclusive jurisdiction of the federal government. Instead, it generally assigns this power to the regional states unless the House of Federation has determined that civil asset recovery is a matter requiring federal legislation according to Article 62(8) of the FDRE Constitution.

Whenever circumstances require the enactment of civil substantive and procedural laws, the federal government should seek the determination of the House of Federation beforehand.

Therefore, if the draft Asset Recovery Proclamation of Ethiopia is considered civil in nature, the federal parliament's constitutional authority to enact it would depend on whether the House of Federation has determined that asset recovery is a matter requiring federal legislation.

Without this determination, it would typically be within the states' jurisdiction according to Article 52(1) of the FDRE Constitution.

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