

Chapter Four: The FDRE Constitution

Overview Principles and History

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Making of Constitutions

- Countries make a new constitution when they wish to make a fresh start, mostly for compelling political reasons.
- The making of a new constitutions or amendment of the existing ones usually, involves a significant re-allocation of political or other powers.
- The manner in which the constitutions will be made hinges on the nature of the polity.
- Political scientists identify three basic models of political founding and organization, namely, polities founded by conquest in which political organization is hierarchical;
- Politics which evolved organically out of more limited forms of human organization and which over time concretize power centers which govern their peripheries and
- Polities founded by design through covenant or compute in which power is shared through a matrix of centers formed by the government of the whole, on the basis of federal principles.

- In hierarchical polities, constitution making is essentially a process of handing down a constitution from the top, the way medieval kings granted charters.
- In organic polities, the process of constitution making is also an organic one, consisting of a series of acts negotiated among the established bodies that share in the governance of the polity.
- In polities founded by convent or compact, the process of constitution making involves a convention of the partners to the pact, or their representatives.

- As O. Okoth-Ogendo, a constitutional author, pointed out, a constitution is: *“A power map’ ’ upon which the framers may delineate a whole set of concerns...including the ideals towards which the policy is expected to strive.”*
- Hence constitutional-making, is a process which “involves, inter alia, making choices as to which one of those concerns should appear on that map.”
- Thus, how this choices made, would necessarily affect some positively and others negatively -- depending on how they involved on the making of the choice.
- Unlike the traditional constitutional making which used to consider the constitution as an act of “completion,” modern constitutional making focus on participatory and conversational “new constitutionalism.”
- Today there is such a virtual consensus that a constitution should be made democratically. The understanding now prevails that constitutional process is democratic; as long as it is participatory and all-inclusive in each stage preceding the final document.

- Constitution-making as it involves “essentially the distribution of power,” the way constitutions made, as well as its substance, is of crucial importance in the political and governance transitions of every polity.
- Particularly for polities in short of national consensus, the participation of all the political, ethnic and socio-economic groups in this power distribution agenda fosters and strengthens in all of them the awareness that they are part of the same polity.
- It endorses and sustains their feeling of “sense of commonality” i.e. “the sociological claim of ‘We’ that defines a people.” This legitimacy ---- the sense of “We” minimizes the threat to the political stability.
- Accordingly, if it is properly organized, given adequate attention and resources, constitution-making can therefore transform societies from the worst to the better, otherwise to a continued unrest.
- These are among the lessons that are drawn from an ongoing study that has been conducted over the past several years by the United States Institute of Peace on constitution making, peace building, and national reconciliation.

Salient Features of the FDRE Constitution

- **1. Federalism:** Previous Constitutions of Ethiopia established a Unitary system of government
- **2. Multinational Federalism:** The Constitution Recognizes the existence of different Ethnic groups and empowered the Sovereign power on them
- **3. Sovereignty:** Sovereign power resides on the NNPs of Ethiopia
- **4. Self Determination:** Right to develop the language, culture, history and identity; and also the right to succession.
- **5. Ownership of rural and urban land:** as common property of Ethiopians owned by the state and the People but administered by government

- **6. Secularism:** State and Religion are Separate
- **7. Accountability:**
- **8. Constitutional Supremacy**
- **9. Non Judicial Constitutional Interpretation:** HOF is empowered to interpret the constitution
- **10. Unicameral Parliamentary Form of Government**
- **11. Fundamental Rights and Freedoms** 32 articles devoted to discuss it

Fundamental Principles of FDRE Constitution

- **Article 8**
Sovereignty of the people
- All sovereign power resides in the Nations, Nationalities and Peoples of Ethiopia.
- This Constitution is an expression of their sovereignty.
- Their sovereignty shall be expressed through their representatives elected in accordance with this Constitution and through their direct democratic participation

- **Article 9**

- Supremacy of the Constitution**

- The Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect.
- All citizens, organs of state, political organizations, other associations as well as their officials have the duty to ensure observance of the Constitution and to obey it.
- It is prohibited to assume state power in any manner other than that provided under the Constitution.
- All international agreements ratified by Ethiopia are an integral part of the law of the land.

- **Article 10**

- Human and Democratic Rights**

- Human rights and freedoms, emanating from the nature of mankind, are inviolable and inalienable.
 - Human and democratic rights of citizens and peoples shall be respected.

- **Article 11**

- Separation of State and Religion**

- State and religion are separate.
 - There shall be no state religion.
 - The state shall not interfere in religious matters and religion shall not interfere in state affairs.

- **Article 12**

- Conduct and Accountability of Government**

- The conduct of affairs of government shall be transparent.
 - Any public official or an elected representative is accountable for any failure in official duties.
 - In case of loss of confidence, the people may recall an elected representative. The particulars of recall shall be determined by law.

4.4. Policy Objectives under FDRE Constitution

- **4.1. Political Regulation of National and Ethnic Conflicts**
- Elimination of Diversity
 - Genocide
 - Forced Mass Population transfers
 - Partition/ Secession (Self Determination)
 - Integration/Assimilation
- Accommodation of Diversity
 - Hegemonic Control
 - Federalism
 - Consociation/ Power Sharing

• **4.2. Management of Diversity in Ethiopia**

- Assimilationist policy of the Past
 - Monolingualism,
 - Legal Centrism,
 - Centralization of Political Power
- Policies For ensuring Political participation of diverse cultural groups
 - Power sharing through Federal Arrangements
 - Power Sharing through Consociation:
Proportionality and Representative Electoral Arrangements

- **4.3. Policies on Religion and Religious Practices**

- Secularism (Art. 90(2))
- Separation of State and Religion (Art. 11)
- Freedom of Religion (Art 27)

- **4.4. Policies on Customary Law and Legal Pluralism**
- Cultural Objectives
- Promotion of Cultural Diversity in Ethiopia: Article 91(1)
- Legal Pluralism and Accommodation of Customary and Religious law on Personal Matters: (Art 34(5) & Art 78(5))

- **4.5. Policies on the use of Multiple Languages**

- The Language Policy of Ethiopia

- **Art. 5 Languages**

- Recognition of all languages
- The Working language of Federal Government
- The working language of Regional States

- **Language Policy in Education**

- Multilingualism

- Mother tongue
- Language of wider communication
- Language of international communication
- Language of Cultural communication

- **4.6. Policies for Redressing Socio-Economic Exclusion**

- Affirmative actions for Redressing Past exclusion
- Women Article 35(Sub 3)
- National Minorities Art. Article 89(Sub 4)-
Economic Objectives

4.5. Status of International Instruments under Ethiopian Constitutional Framework

- What is the place of international agreements to which Ethiopia is a party in the hierarchy of laws in Ethiopia.
- Pursuant to Art 9(4) of the FDRE constitution, international agreements ratified by Ethiopia make an integral part of the law of the land.
- If international instruments are regarded as part and parcel of the law of the land, what is their hierarchy in the Ethiopian legal system?
- To begin with, it is provided under Article 9(1) of the FDRE constitution that the constitution is the supreme law of the land and any law (emphasis added) contradicting with the constitution is null and void.
- As international agreements which are ratified by Ethiopia will become an integral part of the law of the land by virtue of Article 9(4) of the constitution and the phrase —**any law** in sub-article 1 of Article 9 includes international treaties, one can have the audacity to conclude that international treaties are subordinate to the constitution as much as other subsidiary legislations are.

- But, it is provided in Article 13(2) of the FDRE Constitution that the third chapter shall be interpreted in a manner conforming to (emphasis added) the principle of the UDHR, International Conventions on Human Rights and international instruments adopted by Ethiopia.
- Therefore, international instruments are not always subordinate to the constitution, at least, partly.
- Pursuant to the aforementioned article, where never there arises the need for interpretation of any of the provisions under the third chapter of the constitution, resort should be made to relevant international instruments such as the UHDR and other human rights instruments to which Ethiopia is a party.
- Thus, as long as the application of any of the provisions under the third chapter of the constitution meshes well with the spirit of those international instruments and there is no need for interpretation, all international instruments ratified by Ethiopia are subordinate, in hierarchy, to the constitution.