

The Role of Judicial Independence in the Protection of Human Rights in Ethiopia: Analysis of the Legal and Institutional Frameworks and Federal Court Practices

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Abstract

This article examines the role of the Ethiopian federal judiciary in protecting and enforcing human rights from the perspective of judicial independence. Specifically, it examines the interplay between judicial independence and the protection of human rights and the implications of the manifestations of the institutional and personal independence of the judiciary on the role of courts in the enforcement and protection of human rights. The article mainly uses the relevant literature, the relevant law (domestic legislation, treaties, and international jurisprudence), concluding observations and recommendations of different human rights monitoring bodies, the recommendations of the Ethiopian Human Rights Commission (EHRC), internationally and regionally accepted legal principles, standards, and guidelines, different documents, and empirical data collected through interviews and focus group discussions as sources of data. The interviews and focus group discussions involved federal court judges, public prosecutors, and attorneys. A thorough examination of the law and the collected and analysed data reveals that the institutional and personal independence of the federal judiciary is not protected in law and practice in such a way that federal courts can play a significant role in the adjudication and enforcement of human rights in Ethiopia.

Keywords: Ethiopia, Federal Courts, Judicial Independence, Protection of Human Rights

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1. Introduction

Having an independent and impartial judiciary is a prerequisite for protecting human rights.¹ In particular, the right to a fair trial cannot be conceived without an independent and impartial judiciary. A fair trial is essential for human rights and upholding the rule of law.²

Commonly, judicial independence is conceptualised as freedom from interference from the two contending branches of the government, the legislative and executive branches, both institutionally and personally.³ The independence of the judiciary and the protection of human rights reinforce each other, where an independent judiciary is essential and a prerequisite for the protection of human rights. The UN Human Rights Council (UN HRC) has underscored the role of an independent judiciary in the enforcement and protection of human rights. In its Resolution, the Council underlined that an independent and impartial judiciary, among other things, is a prerequisite for the protection of human rights and the application of the rule of law.⁴ Writers, such as Javier Couso, capitalise on the role of an independent judiciary in the enforcement of human rights and argue that judicial independence is essential and a *sine qua non* element for the effective enforcement and protection of human rights.⁵

This article doctrinally and empirically examines the independence of the judiciary and its conduciveness to the protection of human rights in the federal courts of

¹ Letsebe Piet Lesirela, 'Providing for the Independence of the Judiciary in Africa: A Quest for the Protection of Human Rights', (LLM Thesis, The Catholic University of Central Africa, 2003), P. 19.

² HRC, General Comment No. 32, Art. 14, Right to equality before courts and tribunals and to a fair trial, 23 August 2007, CCPR/C/GC/32

³ See Ishmael Gwunireama, 'The Executive and Independence of the Judiciary in Nigeria', Pinsi Journal of Art, Humanity and Socioal Studies, Vol. 2, No. 1, 2022.

⁴ UN Human Rights Council Resolution 44/9 (2020), at file:///C:/Users/DELL/Downloads/A_HRC_RES_44_9-EN.pdf (accessed on 25 July 2023)

⁵ Javier Couso, 'Sine Qua Non: On the Role of Judicial Independence for the Protection of Human Rights in Latin America', Neth. Q. Hum. Rts., Vol. 33, 2015, P. 252.

Ethiopia.⁶ In addition to the relevant laws, the article employs empirical data as a source of information. The data were mainly collected from selected judges, public prosecutors, and attorneys through interviews and focus group discussions from federal courts in Addis Ababa and Dire Dawa. A total of seventeen interviewees, composed of judges, public prosecutors, attorneys, and a director from the Federal Judicial Administration, were interviewed. In addition, empirical data were collected from three FGDs, each composed of attorneys, public prosecutors, and judges. The interviewees and participants of the FGDs were selected by using purposive sampling techniques. Interviewees who held positions such as representative judge, the Deputy Director General at the Ministry of Justice, the Public Prosecutor and Coordinator of Economic Crimes, and the Judgement Inspection Director at the Federal Judicial Administration Council were purposefully selected because of the positions they assumed. Other research participants in the interviews and the FGDs were selected because of their availability at the time of data collection and their willingness.

The article discusses how judicial independence is legally protected and realised in such a way that it contributes to the judicial protection and enforcement of human rights in Ethiopia. That is, it examines the interplay between judicial independence and the protection of human rights. It scrutinises the independence of the judiciary in the selection and appointment procedure of judges, budgetary issues and the infrastructure of courts, and the implications of these manifestations of the institutional and personal independence of the judiciary on the role of courts in the enforcement and protection of human rights. The study concludes with final remarks and corresponding recommendations.

⁶ According to Art. 78 of the Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution), Ethiopia, as a federal state, has parallel federal and state court structures. This study specifically focuses on federal courts for empirical purposes while acknowledging that the legal analysis applies to all courts.

2. The Meaning of Judicial Independence

Judicial independence refers to the principle that courts should not be subject to an improper influence from the executive and legislative branches of government.⁷ The goal of judicial independence is to enable judges to make decisions based solely on the law and the facts of the case, free from the interference or influence of the two branches of government.⁸ In effect, this enables the judiciary to act as a check on the other branches of government, promoting the rule of law and safeguarding human rights and freedoms.⁹

Pragmatically, judicial independence can be defined as a response and solution to concrete problems that the judiciary may naturally face. In this regard, John Bell identifies particular problems from the perspective of judicial independence.¹⁰ These are the following: courts themselves are seen as politicised institutions; political influence on judicial decisions; political influence over the allocation of resources for justice; political involvement in the selection and career progression of judges; and the involvement of judges in extrajudicial activities.¹¹ It is possible to argue that, although the magnitude and severity differ, the stated practical problems that are potentially posed by the executive and legislative branches of government and, to some extent, by the judiciary itself are the problems of every judicial system. In effect, by separating the adjudicatory function from the political branches, we can ensure impartiality, fairness, and consistency in the interpretation and application of law, ultimately benefiting the public good.¹²

⁷ See Gwunireama, *supra* note 3.

⁸ Basic Principles on the Independence of the Judiciary, Adopted by the 7th UN Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 Aug. to 6 Sept. 1985, and endorsed by GA resolutions 40/32 of 29 Nov. 1985 and 40/146 of 13 Dec. 1985, Principle 2.

⁹ Gretchen Helmke & Frances Rosenbluth, 'Regimes and the Rule of Law: Judicial Independence in Comparative Perspective', *Annual Review of Political Science*, No. 12, 2009, PP. 345–366.

¹⁰ John Bell, 'Judicial Cultures and Judicial Independence', Cambridge Y.B. Eur. Legal Stud., Vol. 4, 2001-02.

¹¹ *Id.*, PP. 50-51.

¹² John A. Ferejohn and Larry D. Kramer, 'Independent Judges, Dependent Judiciary: Institutionalizing Judicial Restraint,' *New York University Law Review*, Vol. 77, 2002, P. 967.

Judicial independence, as a generic term, entails both personal and institutional independence. In the following sections, after discussing the nexus between judicial independence and the protection of human rights, we will examine judicial independence from the perspective of these two components in general and in the context of the Ethiopian legal and judicial systems in particular.

3. The Nexus Between Judicial Independence and the Protection of Human Rights

As the judicial system in a country plays a central role in protecting human rights and freedoms,¹³ the independence of the judiciary forms the bedrock of a fair and just legal system in which human rights are protected and duly enforced. As Alemayehu G. Mariam argues, where there is strong judicial independence in place, there tends to be greater respect for human rights, civil liberties, political stability, and effective democratic institutions.¹⁴ In particular, judicial independence guarantees fair trial rights and is a prerequisite to the rule of law.¹⁵ Without judicial independence, human rights can be easily undermined, leading to arbitrary and unjust decisions that erode the rule of law.¹⁶ As Keith S. Rosenn describes, in societies with limited justice, instability prevails, and an unreliable judiciary hampers economic growth by discouraging productive activities.¹⁷ This researcher shares Rosenn's opinion, but would like to examine the impact of an independent judiciary further. The researcher believes that a non-independent judiciary not only hinders socioeconomic development but also leads to a highly unstable society.

¹³ International Principles on the Independence and Accountability of Judges, Lawyers, and Prosecutors, a Practitioners' Guide Series No. 1, International Commission of Jurists, Geneva, 2004, P. 1.

¹⁴ Alemayehu G. Mariam, 'Human Rights Matters in the New Millennium: The Critical Need for an Independent Judiciary in Ethiopia', *IJES*, Vol. 3, No. 2, 2008, P. 123.

¹⁵ UNODC, *The Bangalore Principles of Judicial Conduct*, 2018, Value 1.

¹⁶ See Ines Vargas, 'The Independence of the Judiciary and the Protection of Human Rights', *Mennesker og Rettigheter*, Vol. 7, 1989, P. 3.

¹⁷ Keith S. Rosenn, 'The Protection of Judicial Independence in Latin America', *U. Miami Inter-Am. L., Rev.* Vol. 19, No. 1, 1987, P. 8.

Furthermore, for a more compelling reason, it fails to create a conducive environment for the protection and enforcement of human rights.

An independent judiciary plays a key role in “safeguarding the right to fair trial”.¹⁸ It is generally agreed that independent judges ensure accountability, prevent corruption, and safeguard fundamental human rights, including freedom of speech and assembly, due process, and the rights of marginalised communities.¹⁹ Through impartial adjudication, judges ensure the protection of civil liberties, such as freedom of speech, assembly, religion, and the right to privacy. Judges act as guardians of fundamental rights, preventing the arbitrary restriction or violation of these rights, and thus reinforce democratic values in society.

Under international human rights law, judicial remedy is not the only means of ensuring an effective remedy. In addition to judicial remedies, administrative and other remedies can redress human rights infringements.²⁰ However, international human rights law imposes a duty on states to investigate, prosecute, and use judicial mechanisms to remedy violations in cases of gross human rights violations.²¹ The obligation of states to investigate, prosecute, and punish gross violations is important

¹⁸ Nika Pirvelashvili and Nino Doluashvili, ‘Judicial Independence As A Safeguard off The Right to A Fair Trial: Legal Framework And Practice of The Constitutional Court of Georgia’ in Yücel Arslan, Fatih Çağrı Ocaklı , Enise Yüzüak, Özge Elikalfa, Tuğçe Kiliç Gökçen Sena Kumcu, And Gizem Tezyürek (eds.), *Constitutional Justice in Asia “Judicial Independence as a Safeguard of the Right to a Fair Trial”*, (11th Summer School of the Association of the Asian Constitutional Courts and Equivalent Institutions (AACC), Ankara, 2023), P.162.

¹⁹ Margaret Satterthwaite, UN Special Rapporteur on the Independence of Judges and Lawyers, Speech During the Opening Session of the Asia Pacific Justice Forum, December 8-9, 2022, available at <https://worldjusticeproject.org/news/role-independent-judiciary-protecting-rule-law> (accessed on 27 July 2023)

²⁰ For instance, the right to administrative remedy, in addition to judicial and other remedies, is recognised under Art. 2(3) (b) of the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

²¹ Gross violations of human rights include torture and similar cruel, inhuman, or degrading treatment; extra-judicial, summary, or arbitrary executions; slavery; enforced disappearances; and rape and other forms of sexual violence of comparable gravity. See United Nations, Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice, 2010, P. 4.

for prevention.²² The obligation of states to investigate and prosecute serious human rights violations can be understood through the lens of victims' rights to justice. This duty is clearly outlined in various international human rights instruments and principles. Art. 4 and 5 of the Genocide Convention; Art. 4 of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; Art. 3, 7, 9, and 11 of the International Convention for the Protection of All Persons from Enforced Disappearance; Art. 6 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; and Principle 19 of the Updated Set Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity impose the duty on states to investigate and prosecute serious human rights violations. The ability of states to fulfil this obligation is heavily reliant on having an independent judicial mechanism, as the investigation and prosecution of serious human rights violations would be impossible without an independent and impartial judiciary.

The importance of having an independent judicial mechanism for the investigation and prosecution of serious human rights violations is encompassed within the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity. According to these principles, international and internationalised criminal tribunals may exercise concurrent jurisdiction when national courts cannot provide satisfactory guarantees of independence and impartiality or when they are materially unable or unwilling to conduct effective investigations or prosecutions.²³ To ensure accountability and combat impunity, an independent judiciary is essential.²⁴ By doing so, an independent judiciary acts as a

²² United Nations, Guidance Note of the Secretary General on Transitional Justice: A Strategic Tool for People, Prevention and Peace, 2023, P. 16.

²³ Commission of Human Rights, Updated Set Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, Report of the Independent Expert to Update the Set of Principles to Combat Impunity, E/CN.4/2005/102/Add.1, 2005, Principle 20.

²⁴ Silvia Casale, 'Treatment in Detention' in Ana Salinas de Frías, Katja Samuel, and Nigel D. White (eds.) *Counter-Terrorism: International Law and Practice* (Oxford University Press, Oxford, 2012), P. 511.

check on the executive and legislative bodies, ensuring that their actions adhere to constitutional provisions and international human rights obligations.²⁵ An independent judiciary ensures justice is served impartially and fairly, discouraging impunity. When the judiciary is free from external pressures or political interests, perpetrators of human rights abuses can be brought to justice, ultimately enhancing the protection of human rights.²⁶ Therefore, as Javier Couso convincingly argues, even with an advanced understanding of rights, human rights can still be violated in democracies without a truly independent judiciary.²⁷

The interplay between judicial independence and the protection of human rights is addressed in the resolutions of the General Assembly of the United Nations (UNGA), human rights instruments, and the general comments of human rights monitoring bodies. In its resolutions, the UNGA underlined the nexus between judicial independence and the protection and enforcement of human rights. In this regard, it acknowledges that an independent judiciary is essential to the full and non-discriminatory realisation of human rights and indispensable to democratisation processes and sustainable development.²⁸ In addition to the resolutions of the UNGA, international and regional human rights instruments recognise the right to a fair trial by “an independent and impartial tribunal.”²⁹ The Universal Declaration of Human Rights (UDHR), the ICCPR, the Convention on the Rights of the Child

²⁵ See Linda Camp Keith, ‘Judicial Independence and Human Rights Protection around the World’, *Judicature*, Vol. 85, 2001.

²⁶ For a comprehensive review of academic works on the nexus between judicial independence and the protection of human rights, see Randall Peerenboom, ‘Human Rights and Rule of Law: What’s the Relationship?’, *Georgetown Journal of International Law*, Vol. 36, 2005.

²⁷ Couso, *supra* note 5, P. 257.

²⁸ General Assembly Resolution 50/181 (1995), at <http://hrlibrary.umn.edu/resolutions/50/181GA1995.html> (accessed on 29 November 2024), Para. 2; General Assembly Resolution 48/17 (1994), at <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3CF6E4FF96FF9%7D/ROL%20A%20RES48%20137.pdf> (accessed on 29 November 2024).

²⁹ International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors, *supra* note 13, P. 15.

(CRC), and human rights monitoring bodies in their general comments and communications emphasise the nexus between judicial independence and the judicial protection and enforcement of human rights. According to Art. 10 of the UDHR, everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of their rights and obligations and of any criminal charge against them. Similarly, according to Art. 14 of the ICCPR, in the determination of any criminal charge and obligations in a lawsuit, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law. Rights and obligations in a suit at law should be determined by a judiciary that is independent of the executive and legislative branches of government.³⁰

The Human Rights Committee (HRC) asserts that the right to be tried by an independent and impartial tribunal is an absolute right that cannot be limited.³¹ In addition, the Committee against Torture emphasises the crucial role of an independent judiciary in upholding the principle of legality.³² Moreover, in its general comment, the Committee underlined the obligation of state parties to take actions that will reinforce the prohibition against torture through judicial actions that must, in the end, be effective in preventing it and make available to detainees and persons at risk of torture and ill-treatment judicial and other remedies that will allow them to have their complaints promptly and impartially examined, to defend their rights, and to challenge the legality of their detention or treatment.³³ The CRC provides for the right of a child to have access to an independent judiciary to

³⁰ HRC, General Comment No. 32, *supra* note 2. Para. 18.

³¹ HRC, Communication No.263/1987, Case of *Miguel González del Río vs. Peru*, *op. cit.*, Para. 5.2. cited in International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors, *supra* note 13, P. 15.

³² Committee against Torture, Concluding Observations: Nicaragua, CAT/C/NIC/CO/1, 2009, Para.12.

³³ Committee against Torture, General Comment No. 2, Implementation of Art. 2 by States parties, CAT/C/GC/2, 2008, Para. 2 and 13.

challenge the legality of the deprivation of his or her liberty.³⁴ From this, one can understand that the right to be tried by an independent and impartial tribunal, as a human right obligation of a state, is a human right in itself, and it is also a means to enforce human rights. Hence, the independence of the judiciary can be considered “an essential requirement of the guarantee of human rights and freedoms.”³⁵

4. Judicial Independence in Ethiopia: The Legal and Institutional Framework

In many jurisdictions, the legitimacy of the judiciary in general and the recognition of judicial independence in particular “stem from the constitution”.³⁶ However, it is in the domain of common knowledge that the constitutions of Ethiopia are notoriously short-lived and often violated. In the constitutional history of Ethiopia, four constitutions were adopted in less than seven decades. In this regard, Rosenn’s description of the constitutions of Latin American countries also applies to the constitutional history and culture of Ethiopia: “Each *golpe* ruptures the preexisting constitutional order, leaving the judiciary in the unenviable position of trying to maintain a *de jure* institutional authority in a *de facto* regime.”³⁷ This constitutional instability, coupled with a long history of monarchy and authoritarian rule, limited the independence of the judiciary. In the following subsection, an overview of judicial independence under the 1995 FDRE Constitution is provided.

4.1. The Ethiopian Legal Framework on Judicial Independence

The FDRE Constitution explicitly acknowledges and establishes an independent judiciary. Art. 78 and 79 outline the constitutional mandate of the judiciary. Art.

³⁴ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990), Art. 37(d). It should also be noted that the nexus between judicial independence and the judicial protection and enforcement of human rights is addressed under Art. 7 and 26 of the African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986).

³⁵ The Universal Charter of the Judge, approved by the International Association of Judges (IAJ), 1999.

³⁶ Rosenn, *supra* note 17, P. 33.

³⁷ *Ibid.*

78(1) of the Constitution establishes an independent judiciary. The Constitution specifically prohibits the establishment of special or *ad hoc* courts that usurp judicial powers from regular courts or institutions authorised to exercise judicial functions.³⁸ In addition to the explicit constitutional recognition of the establishment of an independent judiciary under Art. 78 and 79 of the FDRE Constitution, other provisions reinforce the constitutional recognition of an independent judiciary. One such constitutional recognition is the separation of powers. The Constitution provides for the separation of powers, a fundamental principle that reinforces judicial independence.³⁹ In this regard, the most important avenue that helps secure judicial independence is the power of judicial review. John A. Ferejohn and Larry D. Kramer argue that judicial review and judicial independence are often perceived as synonymous by many people.⁴⁰ Conferring constitutional decision-making power to the House of Federation instead of the judiciary in the FDRE Constitution has been identified as one of the “practical and structural impediments to judicial independence that remain to be addressed and overcome.”⁴¹ Even if the power of judicial review is not vested in courts, by dividing powers among the executive, legislative, and judicial branches, the Constitution promotes checks and balances, preventing any branch from overpowering the others. In principle, this separation of powers allows the judiciary to act impartially, free from the influence of other branches of government.

Concerning the personal independence of the judiciary, the Constitution provides that judges shall be independent and directed only by the law.⁴² These constitutional provisions legally protect the judiciary from undue interference, ensuring its

³⁸ Constitution of the Federal Democratic Republic of Ethiopia, 1995, Art. 78 (4), Proc. No. 1/1995, *Fed. Neg. Gaz.*, Year 1, No.1.

³⁹ *Id.* Art. 50 (2), 55, and 72-79.

⁴⁰ Ferejohn and Kramer, *supra* note 12, P. 1033.

⁴¹ Ethiopia, Legal and Judicial Sector Assessment, The International Bank for Reconstruction and Development/the World Bank, (Washington Dc, First Publication), 2004, P. 24.

⁴² Constitution of the Federal Democratic Republic of Ethiopia Proc. No. 1/1995, Art. 79 (3), (4), and (5).

independence in decision-making processes. In addition to the constitutional guarantee, Ethiopia has enacted different laws to strengthen judicial independence. The Federal Judicial Administration Proclamation is one such law.⁴³ This Proclamation established the Judicial Administration Council, a separate body responsible for the administration and appointment of judges. The Council is composed of members from various branches of the government, the judiciary, the Ethiopian Bar Association, a legal academician, and others.⁴⁴ This ensures a multi-stakeholder approach to judicial administration and reduces the possibility of executive control over the judiciary. According to the Federal Judicial Administration Proclamation, in the administration of justice, it is important to ensure that courts exercise their judicial functions free of all internal and external influences and in the spirit of complete independence. This includes establishing a legal framework and procedures that ensure transparency, impartiality, and public confidence in the process by which judges are appointed. It also involves ensuring that members of the judiciary conduct their judicial functions with complete independence and enabling the judiciary to exercise its judicial function free from any internal and external influences.⁴⁵

The other relevant law in which the concept of judicial independence is enshrined is the Federal Courts Proclamation.⁴⁶ The Federal Courts Proclamation provides a legal framework to safeguard the independence of the judiciary in Ethiopia. This Proclamation can be taken as a tool that helps establish an independent and autonomous federal court system that is separate from the executive and legislative branches of government. Similar to the Federal Judicial Administration Proclamation, the Preamble, Art. 23, 39, 43, 52, and 53 of the Federal Courts

⁴³ Federal Judicial Administration Proclamation, 2021, Proc. No. 1233/2021, *Fed. Neg. Gaz.*, Year 27, No. 18.

⁴⁴ *Id.*, Art. 6.

⁴⁵ *Id.*, Preamble, and Art. 3.

⁴⁶ Federal Courts Proclamation, 2021, Proc. No. 1234/2021, *Fed. Neg. Gaz.*, Year 27, No. 26.

Proclamation are provisions that have been provided to give effect to constitutionally recognised judicial independence. In addition to the Constitution and these subsidiary laws, it is important to note that Ethiopia has also adopted international and regional human rights instruments, such as the ICCPR and the African Charter on Human and Peoples' Rights (ACHPR), which emphasise the significance of an independent judiciary.

Despite these constitutional and legal provisions in place, arguments claiming challenges to judicial independence and the existence of a subservient judiciary in Ethiopia persist.⁴⁷ A thorough examination of institutional and individual judicial independence is conducted in the following sections in light of the previously described legal and constitutional frameworks, accepted norms, guidelines, and standards, and the collected empirical evidence.

4.2. Institutional and Personal Independence of the Judiciary and Protection and Enforcement of Human Rights in Ethiopia

As previously examined, courts in general and an independent judiciary in particular are important avenues and prerequisites to protect and enforce human rights, respectively. This section examines the two components of judicial independence—institutional and personal independence—in the Ethiopian legal framework and examines the practice in federal courts.

4.2.1. Institutional Independence of the Judiciary and Protection and Enforcement of Human Rights in Ethiopia

The institutional or collective independence of the judiciary refers to the importance of the judiciary functioning without interference or pressure from the two branches of the government, particularly the executive branch. This setup ensures that the judiciary can function independently from the executive and legislative branches of government. This duty is provided under the United Nations Basic Principles on the

⁴⁷ See Simeneh Kiros Assefa, 'Conspicuous Absence of Independent Judiciary and 'Apolitical' Courts in Modern Ethiopia', *Mizan Law Review*, Vol. 15, No. 2, 2021.

Independence of the Judiciary (the UN Basic Principles). According to the Basic Principles, all governmental and other institutions have to respect and observe the independence of the judiciary.⁴⁸

In the FDRE Constitution, the core principles of judicial independence in general and institutional independence in particular are enshrined under Art. 79(2). According to this constitutional provision, courts at any level should be free from any interference or influence by any governmental body, government official, or any other source. In addition, the financial autonomy of federal courts is recognised under Art. 79(6) of the Constitution. According to this constitutional provision, the Federal Supreme Court has the authority to prepare and submit the budget of federal courts to the House of Peoples Representatives for approval, and once approved, to administer it. As will be discussed in detail in the following section, the institutional independence of federal courts is also secured by giving the judiciary a significant role in the appointment of judges.⁴⁹

The aforementioned constitutional principles of the independence of the judiciary are further elaborated in the Federal Judicial Administration Proclamation. The Preamble, Art. 3, 8, 9, 20–23, and 42 of the Proclamation are the most important provisions on judicial independence. Courts are expected to exercise their judicial functions free from any internal or external influences and in the spirit of complete independence. The key aspects of institutional judicial independence include decision-making independence, judicial jurisdiction over all issues of a judicial nature, financial autonomy, and the availability of sufficient resources.⁵⁰ In the following subsection, this article examines the significance of institutional judicial

⁴⁸ Basic Principles on the Independence of the Judiciary, *supra* note 8, Principle 1.

⁴⁹ Constitution of the Federal Democratic Republic of Ethiopia Proc. No. 1/1995, Art. 80.

⁵⁰ See International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors, *supra* note 13.

independence and its implications for the protection and enforcement of human rights, using relevant laws and empirical data.

4.2.1.1. Decision-making Independence

The institutional independence of courts, to be free from the interference of the executive, includes non-interference in judicial proceedings. The duty of non-interference in judicial proceedings, among other things, protects and ensures the decision-making power of the judiciary.⁵¹ In its concluding observations on Slovakia, the HRC pointed out that states should take specific measures to guarantee the independence of the judiciary and protect judges from any form of political influence in their decision-making.⁵² The UN Basic Principles safeguard the independence of the judiciary in decision-making, as outlined in Principle 4. This principle prohibits unjustified interference with the judicial process, thus protecting its integrity. In general, the primary goal of maintaining decision-making independence for the judiciary is to ensure that judges can perform their duties without interruptions from other state actors.⁵³

As mentioned in the preceding section, the Ethiopian constitutional and legal frameworks recognise the institutional independence of the judiciary in decision-making. However, the data collected in assessing the practice in federal courts reveal that there are problems with respecting the decision-making independence of the judiciary and non-interference in judicial proceedings. In this regard, an attorney mentioned that judges may face pressure in possessory action cases involving the government.⁵⁴ A discussant in a focus group discussion composed of judges and an interviewed public prosecutor shared the same opinion as this attorney. In connection with this, a judge in an FGD mentioned that Court administrators are covertly

⁵¹ *Ibid.*

⁵² Concluding observations, Slovakia, CCPR/C/79/Add.79 (1997), Para. 18.

⁵³ Keith, *supra* note 25, P. 196.

⁵⁴ Interview with an Attorney (Anonymous), Federal First Instance Court, Bole Bench, Addis Ababa, June 2022.

directed to act in favour of the government, even to the extent of replacing them if necessary.⁵⁵

In an interview, a public prosecutor described the interventions of various interest groups, including the executive, in criminal judicial proceedings as follows: Widespread bias in judgment from political, lobbyist, and mob influences affects criminal cases and investigations. Decisions are sometimes influenced by mobs, revealing a gap in impartiality and autonomy.⁵⁶ These opinions demonstrate direct interventions in the decision-making independence of federal courts.

4.2.1.2. Non-Enforcement of Court Decisions

In addition, as decision-making is naturally extended to the power to enforce a given decision and order, the decision-making independence of the judiciary can be explained in terms of the reciprocal duty of the other branches of the government, mainly the executive, to enforce and execute. As Rosenn argues, the executive's refusal to enforce judicial decisions undermines judicial independence.⁵⁷ In effect, the refusal of the executive or lack of cooperation from it to execute and enforce decisions and orders of the court can be taken as the usurpation of the principle of separation of powers. The implementation and enforcement of judicial decisions, viewed as an extension of judicial independence and intrinsically linked to human rights protection, is summarised by Lovemore Chiduza, who states that respecting judicial independence involves implementing court decisions that may challenge state policy, thereby enhancing accountability, the rule of law, separation of powers, and the safeguarding of human rights.⁵⁸

⁵⁵ FGD with Judges, Federal First Instance Court, Dire Dawa Bench, DireDawa, May 2022.

⁵⁶ Interview with a Public Prosecutor (Anonymous), Dire Dawa Branch Office, Ministry of Justice, Dire Dawa, June 2022.

⁵⁷ Rosenn, *supra* note 17, P. 30.

⁵⁸ Lovemore Chiduza, 'The Significance of Judicial Independence in Human Rights Protection: A Critical Analysis of the Constitutional Reforms in Zimbabwe', (PhD Dissertation, the University of the Western Cape, 2013), P. 328.

Research participants reported instances where the police refused to uphold court orders, neglecting their responsibility and rendering judicial decisions ineffective.⁵⁹ An attorney and criminal suspect observed that the police have significant influence in court proceedings, as they are able to affect decisions, detain individuals, bring new charges, or keep those who have been bailed by courts incommunicado. Courts can also enforce their orders by instructing the police to bring individuals before them.⁶⁰ Courts are hesitant to take appropriate action against police officers and others who do not comply with court decisions and orders because they are subservient to the executive branch.⁶¹ For example, a criminal suspect who had been granted bail had to give birth to a baby at the police station because the police refused to release the woman as ordered by the court.⁶² Even if some judges are courageous enough to question police officers who have detained criminal suspects granted bail, it is common to see them removed from benches following the actions they have taken.⁶³

A Federal High Court judge also holds these opinions.⁶⁴ The refusal of the police to execute a court decision is common not only in criminal cases but also in high-profile political cases.⁶⁵ In practice, in the Ethiopian criminal justice system, it is common to categorise criminal cases into two categories: “high-profile political criminal cases,” in which the interest of the government is the top priority,⁶⁶ and other criminal cases, in which the government is not very interested. The refusal of the

⁵⁹ FGD with Attorneys, Federal First Instance Court, Guelele Bench, Addis Ababa, May 2022.

⁶⁰ Interview with an Attorney (Anonymous), Addis Ababa, June 2022; Interview with Mr. Alelegn Mihretu, a criminal suspect and an attorney, Addis Ababa, October 2023.

⁶¹ *Id.*, Interview with Mr. Alelegn Mihretu.

⁶² Interview with a Judge (Anonymous), Federal High Court, Ledeta Bench, Addis Ababa, October 2023.

⁶³ Interview with Mr. Alelegn Mihretu, *supra* note 60.

⁶⁴ Interview with a Judge (Anonymous), *supra* note 62.

⁶⁵ *Ibid.*

⁶⁶ Terrorism and related crimes under the Prevention and Suppression of Terrorism Crimes Proclamation No. 1176/2020, and crimes against the constitutional order and internal security of the state under Art. 238 ff. of the Criminal Code fall in this category. See the Criminal Code of the Federal Democratic Republic of Ethiopia, Proc. No. 414/2005, 2005, Art. 238 ff.

police to execute the decision and order of the courts is common in high-profile political cases.

In addition to the empirical data collected from the research participants and discussed above, there are various documented cases where the police have refused to enforce court orders. Specifically, there have been instances where the police have failed to release criminal suspects who have been granted bail. Several criminal suspects whose release was ordered by the court but was denied by the police have reported their grievances to the EHRC. For example, between January and February 2024, multiple complaints were filed with the Commission against the following police departments:⁶⁷ Kirkos, Addis Ketema, Akaki Kality, Bole, Lemi Kura, and Nefassilk Lafto sub-cities, and the Federal Police Criminal Investigation Department.⁶⁸ These departments collectively detained over 80 criminal suspects in violation of court orders.⁶⁹ In the case of *Chief Sergeant Metiku Teshome v. the Federal Public Prosecutor*,⁷⁰ the court had ordered the release of a criminal suspect. However, despite the court's ruling, the police detained the individual in a location that was not a police custody facility or prison. Similarly, in *Colonel Gemechu Ayana et al. v. the Federal Public Prosecutor*,⁷¹ the primary petitioner stated that after being released from detention by the Federal High Court, they were subsequently detained by both the Oromiya Region Special Forces and the Federal Police in different locations.

⁶⁷ In order to protect the wellbeing of criminal suspects and due to the fact that most cases are still pending before the Commission, the researcher will only mention the police department that refused to release criminal suspects, regardless of a court order.

⁶⁸ Statistical Data from the EHRC, February 2024.

⁶⁹ *Ibid.*

⁷⁰ *Chief Sergeant Metiku Teshome v. Federal Public Prosecutor*, Federal High Court, File No. 253309.

⁷¹ *Colonel Gemechu Ayana et al. v. Federal Public Prosecutor*, Federal Supreme Court Cassation Division, File No. 222914.

The executive's interference in judicial proceedings and the refusal of the police to enforce judicial decisions violate the constitutionally guaranteed institutional independence of the judiciary. These acts of interference and refusal by the executive directly violate the rights of arrested persons to be released on bail and their right to liberty as guaranteed in international human rights treaties and the FDRE Constitution. They also compromise the judiciary's institutional independence and impair its ability to protect and enforce human rights.⁷² In effect, as I. Mahomed cautions, this could "implode the power of the judiciary into nothingness, and much, much worse, human rights could irreversibly be impaired."⁷³

4.2.1.3. Jurisdictional Monopoly: Exclusive Jurisdiction over Judicial Issues

One of the most important aspects of judicial independence is the exclusive jurisdiction of courts over all judicial issues.⁷⁴ The independence of the judiciary also requires courts to have the power to determine if a submitted issue falls within their legal jurisdiction.⁷⁵ In this sense, exclusive judicial power extends beyond the adjudication of cases brought before the courts by contending individual parties. In addition to resolving "ordinary cases according to the law," enabling judicial review is at the core of judicial independence.⁷⁶ Judicial independence is crucial for courts to prevent arbitrary or unjust use of power by political and social actors.⁷⁷

As the guardian of human rights and fundamental freedoms, the judiciary protects individuals from unjust and partial laws adopted by the legislature and enforced by the executive. However, the judiciary can only fulfil this important function if it has the power of judicial review. In Ethiopia, judicial power is vested in the courts.⁷⁸ The

⁷² Constitution of the Federal Democratic Republic of Ethiopia Proc. No. 1/1995, Art. 19 (1)(6) & 17.

⁷³ I. Mahomed, 'The Independence of the Judiciary', S. African L.J., Vol. 115, 1998, PP. 658&661.

⁷⁴ Basic Principles on the Independence of the Judiciary, *supra* note 8, Principle 3.

⁷⁵ *Ibid.*

⁷⁶ Stephen B. Burbank, 'The Architecture of Judicial Independence', S. Cal. L. Rev., Vol. 72, 1999, P. 336.

⁷⁷ Christopher M. Larkins, 'Judicial Independence and Democratization: A Theoretical and Conceptual Analysis', American Journal of Comparative Law, Vol. 44, No. 4, 1996, P. 611.

⁷⁸ Constitution of the Federal Democratic Republic of Ethiopia Proc. No. 1/1995, Art. 79(1).

Constitution gives exclusive judicial power to courts and prohibits the establishment of special or *ad hoc* courts that take away judicial powers from the regular courts or institutions legally empowered to exercise judicial functions.⁷⁹

However, the constitutionally bestowed judicial power excludes the right to challenge unconstitutional laws and acts of the government before a court of law. As has been repeatedly pointed out, the judiciary in Ethiopia does not have the power to strike down legislation and acts of the government that are deemed to be in violation of human rights and fundamental freedoms. This power is given to the HoF according to Article 83 of the FDRE Constitution. This diminishes the role of the judiciary in the protection and enforcement of human rights. It is a misconception to expect a judiciary with no power to oversee other branches in upholding the rule of law and human rights.⁸⁰

There is also legislation, such as the Defence Forces Proclamation, that ousts the jurisdictional monopoly of courts and brings civilians under military courts.⁸¹ According to Article 38 of this Proclamation, the jurisdiction of military courts extends beyond members of the defence force and includes offences committed by civilians. This article cross-references to the offences listed under Articles 284-332 of the Criminal Code, which highlight the predominant offences committed by civilians. For instance, offences such as refusal to perform military service, failure to comply with a calling-up order, and intentionally contracted unfitness are listed under Articles 284-286 of the Criminal Code as offences committed by civilians, not members of the armed forces. Therefore, Article 38 of the Defence Forces Proclamation, similar to Article 9(5) of the State of Emergency Proclamation,⁸²

⁷⁹ *Id.*, Art. 78(4) and 71(1).

⁸⁰ Diagnostic Study of the Ethiopian Criminal Justice System, The Legal and Justice Affairs Advisory Council of Federal Democratic Republic of Ethiopia Attorney General, 2021, P. 201.

⁸¹ Defense Forces Proclamation, 2019, Proc. No. 1100/2019, *Fed. Neg. Gaz.*, Year 25, No.19.

⁸² A State of Emergency Proclamation Enacted to Protect Public Peace and Security No. 6/2023, Ratification Proclamation, 2023, Proc. No. 1299/2023, *Fed. Neg. Gaz.*, Year 30, No. 2.

violates the right of civilians to be tried by an independent and impartial tribunal enshrined in Articles 14 and 15 of the ICCPR, the stated international principles and standards.

4.2.1.4. Financial Autonomy and the Availability of Adequate Budgetary Resources

Another important aspect of institutional independence is the financial autonomy of the judiciary and the availability of sufficient budgetary resources. As commonly stated, the government's financial power or purse is controlled by the legislative branch, not the judiciary. Therefore, it is evident that the judiciary primarily receives its financial budget and other resources from the legislative branch. It is essential for the judiciary, as one of the three branches of government, to be allocated adequate resources and be granted the authority to administer those resources.

The importance of allocating adequate financial resources and ensuring the financial autonomy of the judiciary is recognised in various international legal instruments. One such instrument is the United Nations Basic Principles on the Independence of the Judiciary. According to Principle 7, UN member states are required to provide adequate resources for the judiciary to operate effectively. The Guidelines on a Right to a Fair Trial in Africa also contain a provision with similar content. States must provide adequate resources to judicial bodies for their functions.⁸³ In addition, states must consult the judiciary on budget preparation and implementation.⁸⁴ The HRC emphasises the importance of allocating additional budgetary resources for the administration of justice in cases where delays in judicial proceedings are caused by a lack of resources and chronic underfunding.⁸⁵ Many constitutions allocate a fixed

⁸³ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted by the African Commission on Human and Peoples, (2003), Principle A, Para. 4 (h); *See also* the European Charter on the Statute for Judges, DAJ/DOC (98), Para. A, 4 (v).

⁸⁴ *Ibid.*

⁸⁵ HRC, Concluding observations: *Democratic Republic of Congo*, CCPR/C/COD/CO/3 (2006), Para. 21, *Central African Republic*, CCPR/C/CAF/CO/2 (2006), Para. 16, cited by HRC in its General Comment No. 32, Para. 27.

percentage of the total budget to enhance the financial autonomy of the judiciary.⁸⁶ In these jurisdictions, it is common to allocate up to 3% of the total national budget to the judiciary.⁸⁷ M. Dakolias and K. Thachuk suggest that this constitutional measure helps to limit the budgetary influence of the other branches of government on the judiciary.⁸⁸

According to the Ethiopian constitutional and legal frameworks, the budget of federal courts is submitted to the House of People's Representatives for approval. Upon approval, the judiciary administers the budget. In addition, the House of Peoples' Representatives allocates funds to the Federal Judicial Administration Council, an important body that supports institutional judicial independence.⁸⁹ The budget administration and autonomy of federal courts are further reinforced by the Federal Courts Proclamation.⁹⁰ Despite this clear constitutional stipulation, the budget of the judiciary had not been approved by the House of Peoples' Representatives for the last 25 years. Prior to the 2019/2020 fiscal year, the budget of the judiciary was submitted to the Ministry of Finance, which then presented it to the House of Peoples' Representatives as part of the overall federal government budget. The budget for the fiscal year 2019/2020 was approved by the House for the first time. Since then, the budget of federal courts has been consistently approved by the House of People's Representatives. Breaking the *status quo* and obtaining approval for the judiciary's budget from the House for the first time after 25 years was not easy. The former vice president of the Federal Supreme Court, Mr. Solomon

⁸⁶ Rosenn, *supra* note 17, P. 16.

⁸⁷ *Addis Zemen*, Amharic Daily, Interview with Mr. Solomon Areda, Vice president, the Federal Supreme Court of Ethiopia (hereinafter *Addis Zemen*, Interview with Mr. Solomon Areda), January 2020, available at <https://www.press.et/Ama/?p=25768>.

⁸⁸ See M. Dakolias and K. Thachuk, 'Attacking Corruption in the Judiciary: A Critical Process in Judicial Reform', *Wisconsin International Law Journal*, Vol.18, No. 2, 2000.

⁸⁹ Federal Judicial Administration Proc. No. 1233/2021, Art. 40.

⁹⁰ See the Preamble, Art. 17(2) (c) (e) (i), 19 (2) (4), 36, 37, and 40, Federal Judicial Administration Proc. No. 1233/2021.

Areda, described this challenge by stating, “We insisted and exerted pressure to go to the Parliament to have our budget approved by it.”⁹¹

The approval of the judiciary’s budget by the Parliament can be seen as a significant breakthrough and an important step towards securing the financial autonomy of the judiciary. However, financial autonomy alone is not sufficient to guarantee institutional judicial independence. It is equally crucial to ensure that adequate funding and resources are provided to the judiciary. Currently, the government only allocates about 0.3% of the total national budget to the judiciary,⁹² which falls far below the fixed budget of countries in Latin America, typically around 3%.⁹³ The FDRE Constitution and relevant laws do not address the issue of adequate funding for the judiciary. The government may allege that economic constraints limit its ability to allocate more funds. While not legally binding, we can learn from the Beijing Principles on this matter.⁹⁴ According to the Beijing Principles, when economic constraints make it difficult to allocate the necessary facilities and resources to the court system, which judges consider essential for performing their functions, the maintenance of the rule of law and the protection of human rights still require that the needs of the judiciary and the court system be given a high level of priority in resource allocation.⁹⁵

If we were to import and inject this logically sound principle into the Ethiopian legal framework, the government should prioritise the judiciary in the allocation of funding and resources for the nation. When examining the current allocation of budget and resources to the judiciary, it becomes apparent that it is not only inadequate and insufficient but also unfair. Mr. Solomon emphasised the need for a

⁹¹ *Addis Zemen*, *supra* note 87.

⁹² *Ibid.*

⁹³ John McEldowney, *Developing the Judicial Budget: An Analysis*, A World Bank Conference, (Saint Petersburg, 2011), P. 12

⁹⁴ Beijing Statement of Principles of the Independence of the Judiciary, the LAWASIA Region, adopted by the LAWASIA Council, (2001).

⁹⁵ *Id.*, Para. 42.

fair distribution of resources from the nation's economy rather than requiring a budget equal to that of the US judiciary.⁹⁶

Without adequate funds and resources, the judiciary cannot perform its functions properly and effectively, and its independence, both institutional and personal, would be jeopardised. The main problem that the judiciary is facing is a lack of adequate budget, courtrooms, buildings, a conducive work environment, and infrastructure.⁹⁷ As Ferejohn and Kramer correctly put it, “an underfunded court is a distinctly unpleasant place to work.”⁹⁸ Specifically, a lack of adequate funding and resources affects the administration of justice in general and the judicial protection of human rights in particular, such as the right to a fair trial. In this regard, as Mr. Solomon argues, “without allocating adequate resources and budget [to the judiciary], it is not possible to think about the rule of law, constitutionalism, and justice.”⁹⁹

In other jurisdictions, in addition to allocating a consolidated judicial fund, courts also retain their internal revenue.¹⁰⁰ This revenue, which comes from court fees and other services, is a portion of their budget that is collected and kept by the courts instead of being transferred to the national treasury.¹⁰¹ Federal courts collect a significant amount of money from the judicial services they provide.¹⁰² The Federal

⁹⁶ Addis Zemen, *supra* note 87.

⁹⁷ *Ibid.*

⁹⁸ Ferejohn and Kramer, *supra* note 12, P. 985.

⁹⁹ Addis Zemen, *supra* note 87.

¹⁰⁰ For example, approximately 60% of the courts services budget in Ireland is funded by court fee income. For more information see PowerPoint presentation by Noel Rubotham, *The Budget of the Courts and Judicial System in Ireland* available at <https://rm.coe.int/the-budget-of-the-courts-and-judicial-system-in-ireland-by-noel-ruboth/168076d496> (accessed on 29 November 2024). For more information on the allocation of a consolidated judicial fund see John McEldowney, *Developing the Judicial Budget: An Analysis*, <https://biblioteca.cejamericas.org/bitstream/handle/2015/1771/wb-judicial-budget.pdf?sequence=1&isAllowed=y> (accessed on 29 November 2024); Adam Ilyas and Paulus Rudy Calvin Sinaga, ‘The Urgency of Budget Independence For The Constitutional Court In Strengthening The Independence Of The Judiciary’, *Nagara Law Journal*, Vol. 1, No. 2, 2024.

¹⁰¹ Addis Zemen, *supra* note 87.

¹⁰² አሮን ደጎል፣ ‘የዳኝነት ተቋማዊ ነጻነት በኢትዮጵያ ፌዴራል ፍርድ ቤቶች፣ አጭር ምልክታ፣ ሚዛን ለውረሽው፣’ *ቮልዩም 14፣ ቁጥር 2፣ 2013፣ገጽ 334።*

Supreme Court also suggested that the internal revenue of courts should be included in the judiciary's budget, to be regulated in the two yet-to-be adopted proclamations, the repeatedly cited Federal Courts Proclamation and the Federal Judiciary Administration Proclamation.¹⁰³ Regretfully, the Parliament rejected this recommendation and excluded it from the stated proclamations. This shows the unwillingness of the legislative branch to allocate a sufficient budget and resources to the judiciary, even by letting the latter retain its internal revenues.

4.2.2. **Personal Independence and the Protection and Enforcement of Human Rights in Ethiopia**

One mechanism for ensuring judicial independence is to secure the personal independence of individual judges. Personal judicial independence refers to the autonomy and impartiality of judges in the judicial process and administration of justice.¹⁰⁴ Therefore, it can be argued that "individual judicial independence exists primarily for the benefit of institutional independence" of the judiciary.¹⁰⁵ In other words, as Lord Phillips convincingly argues, personal independence is inseparable from institutional independence, as the latter greatly contributes to the former.¹⁰⁶ To guarantee the judiciary this protection, judges should be independent and shielded from interference and pressure from the two branches of the government and the public.

Personal judicial independence can be manifested in different ways. As previously discussed, one manifestation of personal independence is the freedom of judges to decide cases. To maintain personal judicial independence, judges must have the

¹⁰³ *Addis Zemen*, *supra* note 87.

¹⁰⁴ Mohamed Ali Mohamed Kotby, 'Judicial Independence versus Judicial Impartiality: A Comparative Approach', (PhD Dissertation, Middlesex University, 2022), P. 202.

¹⁰⁵ Stephen B. Burbank, 'Judicial Independence, Judicial Accountability, and Interbranch Relations', *Geo. L.J.*, Vol. 95, 2007, P. 912.

¹⁰⁶ Lord Phillips, 'Judicial Independence and Accountability: A View from the Supreme Court', UCL Constitution Unit, launch of research project on 'The Politics of Judicial Independence' London, 2011, cited in Laura-Stella Eposi Enonchong, 'Judicial Independence and Accountability in Cameroon: Balancing a Tenuous Relationship', *Afr. J. Legal Stud.*, Vol. 5, 2012, P. 331.

freedom to decide cases solely based on the law and the evidence presented before them. External influences, whether through public opinion, public protests, or pressure from interest groups, should not interfere with the judge's impartiality. Judges must evaluate cases without compromising objectivity and resist the temptation to align their decisions with external factors. Judges must be able to approach each case with an open mind and be free from any bias or predetermined outcome. Another related protection is the protection from political interference. Protecting judges from political interference is vital to ensuring personal judicial independence. Judicial immunity shields them from arbitrary removal, disciplinary actions, or intimidation arising from their judgments or opinions. All of these protections help judges ensure impartiality. In turn, impartiality assures judges that they can make decisions solely based on the law and the facts presented before them, guarding against any personal or external influence.

The appointment procedure is a crucial aspect of personal judicial independence. How judges are appointed plays a significant role in ensuring personal judicial independence.¹⁰⁷ Judicial recruitment processes that prioritise merit-based appointments over political or patronage-based selections also help uphold personal judicial independence. In addition, personal judicial independence also necessitates safeguards against external interference. This includes protection from political, economic, or other pressures that could compromise the independence of judges and influence their decisions.

The concept of personal judicial independence recognises the need for judges to be free from any undue influence that may cloud their judgment or impede their ability to uphold the rule of law and protect human rights.¹⁰⁸ The following subsection

¹⁰⁷ See Chávez, Rebecca Bill. 'The appointment and removal process for judges in Argentina: The role of judicial councils and impeachment juries in promoting judicial independence', *Latin American Politics and Society*, Vol. 49, No. 2, 2007, PP. 33-58.

¹⁰⁸ *Ibid.*

analytically discusses the different manifestations and components of personal judicial independence in light of the various legal frameworks and principles, including the UN Basic Principles on the Independence of the Judiciary, the Ethiopian constitutional and legal frameworks, along with the analysis of the collected empirical data, and other relevant sources of information.

4.2.2.1. Impartiality

The literature distinguishes between two interrelated aspects of judicial independence: impartiality and insularity.¹⁰⁹ In the context of judicial independence, insularity generally refers to the importance of shielding the judiciary from interference and pressure from the executive branch, as well as ensuring the personal independence of judges. On the other hand, impartiality pertains to a judge's mindset towards a case and its parties.¹¹⁰ The HRC states that judges should be impartial under Art. 14 of the ICCPR, meaning they must not have biases or favour any party.¹¹¹ Therefore, impartiality refers to the duty of judges to be transparent, neutral, and free from bias and cannot be equated with the independence of judges. However, the impartiality of judges can be seen as a crucial element in safeguarding and ensuring judicial independence. It is reasonable to argue that the concept of judicial independence, particularly personal independence, cannot be fully understood unless it is accompanied by impartiality.

Impartiality, like an independent judiciary, is “at the heart of a judicial system that guarantees human rights in full conformity with international human rights law.”¹¹² The second Basic Principle of the UN requires the judiciary to decide matters before them impartially, based on facts and laws without any restrictions, improper

¹⁰⁹ Menberetshai Tadesse, ‘Judicial Reform in Ethiopia’, (PhD Dissertation, University of Birmingham, 2010), P. 251.

¹¹⁰ International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors, *supra* note 13, P. 20.

¹¹¹ HRC, Communication 387/1989, *Arvo. O Karttunen v. Finland*, UN document CCPR/C/46/D/387/1989 (Jurisprudence), Para. 7.2.

¹¹² International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors, *supra* note 13, P. 2.

influences, inducements, pressures, threats, or interferences, direct or indirect, from any quarter or for any reason. Similarly, the Ethiopian constitutional and legal frameworks recognise the principle of impartiality of judges under Art. 79(3), establishing a principle on the function of judges with full independence and by relying solely on the law.¹¹³

Impartiality in the administration of justice can be compromised by various factors, such as economic, social, or political influences on judges, which can lead to bias, corruption, or a lack of integrity in decision-making.¹¹⁴ The collected data on the impartiality of federal court judges show that there were instances in which federal court judges were not impartial. According to the research participants, a lack of impartiality is witnessed in putting convicts on probation, granting bail, and cases in which the interest of the government is at stake.

Concerning putting convicts on probation and releasing criminal suspects on bail, among the stated instances of lack of impartiality, several research participants mentioned that judges are inconsistent in releasing convicts on probation. An attorney has pointed out the unequal treatment in the judicial system, where the wealthy can pay for bail or probation and be released, which erodes trust in the system.¹¹⁵ A public prosecutor highlighted the perceived bias in granting probation to serious economic criminals over prison sentences for minor offenders, attributing this to bribery considerations.¹¹⁶ An interviewed public prosecutor at the Ministry of Justice shares the same opinion. According to the public prosecutor, although it may be challenging to accept and confirm, there is a rumour that a convicted person who

¹¹³ The constitutional recognition of the impartiality of judges is elaborated by the Federal Judicial Administration Proclamation Arts. 3, 35-38, and 43, as well as Arts. 26, 29 (4), 32, and 33-34 of the Federal Courts Proclamation.

¹¹⁴ Diagnostic Study, *supra* note 80 P. 216.

¹¹⁵ Interview with an Attorney at Law at Federal Courts (Anonymous), Dire Dawa, June 2022.

¹¹⁶ Interview with a Public Prosecutor and Coordinator of Economic Crimes (Anonymous), Dire Dawa Branch Office, Ministry of Justice, Dire Dawa, June 2022.

can pay a bribe will be placed on probation, while someone who cannot afford it will be sent to prison.¹¹⁷

A Public Prosecutor, who serves as the Deputy Director General for Corruption Crimes Prosecution at the Ministry of Justice, shares the same opinion. He said judges might accept bribes to favour fines instead of jail, resulting in many unable to pay being refused probation.¹¹⁸

Concerning the lack of impartiality in releasing criminal suspects on bail, the research participants mentioned the inconsistency and disparity with the law as follows: “Regarding bail, there is an issue that bothers us as public prosecutors. Sometimes a serious crime is committed and bail is granted, and sometimes bail is granted on serious conditions for a non-violent crime.”¹¹⁹

An attorney interviewed expressed the opinion that courts lack impartiality when cases involving the government’s interests are at stake. According to the attorney, government interest in legal cases can lead to bias in favour of the government, sometimes overriding impartiality.¹²⁰ In high-profile cases, court administrators often reassign judges, remove them from handling specific cases, and assign judges who are perceived as favourable by anticipating the outcome of the case.¹²¹ Judges of the Federal High Court have been complaining about internal interventions from court administrators regarding the assignment of judges to benches and the stepping down of judges from cases.¹²² This internal pressure from court administrators, notably from the officials assuming higher positions in the hierarchy of courts, has

¹¹⁷ Interview with a Public Prosecutor (Anonymous), Ministry of Justice, Addis Ababa, June 2022.

¹¹⁸ Interview with the Deputy Director General (Anonymous), Corruption Crimes Prosecution Directorate General, Ministry of Justice, Addis Ababa, May 2022.

¹¹⁹ Interview with a Public Prosecutor and Coordinator of Economic Crimes (Anonymous), *supra* note 116.

¹²⁰ Interview with an Attorney (Anonymous), at the Federal First Instance Court, Bole Bench, Addis Ababa, June 2022.

¹²¹ Interview with Mr. Alelegn Mihretu, *supra* note 60.

¹²² Interview with a Judge (Anonymous), Federal Supreme Court Cassation Division, Addis Ababa, October 2023.

also been reported as a threat to judicial independence.¹²³ The Director of Judgment Inspection and Judge's Discipline Committee at the Federal Judicial Administration Council believes in the prevalence of a lack of impartiality that primarily stems from judges' relationships and bribes.¹²⁴

Based on the data collected from various participants, including judges, it is evident that a lack of impartiality is prevalent in federal courts. The main causes of judges' partiality include the political implications of cases, administrative pressures, judicial corruption, and ethnic and interpersonal ties. Specifically, there is an abuse of judicial discretion and partiality in decisions regarding putting convicts on probation, granting bail, and possessory action cases. In addition, there is interference from the executive branch in possessory action cases, further contributing to the lack of impartiality in the handling of these cases by judges.

4.2.2.2. Recruitment and Appointment Procedure

One of the procedural measures that helps ensure the independence of the judiciary is the recruitment and appointment of judges. Generally, what is important in the recruitment and appointment procedure of judges is to ensure that it is conducted without interference and manipulation from the two branches of government, specifically the executive branch. This is because if judges are not appointed and promoted based on their legal skills, the judiciary may fail to deliver justice independently and impartially.¹²⁵

The HRC has examined the impact of the appointment criteria of judges on judicial independence. As mentioned in its general comment, the requirement of independence specifically refers to the procedure and qualifications for the

¹²³ Diagnostic Study, *supra* note 80, P. 208.

¹²⁴ Interview with the Director (Anonymous), Judgment Inspection and Judge's Discipline, Federal Judicial Administration Council, Addis Ababa, June 2022.

¹²⁵ International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors, *supra* note 13, P. 38.

appointment of judges.¹²⁶ States must ensure judicial independence by establishing clear procedures and objective criteria for appointing judicial members in their constitutions or laws.¹²⁷ In its concluding observation on Slovakia, the Committee underlined the importance of taking specific measures to ensure judicial independence. This includes shielding judges from political pressures through legislation governing their appointments.¹²⁸

The generally agreed-upon selection criteria of judges, among other things, should be based on the candidate's merit, integrity, and qualification; it should not be based on the political loyalty or affiliation of the candidate to the government. Similarly, the UN Guiding Principles on Judicial Independence stipulate that judicial selection and appointment should be based on integrity, ability, and appropriate legal qualifications. They should be free from improper motives and conducted without discrimination based on race, colour, sex, religion, political affiliation, or any other factors.¹²⁹

Similarly, judges should be appointed based on integrity, training, and ability, as outlined in the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.¹³⁰ Merely setting appointment criteria for judges does not guarantee judicial independence. A proper appointment procedure must be in place to ensure that these criteria are followed during the appointment process. In this regard, the accepted requirement is the selection of judges, and the appointment procedure should be conducted by an organ independent of the two branches of the government. For instance, the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa underline the importance of establishing an

¹²⁶ HRC, General Comment No. 32, *supra* note 2.

¹²⁷ *Ibid.*

¹²⁸ Concluding Observations of the HRC on Slovakia, UN document CCPR/C/79/Add.79, Para. 18.

¹²⁹ Basic Principles on the Independence of the Judiciary, *supra* note 8, Principle 10.

¹³⁰ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, *supra* note 83, Principle A, Para. 4 (i).

independent body that will ensure transparency and accountability in the appointment of judges.¹³¹

In the Ethiopian legal and constitutional framework, the legislative organ, the Prime Minister, and the Judicial Administration Council participate in the selection and appointment of federal judges.¹³² Here, it is important to distinguish between the appointment procedures of the president and the vice president of the Federal Supreme Court, the presidents and the vice presidents of lower courts, and federal judges. The president and the vice president of the Federal Supreme Court are appointed by the House of Peoples' Representatives, upon recommendation by the Prime Minister.¹³³ Therefore, as far as the appointment of the leadership of federal courts in general and the Federal Supreme Court in particular is concerned, the power of the executive is limited to recommending candidates to the stated offices, and the Judicial Administration Council does not play any role. However, it can be perceived that, in recommending the president and the vice president for appointment, the Prime Minister cannot be free of political considerations and the interests of the executive. Given the considerable power that the president and the vice president of the Federal Supreme Court have over the Supreme Court and lower federal courts, it "would induce judges to anticipate that 'wrong' decisions in particular cases could have career consequences, thus negatively impacting their independence."¹³⁴

Unlike the appointment of the president and the vice president of the Supreme Court, the nomination and appointment processes for federal judges, presidents, and vice presidents of the Federal High Court and the Federal First Instance Court are the same. Candidates are nominated for appointment by the Judicial Administration

¹³¹ *Id.*, Principle A, Para. 4 (h). See also the European Charter on the Statute for Judges, *supra* note 83, Para. 1.3.

¹³² Constitution of the Federal Democratic Republic of Ethiopia Proc. No. 1/1995, Art. 81.

¹³³ *Id.*, Art. 81(1).

¹³⁴ Diagnostic Study, *supra* note 80, P. 209.

Council and then submitted to the Prime Minister. Finally, their appointment is approved by the House of People's Representatives.¹³⁵ When it comes to the appointment of federal judges, as well as the presidents and vice presidents of the two lower courts, an important question arises about the Prime Minister's role. Specifically, it is unclear whether the Prime Minister's role is simply to submit candidates to the House, or if he also has the authority to reject nominations made by the Council before submitting them for approval. Unfortunately, both the Constitution and the Judicial Administration Proclamation do not provide clear guidance on this matter. It can be argued that the Prime Minister, as the bridge between the Council and the House in the nomination procedure, has the authority to reject the nomination by availing himself of the silence of the Constitution and the Proclamation. The Council does not have legal grounds to challenge the Prime Minister's rejection, bypass it, and submit candidates for the approval of the House. Therefore, it can be concluded that the Prime Minister or the executive plays an important role in the appointment of presidents and vice presidents of all levels of courts and federal judges. In the latter case, his role goes beyond submitting judges for appointment; he has the power and discretion to reject nominations made by the Council. The possibility of this complexity and legal uncertainty could undermine the role of the Judicial Administration Council and pave the way for the interference of the executive in the appointment procedure of federal judges.

About the criteria for the selection and appointment of judges, the Constitution is silent. However, it should be noted that a capable and legitimate judiciary relies on the professional competence of individual judges.¹³⁶ In addition, access to competent adjudication is a human right for court users.¹³⁷ In this regard, the Judicial Administration Proclamation provides for the general requirements for the

¹³⁵ See Art. 8 (1) (2) and 9 (3) of the Federal Judicial Administration Proc. No. 1233/2021 and Art. 81(2) of the Constitution of the Federal Democratic Republic of Ethiopia Proc. No. 1/1995.

¹³⁶ The Comprehensive Justice System Reform Program Baseline Study Report, Ministry of Capacity Building, Justice System Reform Program Office, 2005, P. 161.

¹³⁷ *Ibid.*

appointment of federal judges, as well as additional requirements for those appointed to the Federal First Instance Court, Federal High Court, and Federal Supreme Court.¹³⁸ According to Art. 20 of the Proclamation, there are specific requirements that must be met for a person to be appointed as a federal judge. These requirements include being an Ethiopian national, having a proven reputation for probity, integrity, honesty, and being free from morally repugnant conduct. In addition, the individual must be in good health and demonstrate a sense of duty, responsibility, and diligence of the highest standard that is fitting for the position based on their competence to assume the responsibilities of a judge. They must also have a sense of justice and a commitment to respecting the rule of law, be willing to serve as a judge, have no criminal convictions except for minor contraventions, be at least 30 years old, and hold at least an LLB Degree from a recognised institution of higher learning. From the reading of these general requirements, it can be concluded that the selection criteria are objective and based on the merit, competence, integrity, and qualification of the candidate as enshrined under different instruments and recommended by the HRC. This will, in turn, help ensure a competent, independent, and impartial judiciary.

This researcher empirically assessed the practice of the recruitment and appointment of judges, considering the stated general requirements; the research participants questioned the observance of some of the legally stipulated recruitment and appointment requirements. The opinion of the research participants is that the recruitment and appointment of judges is not based on merit, competence, integrity, or qualification. During the interview, the attorney specifically mentioned that the recruitment and appointment of judges primarily consider the political leanings and ethnic backgrounds of the candidates. The attorney believes that judicial misconduct

¹³⁸ Federal Judicial Administration Proc. No. 1233/2021, Art. 20-23.

often occurs when appointments are made based on ethnicity rather than merit, with quotas taking precedence over qualifications.¹³⁹

Other interviewed research participants and discussants in the focus group discussions shared the opinion of the quoted informant.¹⁴⁰ Research participants believe that judges are selected based on politics, ethnicity, and connections, rather than merit or qualifications. They also mentioned that ethnic quotas play a significant role in the selection process.¹⁴¹ A public prosecutor mentioned that judges should not be selected based on ethnic quotas, as the judiciary is not a political entity like the House of Federation.¹⁴² The practices mentioned by the research participants, even if they were used to a limited extent, do not align with the recruitment and appointment criteria accepted by international instruments and the requirements outlined in the Judicial Administration Proclamation. This will, in turn, hinder the right to a trial by independent and impartial courts in general, as well as the role that the judiciary can play in the protection and enforcement of human rights in particular.

5. Conclusion

Although commendable measures have been taken in adopting laws, the institutional independence of federal courts is compromised by interference from the executive branch and reluctance from the police to enforce court decisions and orders. This diminishes the inherent power of courts to protect human rights. The jurisdictional monopoly of the judiciary has also been eroded by Article 38 of the Defence Forces Proclamation and Article 9(5) of the recently adopted State of Emergency

¹³⁹ Interview with an Attorney at Law at Federal Courts (Anonymous), *supra* note 115.

¹⁴⁰ Interview with a Judge (Anonymous), Federal Supreme Court Cassation Division, Addis Ababa, May 2022; FGD with Attorneys and Public Prosecutors, Federal First Instance Court, Bole Bench, Addis Ababa, May 2022; FGD with Attorneys, Federal First Instance Court, Guelele Bench, *supra* note 59; Interview with a Representative Judge (Anonymous), Federal High Court, Dire Dawa Assigned Division, Dire Dawa, June 2022; Interview with an Attorney at Law (Anonymous), Addis Ababa, May 2022.

¹⁴¹ *Id.*; Interview with a Judge (Anonymous), Federal Supreme Court Cassation Division, *Id.*; FGD with Attorneys and Public Prosecutors, Federal First Instance Court, *Id.*; FGD with Attorneys, Federal First Instance Court, Guelele Bench, *Id.*

¹⁴² Interview with a Public Prosecutor (Anonymous), Guelele Branch Office, Ministry of Justice, Addis Ababa, May 2022.

Proclamation Enacted to Protect Public Peace and Security. Even if the judiciary's budget is approved by the Parliament, the allocated resources are insufficient for effective justice administration and safeguarding human rights. Adequate funding is crucial for upholding the rule of law and constitutionalism.

The analysed empirical data reveals a lack of impartiality in federal courts regarding the individual independence of judges. This is evident through instances of abuse of discretion, partiality in placing convicts on probation, granting bail, executive interference, and pressures in possessory action cases. The recruitment and appointment criteria of judges align with international guidelines and the jurisprudence of the HRC. However, some of the legally stipulated recruitment and appointment requirements are not practically observed; the recruitment and appointment of judges mainly consider the political inclination and ethnic origin of the candidates. This practice is not in tandem with the legally recognised importance of the “depoliticisation of the process by which judicial personnel are appointed and removed.”¹⁴³ Specifically, the Prime Minister plays an important role in the appointment of presidents and vice presidents of all levels of courts and federal judges. This role extends beyond simply submitting judges for appointment; it also has the power and discretion to reject nominations made by the Council. In the case of the president and the vice president of the Federal Supreme Court, the Judicial Administration Council does not play a role in their selection and appointment; the executive and the Parliament have full control over the entire process.

In general, it can be concluded that constitutional provisions and subsidiary laws regarding judicial independence are inspired by internationally recognised guidelines, standards, and the jurisprudence of human rights monitoring bodies.

¹⁴³ Bruce M. Wilson, Juan Carlos Rodríguez Cordero, and Roger Handberg, ‘The Best Laid Schemes ... 2004, Gang Aft A-Gley: Judicial Reform in Latin America: Evidence from Costa Rica’, *Journal of Latin American Studies*, Vol. 36, No. 3, 2004 P. 514, cited in Elias N. Stebek, ‘Judicial Reform Pursuits in Ethiopia, 2002-2015: Steady Concrete Achievements - versus - Promise Fatigue’, *Mizan Law Review*, Vol. 9, No. 2, 2015, P. 221.

However, these provisions and laws are not fully implemented and practised. As J. Mark Ramseyer rightly asserts, “Judicial independence is not primarily a matter of constitutional text.”¹⁴⁴ Therefore, a “constitutional provision stating that the judiciary shall be independent merely indicates a commitment but does not suffice.”¹⁴⁵ Most importantly, “judicial independence waxes and wanes with changes in the political composition.”¹⁴⁶ Similarly, the legal and empirical analysis of this article also highlights that constitutional and legal recognition is the key instrument to ensure judicial independence in Ethiopia. Along with this legal framework, as this article suggests, the development and realisation of judicial independence in a legal system depends on the development of judicial institutions and practices that embrace good governance and a political culture that relies on and is committed to the rule of law and separation of governmental power. The constitutional history and constitutional practice of Ethiopia, unfortunately, have not significantly impacted changes in the judicial administration of justice, the protection and enforcement of human rights in general, and judicial independence in particular.

Therefore, the Ethiopian government should go beyond simply stating its commitment to judicial independence in the constitution by fully and effectively enforcing the constitutionally mandated principles of judicial independence. More specifically, the identified challenges to judicial independence that have affected the role of the judiciary in the protection of human rights in Ethiopia, such as political interference, lack of resources, and corruption, demand immediate intervention by the government. There should also be legal and constitutional reforms to address the identified legal and constitutional gaps, strengthen and ensure judicial accountability and integrity, and provide training for judges and attorneys on legal and judicial

¹⁴⁴ J. Mark Ramseyer, ‘The Puzzling (In)dependence of Courts: A Comparative Approach’, *J. Legal Stud.* Vol. 23, 1994, cited in Stephen B. Burbank, ‘The Architecture of Judicial Independence’, *S. Cal. L. Rev.*, Vol. 72, 1999, P. 332.

¹⁴⁵ Laura-Stella Eposi Enonchong, ‘Judicial Independence and Accountability in Cameroon: Balancing a Tenuous Relationship’, *Afr. J. Legal Stud.*, Vol. 5, 2012, P. 334.

¹⁴⁶ McNollagast, ‘Positive Political Theory and the Law: Conditions of Judicial Independence’, *Journal of Contemporary Legal Issues*, Vol. 15, 2006, P. 108.

ethics. By implementing these reforms, the judiciary will be better equipped to effectively fulfil its crucial role in protecting and upholding human rights. If not, as Mahomed rightly concludes and cautions, subverting judicial independence and attacking the independence of the judiciary is detrimental “[attacking] and [subverting] the very foundations of the freedoms articulated by the constitution to protect humankind from injustice, tyranny, and brutality.”¹⁴⁷ The judiciary, both at large and within the Federal Judicial Administration Council, should make every effort to exercise their constitutionally granted judicial independence and power. This is crucial to effectively protect and enforce human rights, shielding them from any unwarranted interference or pressure from the executive branch.

Conflict of Interest

The author declares no conflict of interest.

¹⁴⁷ Mahomed, *supra* note 73, P. 666.