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41	Yohanan Yokamo	LLB, LLM
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Table of Contents

Articles (peer reviewed)

Note

Comments

Double Taxation Avoidance Treaties in Ethiopia: A Content Analysis

Awet Halefom♣

> In the long run, the business unit or source will yield more revenue to the public treasury than the individual; and the place where the income is earned will derive larger revenues than the jurisdiction of the person.
>
> T.S. Adams

Abstract

Focusing on Ethiopian double taxation avoidance agreements, this article analyses the double taxation treaties Ethiopia has signed with 20 countries. Ethiopia, in most cases, is a source country for international and foreign direct investments. By examining key provisions in these treaties, inter alia, the permanent establishment (PE), business income, independent service, teachers, professors and researchers, professional services, royalties, dividends and interests, and eliminating double taxation provisions, this article shows that the Ethiopian tax agreements lack uniformity, regardless of the status of the country: whether developed or developing member of OECD and non-OECD. The article also shows the provisions of the tax treaties which are, mostly, below the standards adopted in the UN model-favoring developing countries which usually are the source countries. In most of the agreements, narrow conception of PE, narrow base of business income, incorporation of the 'limited force of attraction' principle by few agreements, and limited taxing rights on incomes sourced in Ethiopia are evident. In addition, most of the tax treaties were signed at a time when Ethiopia had no income tax laws which encompass detailed international taxation provisions. As a typical evidence, the old income tax proclamation, i.e. the negotiation base of the current active tax treaties, did not have a broadened provisions of PE conceptualization, services PE, supervisory activities, time period for the establishment of PE, and exploration of natural resources in it.

***Key words**:*
Double taxation, Income tax, Permanent Establishment, OECD Model, UN Model, Tax Treaties

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1. Introduction

To levy tax on income, a state must establish a connection between itself and the income. The 'residence' and/or the 'source' principles of income are the most frequent bases of the income tax jurisdictions of countries.[1] Under the' residence' principle, all income of persons domiciled or normally resident in a country is subject to that country's income tax regime, whereas under the 'source' principle, all income originating from a country, regardless of the beneficiary of such income, is subject to that country's income tax regime.

Double taxation of income may occur as different countries use different bases to tax income. When two states, for tax purposes, treat the same person as 'resident' under their respective domestic laws, then that person is said to be 'dual resident' and thus fully liable for tax in both countries. In such cases, countries may take unilateral or bilateral measures to resolve the problem. As a unilateral solution, countries may resort to their domestic laws; *inter alia*, foreign tax credit, deduction, and exemption to resolve double taxation. Double taxation avoidance agreements fall in these bilateral solutions.

The current double taxation agreements among developing countries, or developed and developing countries are, dominantly, based on two models – the Organization for Economic Cooperation and Development (OECD) and United Nations (UN) Model Double Taxation treaties, which in turn are based on models developed by the League of Nations.[2]

Currently, Ethiopia has 12 'ratified and instrument of ratification exchanged' agreements,[3] 12 'ratified by the House of Peoples Representatives (HPR)'

[1] Michael Lang, Introduction to the Law of Double Taxation Conventions, (Linde, 2010) p, 23-24. Exceptionally, countries like USA also claim tax jurisdiction based on citizenship.

[2] Avi-Yonah, Reuven, 'Double Tax Treaties: an Introduction' in Karl, Sauvant and Lisa, Sachs (eds.), the Effect of Treaties on Foreign Direct Investment: Bilateral Investment Treaties, Double Taxation Treaties, and Investment Flows (Oxford University Press, 2008) , P.99

[3] Ethiopia has agreements signed and in force (until June, 2019) with the following countries: (Egypt Signed on Sep. 15, 2011); India (Signed on May 25, 2011); Sudan (Signed on February 25,

agreements [4] and an additional 4 that have been 'signed, but not ratified',[5]7'waiting for signature' agreements,[6] 6 'under negotiation' agreements and 9 'draft exchanged' group of agreements.[7]In this article, a content analysis is made on ratified and signed agreements Ethiopia entered into, which have been. Data is taken from agreements concluded with India, the Netherland, Egypt, Ireland, Italy, Israel, South Korea, Morocco, Portugal, China, Saudi Arabia, Singapore, France, Sudan, Tunisia, Turkey, the United Kingdom, South Africa and Russia.

However, this research focuses on parts of the treaties dealing with individuals covered, residence, permanent establishment (PE), business income, royalties, dividend and interest, independent personal services and methods of eliminating double taxation. Among others, it is worth to note here that these provisions are

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2006); China (Signed on May 14, 2009) ; French Republic (Signed on June 15, 2006); Turkey (Signed on March 2, 2005) ; The United Kingdom of Great Britain and Northern Ireland (Signed on June. 9, 2011); Netherlands (Signed on August 10, 2012); Kingdom of Saudi Arabia (Signed on February 28, 2013); Ireland Republic (signed on November 3,2014) and Peoples Democratic Republic of Korea (Signed on December 05, 2012). All the agreements are collected from Ministry of Finance, Tax policy Department on June 2019; scanned documents are available with the Author of this article. Readers may access them at www.ibfd.org.

[4] Agreements ratified by the HPR of Ethiopia: Kuwait (Signed on September 14, 1996); Russian Federation (Signed on November 26, 1999); Yemen (Signed on February 1, 2001); Algeria (signed on May 7, 2002); Tunisia (Signed on January 23, 2003); Romania (Signed on November 5,2003); South Africa (Signed on March 17, 2004); Israel (Signed on June 2, 2004); Czech Republic (Signed on 2006); Seychelles (Signed on July 14, 2012); Portugal (Signed on May 15, 2013) and United Arab Emirates (Signed on April 12, 2015). Ibid

[5] Signed but not ratified agreements: Palestine (Signed on July 9, 2015); Poland (Signed); Cyprus (Signed); South Korea (Signed on 26,2016) and Qatar (Signed on April 10,2013). Ibid

[6] Waiting for signature agreements: Kingdom of Bahrain (Negotiation completed on March 26, 2015); Singapore (Negotiation Completed on July 25, 2015); Republic of Malta (Negotiation Completed on January 15, 2016); Mozambique (Negotiation Completed on July 22, 2016); Omar Sultanate (Negotiation completed); Slovak Republic (Negotiation completed) and Brazil (Specific agreement on the avoidance of double taxation on profits derived from International Air and Shipping Transport reached). Ibid

[7] Under this category, 17 countries are found with different statuses on the level of negotiation. Accordingly, six agreements are at the negotiation stage: Islamic Republic of Pakistan (2nd round negotiation conducted but agreement not reached); Islamic Republic of Iran (at 4rd round negotiation); Nigeria (1st round negotiation conducted); Republic of Gabon (1st round negotiation conducted, pending on tax sparing issue) and Kingdom of Morocco (1st round negotiation conducted from 7-11 Dec 2015); Germany (1st round and 2nd round negotiations conducted); with the remaining 9 countries: Thailand, Kenya, Mali, Serbia and Montenegro, Switzerland, Ukraine, Barbados, Botswana and Only Draft Agreement exchanged with two countries: Norway and Belarus. Ibid

areas of divergence between the UN and OECD models. Effort has been made to compare Ethiopian tax treaties with the UN and OECD models, as the provisions of these models have had a profound influence on the international practice of tax treaties between developing and developed countries. For better analysis, the study uses the minimum standards established under the Ethiopian income tax laws and the sample Model prepared by Ministry of Finance and Economic Development (MoFED)[8]corresponding to the content of the tax treaties and the favorable provision of the UN Model for developing countries.

Consecutive parts of the article are arranged to give brief concept and detailed explanation on tax treaties in Ethiopia substantiated by data and evidences. . Following the introduction, the first three sections briefly explore general introductory concepts on source of double taxation, emergence of tax treaties and their status in domestic laws respectively. Afterwards, content-based analysis on the selected subjects of Ethiopian tax treaties is made. A brief conclusion is offered at last.

2. Sources of Double Taxation

There are two bases for double taxation: economic double taxation and juridical double taxation. The term "economic double taxation" is used to describe the situation that arises when the same economic transaction or asset is taxed in two or more states during the same period, but under different taxpayers. “Economic double taxation” occurs where two different persons are subjected to tax on the same income or capital.[9]Such dichotomy could occur when the tax law of one state attributes the asset to its legal owner, while the tax law of the other state attributes it to the person in possession or control.[10]“Economic double taxation” is permitted under many instances in domestic as well as international tax systems. For

[8] This model was the base for the negotiation of the current active tax treaties in Ethiopia.
[9] Klaus Vogel, Double Taxation Conventions (3rd edition, Kluwer Law International, 1997), p.1124.
[10] Klaus Vogel, ‘Double Tax Treaties and Their Interpretation, Berkeley Journal of International Law’, Vol. 4, Issue 1, 1986, p.7.

example, domestic "economic double taxation" happens when a corporation is taxed on corporate profit, while the same profit is taxed for the second time when the corporation distributes dividend to the shareholders.[11]

The "juridical double taxation", which is the usual and well-addressed issue in many literatures, occurs when one person is subject to tax on the same income or capital by more than one tax authority.[12]Despite its multiple bases, the main sources of international juridical taxation are succinctly summarized in the UN convention commentary as follows:

> Where each Contracting State subjects the same person to tax on his worldwide income or capital (concurrent full liability to tax; where a person is a resident of a Contracting State and derives income from, or owns capital in, the other Contracting State and both States impose tax on that income or capital; where each Contracting State subjects the same person, not being a resident of either Contracting State to tax on income derived from, or capital owned in, a Contracting State; this may result, for instance, in the case where a non-resident person has a permanent establishment [or fixed base] in one Contracting State through which he derives income from, or owns capital in, the other Contracting State.[13]

The usual bases of taxation are the source of the income and the residence of the recipient of the item of income. For instance, countries like USA extend the right to

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[11] Some jurisdictions address economic double taxation, in whole or in part, by adopting an integrated corporate and shareholder tax. This can be accomplished by giving the corporate shareholder a credit for all or a portion of the corporate taxes paid on the distributed profits. Countries that have adopted complete or partial integration include France, Germany and the United Kingdom. Under the Ethiopian income tax proclamation, a company is required to pay tax on its profits-under schedule C and tax on the dividends distributed to shareholders under schedule D. See Income Tax Proclamation, Proc. No. 979/2016, Federal Negarit Gazeta, 22th year, No. 104, Art.19 and 55 respectively.

[12] Vogel, Double Taxation Conventions, supra note 9, p. 1124.

[13]United Nations Model Double Taxation Convention between Developed and Developing Countries, (Economic and Social Affairs, UN, New York, 2011) p.312.

tax based on citizenship.[14]In the case of multinational corporations, it is very difficult to pinpoint a particular country as being the residence or home of the corporation.[15] Thus, in determining the residence or citizenship of a multinational corporation, a variety of tests are used. For example, Ethiopia considers a company [body] as a resident if it is "incorporated or formed in Ethiopia, or has its effective management in Ethiopia." [16]

3. The Development of Tax Treaties

Countries may avoid double taxation unilaterally, usually, through their domestic laws.[17]However, unilateral measures are insufficient to avoid double taxation because they do not cover all situations giving rise to double taxation, because they may deal with double taxation situations inconsistently depending on which state's measures are applied.[18]It is this gap that opened the door for the development of respective tax treaties.

A tax treaty is an agreement made between two countries under which each party agrees to limit or modify the application of its domestic tax laws in order to avoid

[14] Donald. R. Whittaker, 'An Examination of the O.E.C.D. and U.N. Model Tax Treaties: History, Provisions and Application to U.S. Foreign Policy, North Carolina Journal Of International Law and Commercial Regulation' Vol. 8, No.1, 2016, p.41

[15] Ibid, p.42.

[16] Income Tax Proclamation supra note 11, Article 5(5).

[17] There are several ways under this category. The first is for a country not to assert jurisdiction to tax foreign-source income of residents (either at all or for selected types of income). The second method is the exemption system. Under this system, the country of residence leaves the taxing right solely with the source country, giving that country the responsibility to tax the source income according to its own tax rules and rates. The third system is the foreign tax credit system under which the residence state taxes total worldwide income of a taxpayer resident in that state but will allow a credit against the residence country tax liability for taxes paid to the source state up to the amount of domestic tax on that income. The fourth system is deduction method which allows a deduction for foreign income taxes in the calculation of taxable income. See Richard J. Vann, International Aspects of Income Tax in Victor Thuronyi, (ed.), Tax Law Design and Drafting, volume 2, (International Monetary Fund: 1998) electronic access available at https://www.imf.org/external/pubs/nft/1998/tlaw/eng/ch18.pdfp.38; See Dick Molenaar, Taxation of International Performing Artistes: The Problems with Article 17 OECD and how to Correct Them, (Thesis Submitted to Erasmus University Rotterdam in the fulfillment for the Degree of Doctor of Law, Volume 10 Doctoral Series, IBFD-Academic Council, 2005) p.171; Thomas Rixen and Peter Schwarz, 'Bargaining over the Avoidance of Double Taxation: Evidence from German Tax Treaties Public Finance Analysis', Vol. 65, No. 4 (December 2009) p.445.

[18] Klaus Vogel, Double Tax Treaties, Supra note 10, pp 9-10.

double taxation.[19] However, it is worth clarifying here that tax treaties are not intended to impose or create new taxes by the signatory countries, but to provide relief measures from domestic taxation.[20] Consequently, individual states have entered into bilateral agreements for the avoidance of double taxation.

As can be discerned from below, there are several model conventions on tax treaties with different bargaining positions and objectives. The UN and OECD model conventions are the commonly adopted models in bilateral negotiations. Researches done on international tax treaties usually depend on these models as a reference to show competitive advantage of countries in their tax treaties.[21] Regardless of their differences, tax treaties are pillared in avoiding or, at least, reducing double taxation, lowering the administrative and enforcement costs of taxation by facilitating the exchange of information between the tax authorities of signatory countries, and providing certainty of treatment for cross-border trade. These are justifications given to the question as to why countries bother to conclude double tax treaties at all, in circumstances where unilateral tax relief is already in place.[22]

Moreover, double taxation avoidance agreements seek to allocate taxing rights in the respective agreements, Accordingly, certain income or capital can be taxed only in one of the two contracting states or can be taxed by both states proportionately, or the right to tax for the source state may be limited to a certain percentage, and the state of residence may give credit for taxes paid in the source state.[23] Particularly, during a negotiation between a developing country and a developed country, the developing country accepts constraints on its ability to tax

[19]Carlos Perez-Gautrin, 'Basic Introduction to Tax Treaties,Willamette Journal of International law & Dispute Resolution', Vol.17, 2009, p.158.
[20] Id.
[21]Thomas Rixen et al, Supra note 17, p.447.
[22]Id, p.445. See also Klaus Vogel, Double Tax Conventions, supra note, 9, p.449
[23]Michael Lang, supra note1, p.31.

inward investors.[24] For instance, the negotiation on withholding tax rates between developed and developing countries rests on the fixation of a maximum rate at which the capital importing country can tax dividends, interest payments, royalties and fees for management, technical and consultancy paid to residents of the treaty partner.[25]

It is important to note that, despite having common provisions, the two world-dominating model tax treaties – the UN model and OECD – have bold differences. Furthermore, it is worth mentioning that these models have had a profound influence on international treaty practices. As a model designed to favor developing countries, the UN Model Convention generally "favors retention of greater 'source country' taxing rights under a tax treaty—the taxation rights of the host country of investment—as compared to those of the "residence country" of the investor."[26] This is founded upon the presupposition of the flow of investment to developing countries as these countries are net importers of capital and not exporters. This basic assumption lies in the basic principles of the Model. It embodies that it would be appropriate for the residence country to extend a measure of double taxation relief through either a foreign tax credit or an exemption. In the OECD Model, exclusively drafted by developed – primarily, European and North American – countries, no serious consideration has been given to apparent problems faced by capital importer countries, i.e., source income exporters.[27] Specific differences can be found in Article 5 (permanent establishment), Article 7 (business profits), Article 9 (associated enterprises), Article 10 (dividends), Article 11 (interest), Article 12 (royalties), Article 13 (capital gains) and elimination of double taxation (article 23) of the OECD Model.

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[24] ibid.

[25] More on the negotiation outcomes of tax treaties between developing and developed countries is available at Martin Hearson, 'When Do Developing Countries Negotiate Away Their Corporate Tax Base? Journal of International Development', Vol.2018, pp.233-255

[26] United Nations, Supra note 13, p, IV. See also Michael Lang, supra note1.

[27] Donald. R. Whittaker, supra note 14, p.43.

4. Status of Tax Treaties in Domestic Laws

The common practice of the treatment of tax treaties in domestic laws is allowing the provisions of the treaties to have precedence over any inconsistent provisions of domestic tax law.[28] The usual result of such provision under the law of most countries is that, apart from the administrative treaty provisions on the mutual agreement procedure and the exchange of information, a treaty sets limits on the operation of domestic law, but does not expand its operation.[29]

Coming to the Ethiopian case, the Federal Democratic Republic of Ethiopia (FDRE) Constitution seems to recognize two sets of international treaties. Under the first group of treaties are human rights treaties that are somehow privileged with a special treatment under the Constitution. Accordingly, these kinds of treaties are required to be interpreted in conformity with the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia.[30]

The second group of treaties, in which tax treaties fall under, are legally viewed as part of internal legislation, backed by Article 9 of the FDRE Constitution where laws and treaties made by the federal government are considered to be the integral parts of the law of the land. Accordingly, these treaties are expected to be in parallel position with subordinate laws that are found hierarchically below the Constitution.[31]

The approval process of international treaties in Ethiopia involves the executive and legislative branches. The power to negotiate and ratify international agreements resides with the federal government.[32] The legislator is empowered to

[28]Richard J. Vann, Supra note 17, p.11.
[29] Richard J. Vann, Supra Note 17, p.10.
[30] The Constitution of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazetta, 1st Year, No. 1, Article 13(2)
[31] Ibid, Article 19.
[32] Ibid, Article 51 (8).

ratify agreements concluded by the executive.[33]Specific to tax treaties, subordinate to the basic principle in the constitution, the Income Tax Proclamation has empowered the Ministry of Finance and Economic Cooperation (MoFEC) to conclude international tax treaties.[34] Regarding the status of tax treaties, the proclamation is clear in stipulating that "if there is any conflict between the terms of the tax treaty and the Proclamation [Income Tax Proclamation] … the treaty will prevail over the provisions of the Proclamation."[35] The Exception to this principle is when fifty or above percentage ownership or control of the resident body [Company] of the other contracting state is held by an individual or individuals who are not a resident of that state, then, the exemption, exclusion, or reduction benefit available in the tax treaty will be inapplicable.[36]

5. Double Taxation Avoidance Treaties in Ethiopia

This section critically examines the basic contents of the agreements listed under the introduction part of this article. The analysis made in this respect considers the UN and the OECD model conventions, as well as the position Ethiopia takes in domestic tax legislations as references. Particularly, the position of the repealed income tax laws[37]has been considered as all the treaties to which Ethiopia signed, ratified and adopted while these laws are in force.

5.1. The Personal Scope of the Tax Treaties

The personal scope articles specify individuals on whom a particular treaty applies. This will normally be on the residents of the contracting states. This will help to

[33] Ibid, Art. 55(12)
[34] Income Tax Proclamation, supra note 11, Article 48(1).
[35] Ibid, Art. 48(2).
[36] Ibid, Art. 48(3). This exception has an exception under sub article 4 of this article. Accordingly, if the company is listed on a stock exchange in that state or if that company carrying on active business in that other contracting state and the Ethiopian-source income derived by the company is attributable to that business, the privilege of the treaty will continue to apply.
[37]Income Tax Proclamation No. 286/2002, Federal Negarit Gazetta, 8th year, No. 34 and Council of Ministers
Income Tax Regulations No. 78/2002, Federal Negarit Gazetta, 9th year, No. 18 were in force when the treaties that are subjects of this article were adopted, signed and ratified.

attain three important objectives. First, with the operation of the 'personal scope' articles, a treaty will only apply on individuals who are residents of either contracting states. Second, dual residency will be solved as the major reason for double taxation agreements is to solve the dual residence of individuals under the domestic law of the two contracting states. Third, it guarantees that a person who is not a resident of either contracting states cannot take advantage of the benefits under the treaty. The OECD and UN models do not present major differences as to their personal scope, which is defined in article 1 and 4 of both models.

In determining the scope of application of particular agreements, in their respective Article 1, all Ethiopian agreements have a caption titled 'Persons Covered' and states: 'this agreement shall apply to persons who are residents of one or both of the Contracting States.' This Article must, therefore, be read in conjunction with the residence article (Article 4), which provides a solution in cases of dual residency, to determine the personal scope of the agreements. Accordingly, for individuals, as a tiebreaker rule,[38] all treaties adopt 'mutual agreements' of the contracting parties as a solution. In the case of 'other than individuals', there is inconsistency where most of the agreements employing the 'place of effective management' as a solution. However, the agreement with Turkey, China and India took a different position. The tie-breaker rule in the agreement with India and China places mutual agreement if the place of effective management failed to fill the gap, whereas in the Turkey case, only 'mutual agreement' is employed to break the tie. A special sub-article is inserted in the agreement between Ethiopia and France which limits applicability of the 'Residence' determination criterion in case where "[T]he person is only the apparent beneficiary of income … either directly, or indirectly through other individuals or legal persons, to a person who may not

[38] The tie-breaker rule is a solution to the problem of determining the residence of dual residents for individuals and companies. Both the UN and OECD models provided the same solution – in Article 4 – where mutual agreements of the contracting states and the place of effective management of companies are included. UN model, supra note 13, p.94.

himself be regarded as a resident of foregoing state within the meaning of this [Article 4] article."

The sample model prepared by MoFED provides 'mutual agreement' and 'place of effective management'[39] as a tiebreaker rule for individuals and companies respectively, which is also incorporated in the UN and OECD model conventions. But still, this provision can't solve the issue at all. For example, a bilateral treaty between, say, Ethiopia and China , can arise in relation to a company which is under paragraph 1 of Article 4, a resident of Ethiopia, and which is in receipt of, say, interest income, not directly, but instead, through a permanent establishment which it has in a third country, say, Kenya. If applied, the agreement has the effect that such a company can claim the benefit of the terms on, say, withholding tax on interest in the treaty between Ethiopia and China, in respect of interest that is paid to its permanent establishment in Kenya. This is one example of what is known as a "triangular case". In this respect, no solution is proposed in the agreements Ethiopia signed.[40]

5.2. Permanent Establishment (PE)

Under the 'Permanent Establishment' (PE) part, there are controversial grounds of differences between the position of the UN and the OECD model treaties. These differences fall on the broader (or narrower) conception of PE and services of PE under Article 5(3) of both model conventions. Article 5(3)(a) of the UN Model provides for a broader notion of the construction of PE[41] combined with a shorter

[39] The place of 'effective management' is defined nowhere in the agreements. The UN commentary proposed that when establishing the "place of effective management", "circumstances which may, inter alia, be taken into account are the place where a company is actually managed and controlled, the place where the decision-making at the highest level on the important policies essential for the management of the company takes place, the place that plays a leading part in the management of a company from an economic and functional point of view and the place where the most important accounting books are kept." Ibid.

[40] UN model, supra note 13, p.94

[41] Article 5(3) of the UN model defined permanent establishment to include "A building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months" while the OECD model limited

six months period for its existence, in contrast with Article 5(3) of the OECD Model, which provides for twelve months. This is well elaborated under the commentary of the UN Model Convention. Accordingly,

> In addition to the term installation project used in the OECD Model Convention, subparagraph (*a*) of paragraph 3 of the United Nations Model Convention includes an assembly project as well as supervisory activities in connection with a building site, a construction, and assembly or installation project. Another difference is that while the OECD Model Convention uses a time limit of 12 months, the United Nations Model Convention reduces the minimum duration to six months. In special cases, this six-month period could be reduced in bilateral negotiations to not less than three months.[42]

Hence, under the UN Model, which aims to preserve source country taxation rights to the benefit of developing countries, a PE may easily be established in a source country. Because the UN Model indicates that building and construction activities and related supervisory activities constitute a PE, if they last more than six months, consulting services will suffice for a PE, provided such services continue for a cumulative period of six months. While, under the OECD Model, building and construction activities must continue for more than twelve months to constitute a 'permanent establishment. Related supervisory activities, such as consulting services are, however, not included.

The other ground of differences between these model treaties is the so-called 'Service PE'. Under Article 5(3) (b) of the UN Model, a PE may exist insofar as this type of activity continues for an aggregate period of more than six months

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itself to a single sentence article under article 5(3) to include "A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months."

[42] UN model, supra note 13, p.107

within any twelve-month period.[43] This article deals with the furnishing of services, including consultancy services, the performance of which does not by itself create a 'permanent establishment' in the OECD Model Convention. On the other hand, treaty clauses, such as those provided under Article 5(6) of the UN Model on insurance companies are ground of content difference between the two treaties. The UN model stipulates that "an insurance enterprise of a Contracting State shall […] be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status."The justification as to why the UN model has come up with such a bold sub-article is provided under the commentary of the Model while the OECD Model provides a defense justification on its part.[44]

On the Ethiopian side, most of the treaties included a six-month threshold, while agreements with Israel, Poland, Tunisia, and Russia contain a nine-month threshold.[45] Agreements made with the Republic of South Korea and Turkey hold a twelve-month threshold. The agreements seem inconsistent regardless of the kinds of countries – developing or developed, or member of OECD or not which could be taken as an expression of weak negotiation. The 'service PE' is included in six of the 20 tax treaties. From among these treaties, all, saving Egypt, resemble the provisions included in the UN Model, which establishes a six-month threshold in

[43] The committee of the 2011 commentary of the UN model stated that developing countries have raised opposition to the period of time stated in the model. These claims are anchored on two important concerns. Those countries that oppose the 6 months threshold claimed that "construction, assembly and similar activities could, as a result of modern technology, be of very short duration and still result in a substantial profit for the enterprise" and more fundamentally "the period during which foreign personnel remain in the source country is irrelevant to their right to tax the income." To the extreme of this, countries who oppose the existence of time limit declared that "it [the 6 month] could be used by foreign enterprises to set up artificial arrangements to avoid taxation in their territory." UN model, supra note 13, P.108.

[44] Michael Lang, Pasquale Pistone, Josef Schuch and Claus Staringer(eds.), The Impact of the OECD and UN Model Conventions on Bilateral Tax Treaties (Cambridge University Press, New York, 2012) p.15.

[45]Convention with the State of Israel Article 5(3), the Republic of Poland Article 5(3), Republic of Tunisia Article 5(2)(i) and Government of the Russian Federation Article 5(3)

any twelve-month period of time. Article 5(2) (f) of both the OECD and UN models, particularly, refers to the extraction of natural resources as examples of 'fixed places of business' included in the concept of 'permanent establishment'. Ethiopia, being a country with natural resources and the recipient of investments focused on such a sector, has included in its tax treaties 'place of extraction of natural resources', but the 'exploration of natural resources' as a ground for PE is included only in treaties signed with South Africa and Morocco[46].

In connection to the 'Services PE' and 'Construction PE', the Ethiopian agreements still lack consistency. All treaties included Construction PE but only agreements with India, Egypt, Morocco, Portugal, Saudi Arabia, Singapore, Tunisia, South Africa and Russia included supervisory as a ground of establishing PE. Most treaties failed to include 'Services PE', while those incorporating this ground vary as to the threshold period. Most treaties, except agreements with India, Egypt, Italy, UK and South Africa, failed to include 'Services PE', while those treaties which included service PE vary as to the threshold period extending from 6-12 months. The UN model expands the definition of permanent establishment to include insurance activities that would not constitute a permanent establishment under the OECD model. Only 8 agreements include insurance as base of establishing PE in the Ethiopian agreements.[47]

The positive or negative sides of these considerations need to be analyzed from the vantage point of the tax laws of Ethiopia. To one's surprise, the repealed income

[46]Agreement between the Republic of South Africa and The Federal Democratic Republic of Ethiopia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes and Income Concluded on 17 March 2004 Article 5(2)g and Convention Between the Kingdom of Morocco and The Federal Democratic Republic of Ethiopia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income Conclude on 19 November 2016, Article 5(2) h.

[47]See Article 5(6) of the agreements with Arab republic of Egypt, Portuguese Republic, Singapore, Kingdom of Morocco, Republic of Sudan, Government of Russian Federation and Article 5(5) of Republic of Tunisia and Government of Italian Republic.

tax Proclamation,[48] a base for all these agreements, did not contain the 'services PE', 'supervisory activities', and 'exploration of the natural resources' as grounds of PE, and there was no time period for the establishment. In addition, these grounds were not incorporated in the Sample Model prepared by the then Ministry of Finance and Economic Development (MOFED). Unlike this discontent, the current new Proclamation issued in 2017 has a broad definition of PE with short thresholds. Like the UN Model treaty, the 'services PE', 'supervisory activity' connected with site and 'place of exploration' are included. The threshold for these activities is set to be 183 days, while the time to establish PE varies on the agreements described above.[49] The higher the increase in the threshold period for establishment and narrow definition of PE, the greater the loss on the right of taxation in source countries Even in case of construction PE, the 6 month threshold could not be favorable as, due to modern technology, it could be of very short duration and still result in a substantial profit for the enterprise. Ethiopia, as a hub of Foreign Direct Investment (FDI), was expected to negotiate on broader definition and short period of establishment for PE, even to the extent of the UN model, but it is not the case in the agreements.[50]

5.3. Business Income

Regarding business income, references need to be made from the OECD and UN model conventions. With the exception of paragraph 1 and 2 of the business income Article, both the OECD and the UN model conventions have a similar content. Besides, the UN Model does not include sub-article 5 of the OECD Model which states "no profit shall be attributed to a 'permanent establishment' by reason of the mere purchase by that 'permanent establishment' of goods or merchandise for the enterprise." The main controversy behind this omission/inclusion is whether

[48]Income Tax Proclamation, Supra note 37, Article 2(9)
[49] Income Tax Proclamation, supra note 11, Art. 4.
[50] Allison Christians, Tax Treaties for Investment and Aid to Sub-Saharan Africa: A Case Study 585 in Karl P. Sauvant and Lisa E. Sachs, (eds.), The Effect of Treaties on Foreign Direct Investment: Bilateral Investment Treaties, Double Taxation Treaties, and Investment Flows, (Oxford University Press, New York: 2009), P.585.

profit attributed to a 'permanent establishment' by reasons of the mere purchase of goods should be subjected to tax on that country. However, it should not be alluded that inclusionary provisions are prompted by developed countries.

The principle of 'limited force of attraction' rule is boldly incorporated under 7 paragraph 1 of the United Nations Model Convention, which permits the enterprise, once it carries out business through a 'permanent establishment' in the source country, to be taxed on some business profit in that country arising from transactions by the enterprise in the source country.[51] Owing to this principle, where the profits of an enterprise other than those attributable directly to the 'permanent establishment' may be taxed in the State where the 'permanent establishment' is situated, such profits should be determined in the same way as if they were attributable directly to the 'permanent establishment'. Considering the broad inclusion of income attributable or related to the 'permanent establishment', this principle is favored by developing countries because it allows taxation of income, not only the profits attributable to that 'permanent establishment', but other profits of the enterprise derived in that country to the extent allowed under the Article. However, it is clear that this broad inclusionary principle is limited to business profits covered by Article 7 and does not extend to income from capital (dividends, interest, and royalties) covered by other treaty provisions.

There is no uniformity on the rules of the attribution of profits to the PE in the Ethiopian agreements. Ethiopia has adopted the 'limited force of attraction' principle contained in Article 7(1) (b) (c) of the UN Model in the treaties with Morocco, Saudi Arabia and South Africa In the remaining ones, the 'limited force of attractions' rule is missing– i.e. the OECD Model convention seems to be the dominant one.

[51] UN model, supra note 13, p.141

With respect to the determination of the profits of a PE, in some of its treaties, Ethiopia has adopted Article 7(3) of the UN Model. Article 7(3) of the UN Model states that no deduction shall be allowed in respect to amounts paid (other than the reimbursement of actual expenses) by the head office to the PE (or vice versa) by way of royalties, fees or similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of banking enterprises, by way of interest on money lent. The motivation behind choosing this model is that the disallowance of head office expenses preserves the source country's tax base and Ethiopia, almost invariably, is the source country under these treaties. The treaty with India, Egypt, and Morocco falls within this category. The remaining agreements are compatible with the OECD Model Convention. In fact, there are slight differences in replicating the OECD Model. Some of the contracting parties included a condition that directs its application to be dependent on domestic law limitations.[52]

Generally, all the agreements, with the exception of Morocco which adopt the 'omission' principle of the UN Model, of Ethiopia include the prohibition in the OECD Model in replica which reads "no profits shall be attributed to a 'permanent establishment' by reason of the mere purchase by that 'permanent establishment' of goods or merchandise for the enterprise." OECD member countries have agreed terms incompatible to what is stipulated under the OECD model while the other agreements took the UN as well as the OECD depending on the kind of paragraphs in Article 7. Only the agreement with Morocco adopted the UN principles in all the three paragraphs of the agreements as it is discussed in this study.[53]The Model

[52] The agreement made with the Netherlands, Israel, South Korea, Poland, Portugal, China, Sudan and UK falls in this category.

[53]Convention with the Kingdom of Morocco, supra note 46, Article 7(1)-(3).

prepared by MoFED has similar provisions with the OECD Model with no 'limited force of attraction' and other parallel provisions.[54]

5.4. Dividends, Interests and Royalties

a. Dividends

The taxation of dividends generated by a company in one contracting state and paid to a citizen of another country has been a consistent concern of tax treaties. In this regard, the UN Model allows both the country of source and the country of residence to tax dividends from investments in the source country. The major difference between the OECD Model and the UN Model, however, relates to the withholding rate and the percentage of ownership which is considered in direct investment. The UN Model leaves vacuum the rate of withholding for negotiation between the contracting states.

Ethiopian tax treaties deal with the taxation of dividends under their respective Article 10. Currently, dividends paid by Ethiopian companies to [non-resident] foreign shareholders or equity owners are taxed at 10 percent as per the income tax Proclamation[55] thought there is no uniformity on the treatment of dividends in tax treaties signed by Ethiopia. Some of the treaties do not make any distinction between portfolio and direct investment while some provide otherwise. The agreements concluded with Egypt, Republic of Korea and Portugal established an 'if' provision stating: "if the beneficial owner is company (other than partnership) which holds directly of at least 25 percent of the capital of the company paying the dividends", five percent will be imposed on the gross amount of the

[54] Convention between the Federal Democratic Republic of Ethiopia and _____ for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, available at Ministry of Finance, accessed on July 2016, Article 7(6). This Model is revised and updated on 2018 however; no change has been made on the business income part.

[55] Income tax proclamation, supra note 11, Article, 55.

dividend.[56]Other tax treaties make a distinction based on the company residency: whether it is in Ethiopia or the other contracting state.

The Agreement with the Netherlands makes it clear that if the company paying the dividend is an Ethiopian resident, the tax will be10 percent while if the company paying the dividend is resident of the Netherlands, the tax shall not exceed 15 percent of the gross dividend.[57] The Treaty with Israel is an exception because it establishes a 10 percent ownership threshold for dividends.[58] On the other hand, all other agreements provided a single sub-article with a phrase of "not exceeding" percentage on their agreements with varying ingrates. The 5 percent rate on the gross amount of the dividend seems a common rate within this category. However, it will be worthwhile to say that the definition of dividend is the only sub-article uniformly incorporated in the treaties made by Ethiopia.

With respect to dividends, Ethiopia does not follow any of the model treaties consistently in comparison with the model treaties of the OECD and the UN. Particularly, on the threshold to differentiate between direct and portfolio investments, there is no uniformity (i.e., 25 percent in Article 10 of the OECD Model, instead of the 10 percent suggested in the UN Model). Many treaties have adopted lesser or above the thresholds hammered out in these model treaties.[59] Not only that, in some treaties, a flat withholding tax rate has been negotiated regardless of the distinction between direct and portfolio investments.

[56] See Convention with Arab Republic of Egypt, Republic of Korea and Portuguese Republic, 10(2).
[57]Convention between the Kingdom of the Netherlands and the Federal Democratic Republic of Ethiopia for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect Taxes on Income Signed on August 2012, Article 10(2)
[58]Convention between the State of Israel and the Federal Democratic Republic of Ethiopia for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect Taxes on Income concluded on 2 June 2004, Article 10(2)
[59] See article 10 of the agreements with Kingdom of Netherland, the Arab Republic of Egypt, , State of Israel, Republic of Korea, Kingdom of Morocco, Republic of Poland,, Portuguese Republic

b. Interests

In the interest part, there is no substantial difference between the UN and OECD model. The difference lies insofar as the levying of withholding tax rates exceeds the maximum amount indicated in the OECD Model. The allocation of taxing powers is usually shared along the lines of both Models.

The maximum withholding tax rates included in Ethiopia's agreements for interest vary from one another. The treaty with Israel is the only one that establishes two different rates (5 percent or 10 percent depending on the case).[60] The treaties with India, Egypt, Italy, Poland, Sudan, Tunisia, and Turkey include a 10 percent maximum withholding tax rate; the Netherlands, Ireland, Saudi Arabia, UK and Russia a 5 per cent maximum withholding tax rate; China, Korea and South Africa 7 percent, 7.5 percent and 8 percent maximum withholding tax rates, respectively.

Most of the tax treaties defined interest broadly to include income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article. To avoid the risk of confusion, some of the treaties exclude "any income which is treated as a dividend under Article 10."[61]

Providing exemption is also another feature of these agreements. The most common ways of exempting the possibility of taxation by the source country include: interest collected by any level of government; interest collected by central bank and/national bank; interest paid by any level of government; interest arising

[60]Convention Between the Government of the State of Israel and the Government of the Federal Democratic Republic of Ethiopia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Article 10(2).
[61]See Article 11(4) of the agreement with Ireland and United Kingdom.

from loans; interest paid on contracts concluded between the governments of the contracting states.

c. Royalties

Similar to the Dividend Section above, the OECD Model provides for exclusive residence jurisdiction leaving nothing to the source country. In fact, this exclusive jurisdiction is agreed to be waived if the property or right which gave rise to the royalty payment is effectively connected with a 'permanent establishment' in the country of the licensee. Whereas, the UN Model on royalties allows both the source and the residence country to tax royalties and, again, the rates are to be determined by negotiation, instead of imposing a fixed rate.[62]The general rates for royalties vary from 10 to 20 percent. For example, the agreement with South Africa upholds a 20 percent rate.[63]

On 'fees for technical services (FTS)', most treaties have separate provisions. A distinction can be made between treaties containing articles on FTS, between those that have a wide definition of the term, those with a lower rate for FTS and those that have a narrow definition of the term with a higher tax rate.

The wider definition is along the following lines: 'the term "fees for technical services" as used in this Article means payments of any kind. It is other than those mentioned in Article 14 and Article 15 of this Convention as consideration for managerial or technical or consultancy services, including the provision of services of technical or other personnel.'[64] a treaty that combines royalties with 'technical

[62]OECD, Model Tax Convention on Income and on Capital Volume I and II (Updated 21 November 2017 (Full version), OECD publishing, 2019, Article 12(1) and UN Model, supra note 13, Article 12(1)(2)

[63]Convention between the Republic of South Africa and the Federal Democratic Republic of Ethiopia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income signed on 17 March 2004 , Article 12(2)

[64]This broad definition is available only in the agreement between Ethiopia and India. See Agreement between the Government of Federal Democratic Republic of Ethiopia and the Government of Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income signed on 25 of May 2011, Article 12(3)(b).

services' exists only in the agreement with India. All tax treaties, including the treaty with India, adopted a separate article under Article 14 for 'independent professional services'.

5.5.Independent Personal Services

Except for those agreements that incorporate technical services under a separate article, independent personal service is provided under Article 15 as part of all the agreements. Article 14 deals with independent personal services in almost all the tax treaties signed by Ethiopia. With reference to the substances, the tax treaties can be classified into two categories. The first category of tax treaties includes a provision. The provision states that independent personal services will only be taxable in the residence country. However, if the person performing the services has a fixed base income, that person may be taxed in the other State in so much as the income is attributable to that fixed base. They do adopt the 'fixed base' criterion for the taxation of independent personal services in the source country as provided by the OECD Model, which was deleted in 2000. The UN Model follows the same pattern. The second category of tax treaties, besides the 'fixed base', adopts the 183-days period of stay criterion, which is similar to the provision of Article 14(1) (b) of the UN Model. Accordingly, income will be taxable if "his stay [the service provider] in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183-days in any 12-months period, commencing or ending in the fiscal year concerned. In this case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State." Unaccustomedly, the tax treaty with South Africa has left the independent personal services excluded for agreements just like the OECD Model Convention.[65]

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[65] The taxation of income from independent personal services shows a basic difference in the approach of the OECD and UN Models from the moment in which the former, in 2000, decided to

5.6.Professors, Teachers and Researchers

Most of Ethiopia's treaties include a separate provision for professors, teachers and research scholars. Again, there are variations, but generally, an exemption of two years is granted. The treaty with China has provided a 'not exceeding three years' provision, which seems favorable to the Chinese or Ethiopians depending on the balance of expatriate manpower between two countries.

The general rationale behind the provision is to stimulate the exchange of professors and teachers by reducing the administrative burden (avoiding the obligation to file a tax return in the work state).[66]The provision generally stipulates that in the case of a professor or teacher who is a resident of one of the states and who visits the other state for a period not exceeding two years for the purpose of teaching or engaging in research at a university, college or other educational institutions, shall be exempt from tax for any remuneration received for such teaching. However, all these treaties reserved this exception not to apply to income from research if such research is undertaken not in the public interest, and primarily, for the private benefit of a specific person or persons. These treaties do not include a definitional article for the generic words used in these articles. Besides, whether income obtained from visits exceeding the time limit should be taxable as of the beginning of the visit or not, and if an individual can be entitled to the benefits of the Article more than once are not clear.

5.7.Methods for the Elimination of Double Taxation

As described in the previous sections, tax treaties are assumed to solve international juridical double taxation issues. Tax treaties have been treated at sufficient length. Under this section, the treatment of exemption, tax credit or

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eliminate Article 14 justified by removing an unnecessary duplication that often creates difficulties in the dividing line between the scope of Articles 7 and 14.

[66] Michael Lang et al, supra note 1, p.15.

deduction methods as ways of eliminating double taxation, and the position of each contracting sides will be addressed.

Since Ethiopia has a residence plus source-based taxation system, it uses the credit method (as opposed to the exemption method) for avoiding double taxation in its domestic laws. The differences between the UN and the OECD Models on the methods of eliminating double taxation relies: (1) the UN model Article 23A mentions Article 12 in paragraph 2 of the UN Model and prevents double -taxation through paragraph 4; (2) the United Nations Model Convention extends the right to tax in the country of source in many cases to income which under the OECD Model Convention is taxable only in the country of residence (3), Article 23 A, paragraph 1, of the United Nations Model Convention has a much broader scope than the corresponding provision of the OECD Model Convention.

All tax treaties include 'methods to avoid double taxation' under their respective Article 23 with the exception of the treaty with Singapore –which is provided under its Article24. The treaty with Tunisia uses 'settlement of tax credits' as the caption of the treaty. There is variation in the structure of this provision with some treaties including separate ways of avoiding double taxation for each contracting country, while others include a single principle of avoidance in a single sub-article. The treaty with the Netherlands is an exception to this common trend. The agreement took the principle, on the Netherlands' side, that "when imposing tax on its residents [the Netherlands], may include in the basis which such taxes have imposed the terms of income which according to the provisions of this convention may be taxed in Ethiopia." Exemption of income as well as the deduction of tax included on article by article basis of inclusion or exclusion in the tax treaties with four sub-articles. [67]

[67] This agreement is different from other agreements concluded by Ethiopia. The article reads as follows. "The Netherlands, when imposing tax in its residents, may include in the basis which such taxes are imposed the terms of income which according to the provisions of this convention may be

A common feature contained in the tax treaties signed by Ethiopia for avoiding double taxation with respect to income earned or capital located in the other country by an Ethiopia resident grants a deduction for the tax paid in the country. Considering that the deduction would not exceed the amount of the tax to be paid to Ethiopia. The exception to this are the treaties with South Africa and Russia which dictate for Ethiopia to allow a credit against any Ethiopian tax payable in respect of that income, provided that such credit shall not exceed the Ethiopian tax.

All the treaties have provided a limit under a common phrase 'the amount of credit [deduction] shall not, however, exceed that part of [X country] tax as computed before the credit which is appropriate to that income is given.. The treaties signed with China, Ireland, South Korea and the UK established that dividends paid by an Ethiopian company to a resident of one of those countries will be exempted from tax in those countries with some conditions.[68]

As indicated in the UN Commentary, one of the complaints of developing countries on the foreign credit method as a method of eliminating double taxation is that "the benefit of low taxes in developing countries or of special tax

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taxed in Ethiopia. However, where a resident of the Netherlands derives income which according to paragraph 1, 3 and 4 of article 6, paragraph 1 of article of article 7, paragraph 6 of article 10, paragraph 6 of 11 and article 12, paragraph 1 and 2 of article 13, paragraph 1 of article 14, paragraph 1 of article 15. Paragraphs of 1 and 2 of article 17, paragraph 1 of article 18, and paragraph 2 of article 21 of this convention may be taxed in Ethiopia and included in the basis referred in paragraph 1, the Netherlands shall exempt such items of income by allowing deduction of its tax. This reduction shall be computed in conformity with the provisions of the Netherlands law of avoidance of double taxation."Convention between the Kingdom of the Netherlands and the Federal Democratic Republic of Ethiopia for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect Taxes on Income Signed on August 2012, Article (1)(2).

[68] In the agreement with China, Ireland, Korea and UK, it is provided that " a company which is a resident of Ethiopia to a company which is a resident of … and which owns not less than 20 per cent of the shares of the company paying the dividend", "a company which is a resident of Ethiopia to a company which is a resident of Ireland and which controls directly or indirectly 5 per cent or more of the voting power in the company paying the dividend", "a company which is a resident of Ethiopia to a company which is a resident of Korea which owns at least 10 per cent of the voting shares issued by or the capital stock of the company paying the dividends" and "a company which is a resident of Ethiopia to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend" the credit shall take into account the tax paid to Ethiopia by the company paying the dividend in respect of its income respectively.

concessions granted by them may in large part inure to the benefit of the treasury of the capital-exporting country rather than to the foreign investor for whom the benefits were designed. Thus, revenue is shifted from the developing country to the capital-exporting country.[69] To solve such defects, it seems, the treaties signed by Ethiopia as listed in the table below has included a tax-sparing provision by which these countries, with respect to income earned by a resident of those countries in Ethiopia fully or partially exempted by special tax regimes, will grant a tax credit equivalent to the tax that would have been paid in Ethiopia if those exemptions would not have existed. Such provisions vary from country to country as to the effective period of time extending from five to ten years.

The objective of this tax sparing provisions is to preserve the tax incentives granted by one jurisdiction (Ethiopia, considered to be the source of capital import country) by requiring the other country (the residence/capital exporting country) to give a tax credit for the taxes that would have been paid in Ethiopia had the incentive not been granted. Many special tax regimes which include different types of tax benefits in the investment laws of the country were enacted.[70]

Consequently, the inclusion of tax-sparing provisions in the tax treaties signed by Ethiopia was necessary in order to achieve the expected objective (i.e. grant tax incentives to foreign investors) and not serving as a channel of transferring revenue to the country of residence of the foreign investor.

Table 1: Methods of avoiding double taxation in agreements entered into by Ethiopia (Authors construction)

[69] The UN Model recommends for developing countries "tax incentive measures shall not be made ineffective by taxation in the capital-exporting countries using the foreign tax credit system. This undesirable result is to some extent avoided in bilateral treaties through a "tax-sparing" credit, by which a developed country grants a credit not only for the tax paid but also for the tax spared by incentive legislation in the developing country." UN model, supra note 13, p.305.

[70] See, inter alia, Council of Ministers Investment Incentives and Investment Areas Reserved for Domestic Investors, Regulation No.270/2012, Federal Negarit Gazetta, 19th year, No. 4

Country	C**redited/deducted**	**Tax type**	**Period of time**	**Possibility of Extension** [71]
Egypt	Credited	Tax on income	Five years	NA (Not applicable)
Ireland[72]	Deducted	Profit of company,	Five years	By agreement
Italy	Deducted[73]	Tax on profit, dividend, interest, and royalties	In accordance with laws and regulation of the state	NA
Israel	Credited	Tax on income	In accordance with laws and regulation of the state	By agreement
Korea[74]	Credited	business profits	first ten years	By agreement
Portugal[75]	Credited	Tax on income	first seven years	By agreement
Poland [76]	Credited	Tax on income	Only for five years	NA

[71] 'Possibility of extension' refers to the availability of way outs on the extension of the period of time in the specific article. 'NA' refers to Not Available.

[72] The Agreement between Ethiopia and Ireland specified laws subjected to the tax-sparing provision by for any exemption or reduction of tax granted to promote economic development in Ethiopia under the provisions of Council of Ministers Regulation No. 270/2012 on Investment Incentives and Investment Areas Reserved for Domestic Investors, as they may be updated or amended from time to time" provided that the scope of activities covered by such provisions is not materially changed up to the date of signature of the convention. See Convention between Ireland and the Federal Democratic Republic of Ethiopia for the Avoidance of Double Taxation and the prevention of Fiscal Evasion with Respect to Taxes on Income concluded on November 2014, Article 24(6)

[73] Deduction depends on the specified maximum rate provided in the agreement.

[74] The Ethiopia and Korea agreement provides a condition that the existing exemption or incentives "were in force on the date of signature of this Convention or have been modified only in minor respects so as not to affect their general character."

[75] The Ethiopia and Portugal agreement conditioned the exemption or reduction be granted for profits from industrial, construction, manufacturing or agricultural activities, provided that the activities have been carried out within that Contracting State. Convention between the Portuguese Republic and the Federal Democratic Republic of Ethiopia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income signed on 25 may 2013, Article 24(3).

76 The Ethiopia and Poland agreement provides that the ground laws "were in force on the date of signature of this Convention or any other provisions which may subsequently be introduced in Ethiopia in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character."Convention between the Republic of Poland and the Federal Democratic Republic of Ethiopia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income concluded on 13 May 2015, Article 24(3).

China	Credited	Business profits	In accordance laws and regulation of the state	
Saudi Arabia	Credited	Tax on income	In accordance with laws and regulation of the state	NA
Singapore	Deduction	Tax on income	In accordance with laws and regulation of the state	NA
French	Credited	Tax on income	In accordance with laws and regulation of the state	NA
Sudan	Credited	Tax on income	In accordance laws and regulation of the state	By agreement
Tunisia	Credited	Tax on income	Ten years	By agreement
UK[77]	Credited	Tax on income	Ten years	By agreement
Russia [78]	Credited	Tax on income	In accordance laws and regulation of the state	By agreement

[77] The agreement with the UK has provided details on the conditions for granting credits on the incentives given in Ethiopia based on the specified laws. Accordingly, the incentives need to be " the incentives given in the Investment Incentives and Investment Areas Reserved for Domestic Investors Council of Ministers Regulations No. 84/2003 so far as it was in force on, and has not been modified …or any other regulation which may subsequently be made granting an exemption from or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character provided it has not been modified thereafter or has been modified only in minor respects, so as not to affect its general character. The agreement also cleared out that relief will not be provided in the following conditions "where income or profits in respect of which tax would have been payable but for the exemption from or reduction of tax granted under the regulations referred to in that paragraph arise or accrue more than ten years after the date on which this Convention enters into force; in respect of income or profits from any source if that income or those profits arise in a period beginning more than 10 years after the exemption from or reduction of tax referred to in that paragraph was first granted in respect of that source whether that period began before or after the entry into force of this Convention."." See article 22(3) of the agreement between the United Kindom and Ethiopia signed June 9, 2011.

[78] The Ethiopian-Russian agreement elucidates that "the tax which would have been paid but for any exemption or reduction of tax granted under incentive provisions contained in the law of a Contracting State designed to promote economic development to the extent that such exemption or reduction is granted for profits from industrial, construction, manufacturing or agricultural activities, provides that the activities have been carried out within the Contracting State."

Conclusion

This research pinpointed that from the agreements Ethiopia (signed) entered into , significant number of the mare below the standard provisions included in the UN Model Convention. In the 'permanent establishment' part of Ethiopian treaties, it is observed that a narrower conception of PE is used. This is against the interest of Ethiopia, in the sense that some agreements give a12-months threshold, against the favorable 6-months threshold, to establish PE. Few agreements incorporated service PE and only two agreements (South Africa and Morocco) incorporated exploration of natural resources as a situation in which a PE can be established. A weak 'permanent establishment' provisions in Ethiopia's agreements mean there would a pool of inward investment of indeterminate size that Ethiopia cannot currently tax.

In the business part of the agreements, contrary to the provisions of the UN Model which adopted the 'limited force of attraction' principle which is favorable for developing countries as it allows taxation beyond the profits attributable to that 'permanent establishment' to other profits of the enterprise derived in that country. Ethiopian tax treaties do not contain the 'limited force of attraction' provision with the exception of three countries: Morocco, Saudi Arabia and South Africa. With the exception of one country, Morocco, all the agreements adopted the OECD Model principle which excludes profits from a mere purchase not to be attributed to a 'permanent establishment'. In the professors, teachers and researchers section of the treaties Ethiopia entered into, lack of clarity exists as to whether income from visits in excess of the time limit would be taxable as of the beginning of the visit, and if an individual may be entitled to benefit from the Article more than once. Perhaps more significant is the major lack of taxing rights on humble number of agreements.

Uniformity is also missed in Ethiopia's tax treaties, which question the bargaining capability of the countries. Therefore, this also needs further inquiry. Uniformity is only observed in the 'Personal and Material Scope' articles of the treaties. To a lesser extent, the principle adopted as a tie-breaker rule in the residence part of the treaties is similar, i.e. agreement in case of 'individuals' and 'effective management' in case of 'other than individual' persons. In fact, it doesn't mean that Ethiopia needs to have a uniform agreement with all the contracting countries, but at least the agreements need to meet the minimum standards provided in the UN Model Convention which favors source countries, like Ethiopia. This problem extends regardless of the kind of countries –be it developed or developing or member of OECD or not.

Moreover, all the treaties, which are the subject of this research, were concluded during the time when Ethiopia had no strong laws on international taxation and tax agreements, particularly on permanent establishments. It is presumed that the domestic tax laws can exert a substantial influence on the content of bilateral tax treaties, as countries seek to preserve domestic taxing rights in their treaty networks. This is the reason for many of the differences between treaties. Conversely, if countries do not exert certain taxing rights in domestic laws, they generally do not seek to retain the ability to exert taxing right under their treaties. During the conclusion of most of the treaties Ethiopia is a party to, there was a law with a nearly zero provision on 'permanent establishment'. Most importantly, it is also marked that the former income tax Proclamation, a base for all these agreements, contains no provisions on services PE, supervisory activities, time period for the establishment of PE, and exploration of the natural resources part. There was no single provision on matters of double taxation avoidance treaties. Besides, the Sample Model prepared by MoFED has no provision on supervisory activities, exploration of natural resources and service PE. However, the new Proclamation, issued in 2017 and which is currently in use, has a broad definition of PE with short thresholds. Similar to the UN Model Treaty, the new Proclamation

provides articles for services of PE, supervisory activity connected with site and place of exploration. However, a later change of tax laws will not bring any policy relevance pertaining to the existing treaties.

In general, according to this study the Ethiopian Government needs to review or re-evaluate its double taxation treaties. Most of the treaties do not meet the standards set out in the UN Model. Some of the treaties are even against the basic tax interest of the country. In addition, Ethiopia needs more robust domestic laws to bolster its negotiating position and a stronger model than those currently available so that the eventual outcome of negotiations is closer to the reasonable compromise position embodied by the UN Model. The bottom line is that renegotiation is a viable solution to correct the defects of these existing agreements.

Using Corporate Social Responsibility (CSR) as a Tool to achieve Public Policy Objectives in Ethiopia: Comparative Perspectives and Lessons

Biruk Abiyu♣ and Zemenu Tarekegn♠

Abstract

Corporate Social Responsibility (CSR) has been given a variety of definitions by different scholars, international organizations, government bodies and business entities. Despite this, everyone agrees on its vital importance in integrating environmental, social, economic, political and other concerns of the society into the corporate operations, values, culture, decision-making, strategy and agendas. Like wise in cognizant of its great importance for the achievement of public policy objectives, many countries have promoted CSR by employing different mechanisms such as formulating separate CSR policies, enacting CSR laws, preparing guidelines for the promotion of CSR on voluntary basis, employing incentives (fiscal and financial) and awards/certificates of recognition, establishing institutions devoted for the promotion and implementation of CSR, and Mainstreaming CSR in to different policies and operations of governmental authorities. However, the Government of Ethiopia has not promoted CSR to the required extent so as to make the best out of it.This article is, thus, mainly devoted to show some selected international experience on CSR in comparison with the case in Ethiopia and draw lessons so that the Ethiopian government can make the best of CSR in achieving public policy objectives.

Keywords: corporate social responsibility (CSR), achievement tool, public policy objective, sustainable development

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1. Introduction

Corporate social responsibility (CSR) is a concept known by different nomenclatures such as corporate responsibility, corporate accountability, corporate ethics, corporate citizenship or stewardship, responsible entrepreneurship, and triple bottom line.[1]As the range and mixture of the concepts in its name vary in different contexts, different scholars, business dictionaries, declarations of international organizations and other documents define CSR by using different terms. Given that the concept of CSR is still evolving, there are a large variety of definitions in the literature, albeit, with some common characteristics.[2]For these reasons, there is no a single and universally applicable definition for CSR that can be adopted by a particular corporation, international organization or national governmental body.

The European Commission, on its part, defined CSR as a model through which companies, on voluntary basis, run their business operations and relationships with the stakeholders (the community, customers, suppliers, investors, government) within the social and environmental dimensions of the locality they are operating.[3]This definition recognizes activities done only voluntarily by corporations as a CSR. Hence it can be concluded that CSR excludes acts done in compliance with mandatory legal requirements from the ambit of CSR because discharging mandatory legal responsibility is compulsory by its nature. Compulsoriness could be expressed by the existence of negative sanctions (civil, criminal or administrative) that follow a failure to discharge obligations required by law.These kinds of sanctions will therefore not be attached to responsibilities

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[1] Paul Hohnen, Corporate Social Responsibility: An Implementation Guide for Business, International Institute for Sustainable Development, 2007, available at http://www.iisd.org/pdf/2007/csr_guide.pdf , p.4.

[2]ZuleikaFerre, 'Corporate Social Responsibility in Uruguay: What enterprises do and what people think about it', *Corporate social responsibility in Latin America: a collection of research papers from the virtual institute network*, united nations conference on trade and development, United Nations, New York and Geneva, 2010, P.30.

[3]The European Commission, Green Paper "Promoting a European framework for corporate social responsibility", 18 July 2001.p.4&7.

dependent on the willingness/voluntariness of the performer.In this regard, CSR is generally understood to be doing beyond the legal compliance and what is required by law. Fulfillment of minimum requirements provided by law is a legally binding obligation of the corporation and doing beyond what is required by law is a CSR. However, it doesn't mean that discharging legal obligations has no nexus with CSR. It is very likely that a corporation properly discharging its legal obligations will have a strong sense of social responsibility. It is also a paradox to consider a corporation socially responsible for its involvement in activities categorized under CSR if it violates legal rules on the other side. Obedience to the law should be taken as the first step (a requirement perhaps) for a corporation to be considered as a socially responsible corporation though the corporation persistently takes part in activities considered as CSR in a given country. Accordingly, a corporation discharging its CSR towards the environment should not be considered as socially responsible if it violates its tax obligations. Even there are many writers that consider obedience to the law as one type of CSR by itself.[4]

The European Union (EU) has also contributed for a widely cited definition of CSR in the business and social context. Accordingly, CSR is a concept that an enterprise is accountable for its impact on all relevant stakeholders; it is the continuing commitment by business to behave fairly and responsibly, and contribute to economic development while improving the quality of life of the work force and their families as well as of the local community and society at large.[5]This definition emphasizes the impact of corporations on stakeholders in

[4] For example, the well-known writer on CSR, Carroll states that CSR can be defined by taking into account four dimensions that characterize the enterprises' responsibility towards society: Economic (the provision of goods and services with the purpose of maximizing profits), Ethical (the group of activities that, even when legal, are considered as correct or incorrect by society), social (those activities that are not an obligation but are considered as good for society like supporting social or community projects), and Legal dimensions. The legal dimension refers to compliance to the laws that regulate their activity. Accordingly, adherence by the companies to the state made laws (constitutions, proclamations, regulations, directives etc…) of the countries they are operating in is considered as discharging their corporate social responsibilities…see Zuleika(n2)31.

[5] A renewed EU strategy 2011-14 for Corporate Social Responsibility," European Commission presses release, http://ec.europa.eu/enterprise/ newsroom/cf/_getdocument.cfm?doc_id=7010, 25

different ways while maximizing its profits and cognizant to this it demands the behavior of firms to be fair and responsible to help the improvement of quality of life for its workers, their families as well as the whole society and the overall economic development of the country. As issues of sustainable development become more important, the question of how the business sector addresses them is also becoming an element of CSR.[6]Accordingly, the World Business Council for Sustainable Development (WBCSD) defines CSR from the perspective of sustainable development taking its scope broader and closer to the purposes the organization is established for. Thus, the council illustrates it as a business company that contributes to a sustainable economic development.[7]Hence, CSR could be understood as a mean that firms use to integrate social, environmental and economic concerns into their values, culture, decision-making, strategy and operations in a transparent and accountable manner. Thereby the companies establish better practices within the organizations, create wealth and improve society.[8]In light of the definitions given, this article is devoted to show some selected international experiences on CSR in comparison with the case in Ethiopia and draw lessons in order to use the best CSR practices in achieving public policy objectives in the country.

Having this general understanding on the notion of CSR, the subsequent parts of the article are organized as follows: section two deals with the historical development of CSR. Section three is about common areas and importance of CSR. Section four discusses some selected international experiences on CSR. Section five briefs the current status of CSR in Ethiopia in relation to its public policy

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October 2011, as quoted by Corporate social responsibility in India : potential to contribute towards inclusive social development Global CSR summit 2013, An Agenda for inclusive growth.

[6] Paul Hohnen, Corporate Social Responsibility: An Implementation Guide for Business, International Institute for Sustainable Development, 2007, available at http://www.iisd.org/pdf/2007/csr_guide.pdf , p.4.

[7] Ibid.

[8] Ibid.

objectives. Finally, the article offers some concluding remarks and brief recommendations.

2. Historical Development of CSR

Historically, the concept of corporate social responsibility was brought some one hundred and fifty years ago in the United States of America as a social and political response to the fast progression of capitalism during the thirty years following the American civil war (1861-5).[9]Before the notion of CSR, the first initiatives of private agents in assisting the community were principally carried out by charities while the Catholic Church was responsible for the distribution of goods.[10]It is in the late nineteenth and early twentieth century that corporate philanthropy started to emerge, as enterprises provided charity and contributed to social projects in different forms.[11]At its inception the concept of CSR wasrelated with corporate philanthropy in the form of provision of charities and support for planned projects of the society.[12]In the late eighties and early nineties public opinion, social movements and activities by non-governmental organizations (NGO's) started to pressure businesses to develop a more sophisticated approach to CSR, known as 'enlightened self-interest'.[13]In line with this, a chemical industry in Canada developed the 'responsible care' programme in the mid-80s and participation to the programme became a requirement for membership in the Chemical Industries Association.[14]The programme was also taken-up by the US Chemical Manufacturers Association (CMA) in 1988 and the UK Chemical Industries

[9] McEwen T (2001), Managing Values and Beliefs in Organisations, FT Prentice Hall, London as quoted by Constantinabichta, corporate social responsibility a role in government policy and regulation?, Centre for the study of Regulated Industries (CRI), University of Bath School of Management, 2003, P. 13.
[10]Zuleika (n2) 30.
[11]Ibid.
[12]Constantinabichta, corporate social responsibility a role in government policy and regulation?, Centre for the study of Regulated Industries (CRI), University of Bath School of Management, 2003, P.7.
[13] Ibid.
[14] Ibid.

Association in 1989 and it was a must for members to train their workers accordingly. They were also required to work closely with customers, transporters, suppliers, distributors and communities to triumph effective environmental management of processes and products.[15] Most commonly, the Responsible Care programme was taken as an essential entity to improve performance in businesses by increasing public image, providing wider benefits to the wider society and improving environmental and social impact of the processes and products.[16]

CSR began to be used in scholarly texts since 1950s when Howard R.Bowen used the term CSR in his famous book titled *Social Responsibilities of the Businessman.* As the book was first published in 1953, it is the first to introduce a comprehensive discussion of business ethics and social responsibility. Accordingly, it has created a foundation for business executives and academics to consider the subjects as elements of strategic planning and managerial decision-making processes.[17]Many experts believe it to be a seminal book on corporate social responsibility.[18]For this, Bowen is known as the father of CSR. However, Bowen only defined CSR from the perspectives of businessmen. These days CSR is not only the issue of business making corporations but also for governmental bodies, universities, public enterprises and other relevant entities. For instance, higher education institutions, mainly universities, worldwide have begun to cuddle sustainability concerns and engage their campuses and communities in such efforts which have in return led to the development of integrity and ethical values in these organizations and their

[15] Tapper R (1997), Voluntary Agreements for Environmental Performance Improvement - Perspectives on the chemical industry's Responsible Care program, Business Strategy and the Environment, Volume 6, pp287-292 , as quoted by Constantina (n13)7.
[16]Constantina (n13) 7.
[17]Howard R. Bowen, Social Responsibilities of the Businessman, University of Iowa Press, 2013, Available at: https://books.google.com.et/books/about/Social_Responsibilities_of_the_Businessm.html?id=ALIPAwAAQBAJ&redir_esc=y [Accessed on January 1, 2020]

[18] Ibid.

relationships with stakeholders.[19]The Bologna Process is the most cited development in this regard. It has provided for the inclusion of social concerns into the operation of universities.[20]

Seen in this light,the thinking that the government is the only responsible body to address all the issues of the society has totally changed and the notion of CSR has now gained the recognition of citizens, international organizations, governments, and more importantly by the business itself, throughout the world. Hence, "CSR is not a movement anymore reserved to a particular part of the world or business but it has become a joint venture to all organizations that are concerned to address issues in a society."[21]

3. Common areas and importance of CSR for public policy objectives

CSR is a very broad concept that addresses many and various topics such as human rights, corporate governance, health and safety, environmental effects, working conditions and contribution by corporations to economic development.[22]Pursuant to stakeholder theory of corporate governance, the management of a corporation essentially requires simultaneous consideration to the legitimate interests of all

[19]Amber Wigmore-Álvarez, *University Social Responsibility (USR) in the Global Context: An Overview of Literature*, Business & Professional Ethics Journal, 31:3–4, pp. 475-498, 2012, p.1.

[20]Concerning social dimensions, the Bologna process under its paragraph 14 provides that "The social dimension calls for equitable access into, successful progress through and completion of high quality higher education for the whole spectrum of the population in their various walks of life and age groups; it requires a learning environment of great quality geared to the needs of a diverse student body. The student body within higher education should reflect the diversity of Europe's populations. In order for this to happen, access into higher education will be widened by fostering the potential of students from socially disadvantaged groups and by providing adequate conditions for the completion of their studies. Significant progress should be made within each participating country over the next decade". Available at: http://ehea.info/media.ehea.info/file/20090223-Ostend/54/2/BFUG_Board_CZ_19_4_draft_communique_200209_594542.pdf.

[21]Mathias Nigatu, Corporate *Social Responsibility (CSR) in Ethiopian Banking Sector: A case Study on Commercial Bank of Ethiopia (CBE)*, Nile Journal of Business and Economics, Vol.4, PP. 3-15, 2016, P.4.

[22]S Geethamani, *Advantages and disadvantages of corporate social responsibility*, International Journal of Applied Research,Vol.3, No.3, PP.372-374, 2017, P.327.

appropriate stakeholders, both in and outside of the establishment (internal and external stakeholders).[23]Accordingly, CSR starts internally by creating healthy working environment better than what is required by national and international laws as a minimum standard of labour enabling employees to live a quality life out of the work place.[24]As employees are organization's greatest assets, organizations have to be socially responsible to their employees.[25]Since the longevity of employees is influenced by the lifestyle choices that they make, organizations need to offer tools and incentives that encourage employees to adopt or maintain healthy lifestyles.[26]

CSR also covers commitments to protecting and even improving the environmental conditions for the benefit of current as well as future generations.[27] The concept of responsibility toward the natural world in general has emerged only in recent years due to human activities that interfere with natural cycles on such a scale as to upset the balance of nature and the environment.[28]Cognizant to these environmental problems caused by businesses, it is now widely agreed that the role of the business should be there to contribute for the protection and recovery of the environment.[29]In addition to environmental concerns, CSR is concerned with many

[23] Lee E. preston, *the Stakeholder theory of the corporation: concepts, evidence and complications*, Academy of management Review, Vol. 20, No.1, pp.65-91, 1995, p.67.
[24]Ibid.
[25] Ezekiel S. Asemah et al, *Business Advantages of Corporate Social Responsibility Practice: A Critical Review*, New Media and Mass Communication, Vol.18, PP.45-54, 2013, p.46.
[26] ibid.
[27] Ibid.
[28] Mitsuhiro U, Business responsibility to the Environment. NIKKEI GSR project Report, Associate professor, Keio University, 2010, as quoted by K. Rama MohanaRao&FentayeKassaHailu, *Environmental corporate social responsibility of brewery firms in Ethiopia*, International Journal of Applied Research, Vol.2, No. 4, PP. 1-7, 2006, P. 1.
[29] Corporate social responsibility, particularly environmental aspects, imposes on corporations an extra commitment to invest on and halt damage against the environment. This burden may be against the policy, which most developing countries adopted, of easing investment /attracting investment/ especially foreign direct investment. Foreign investors select the host country based on their comparative advantage. Thus, cumbersome CSR obligations may impede FDI. However, the researchers believe that these interests should be reconciled in two major ways. First, the host country shall not make environmental exploitation as an incentive for Multinational corporations. These Corporations shall commit to the environment and the host country, reciprocally, compensate this burden by other incentive mechanisms such as extended tax holidays and custom duty

aspects of human rights of individuals or citizens collectively, like the right to clean water, the right to safe and healthy environment, the right to education, the right to health, child rights, women rights, cultural rights and the right to development (sustainable development). It is also concerned with consumer protection, administration/ governance within the corporation (corporate governance) as well as governmental administration issues like good governance and anti-corruption, fair competition, and many other areas of engagement.

CSR offers many advantages for the society at large and the corporation itself. For the society, CSR provides the following advantages among others:[30] It would help avoid the excessive exploitation of labour, bribery and corruption; improve profitability, growth and sustainability, redress the balance between companies and their employees. Moreover, rogue companies would find it more difficult to compete through lower standards, and the wider community would benefit as companies reach out to the key issue of underdevelopment around the world.[31]Some of the benefits for firms implementing CSR are:[32]improved anticipation and administration of risks, enhanced reputation of business management and good will**, e**nhanced capability to recruit employees, developing and retaining employees, improved working efficiencies and cost reductions, improved capacity to entice and constructan effective and efficient supply of business chains, improved ability to address contemporary changes, additional robust "social license" to function in the community, access to capital, improved relations with regulators of the business sector, and a catalyst for responsible consumption.

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exemptions. Secondly, corporations may sustainably remain in market if they get social license to operate in host country. Thus, corporations are required to be engaged in long term profit making strategies by incorporating public welfare deficiencies in to considerations.

[30]S Geethamani (n23) 3.

[31]Ibid.

[32] Paul, Corporate Social Responsibility: An Implementation Guide for Business, P. 10-12 & Ezekiel, Business Advantages of Corporate Social Responsibility Practice: A Critical Review, P. 50-51.

Therefore, CSR is very essential for countries in achieving their broader public policy objectives in economic, social and other spheres.

4. Some relevant international experiences regarding CSR

CSR is influenced by many factors prevalent in a nation and the purposes for its implementation vary among countries. There are many factors that determine the implementation of CSR in a country. Determinant factors can be categorized as company- leveland country- level determinants.[33]Company-level determinants of CSR mainly include firm size, company profitability, and corporate governance characteristics.[34]Firm size has a strong positive relation to a company's engagement in CSR activities and bigger businesses are more likely to invest in CSR initiatives than the smaller ones because of the greater public scrutiny over their behavior.[35]Public Scrutiny of larger companies is expressed through public resentment, consumer boycotts, and government regulation due to their higher market power.[36]Thus, countries in which many large-size corporations are operating will have a chance for a greater performance of CSR than countries with large number of small-size firms.

Profitability of businesses is another determinant factor of CSR practices. As more profitable firms use more self-regulating mechanisms to ensure to the public that the organization is legitimate, it is more likely that they will participate in CSR activities.[37]On the other hand, corporations that are experiencing relatively weak

[33] Anna-Lena Kühn*et al*, 'Contents and Determinants of Corporate Social Responsibility Website Reporting in Sub-Saharan Africa: A Seven-Country Study', Business & Society, 2018, Vol. 57(3) , pp. 437– 480, p.442.
[34]BirhanuMoltotAyalew. Corporate Social Responsibility Practices, Determinants and Challenges; Theoretical and Empirical Lesson for Effective and Successful Engagement. Journal of Investment and Management.Vol. 7, No. 6, 2018, pp. 157-165, p.160.
[35]Ibid.
[36] Anna-Lena Kühn et al, Contents and Determinants of Corporate Social Responsibility Website Reporting in Sub-Saharan Africa: A Seven-Country Study, p. 445.
[37]BirhanuMoltotAyalew. Corporate Social Responsibility Practices, Determinants and Challenges; Theoretical and Empirical Lesson for Effective and Successful Engagement, p. 160.

financial performance will be less likely to involve in CSR activities.[38] Governance characteristics, closely related to the issue of ownership structure and board composition, also meaningfully influence CSR engagement in both developed and developing countries.[39]Firms with larger shareholders are more likely to be engaged in CSR activities than firms with their shares more dispersed.[40]Similarly, board diversity is a determinant of CSR and it is realized that the diversity of the board has a positive effect on firm's CSR performance.[41]

Country-level determinants of CSR broadly include socio-economic and political factors.[42] Campbell has identified economic environment, competition, legal environment, private regulation and the presence of independent organizations, and institutional conditions as some among the determinant factors of CSR. In this regard, companies operating in a more economically and socially developed countries, and also countries with a strong system of transparency and lower levels of corruption, are more likely to be actively involved in CSR considering such determinant activities.[4344]

Corporations operating in a relatively unhealthy economic environment in which the possibility for near-term profitability is limited will be less likely to discharge their social responsibilities.[45] Whereas, companies in a stable institutional environment are tend to be vibrant in CSR reporting.[46]It has also been stated that there is a strong relationship between competition and CSR in that corporations will be less likely to involve in CSR activities if there is either too much or too

[38] Campbell, J. L.: 2007, 'Why Would Corporations Behave in Socially Responsible Ways? An Institutional Theory of Corporate Social Responsibility', Academy of Management Review 32(3), p. 952.
[39]Birhanu(n 38) 160.
[40]Ibid.
[41]Ibid.
[42]Anna-Lena (n 37) 442.
[43]Ibid.
[44] Campbell(n 39).
[45] Ibid.952.
[46]Anna-Lena (n 37) 442.

little competition.[47]Corporations are also more likely to discharge their CSR if there are a system of well-organized and effective industrial self-regulation in place to ensure such behavior that monitor their behavior and, when necessary, mobilize to change it. Strong and well enforced state regulations is also equally important to ensure such behavior.[48]

However, the existence of various determinant factors made it impossible to have a uniform performance of CSR throughout the world. Consequently, it also became difficult to have a particular nation with a perfect CSR system to be entirely transplanted by others. Thus, in this part of the article, some selected relevant international experiences on CSR are discussed briefly. Countries with relevant CSR experiences are selected from Africa, Asia and Europe. From Africa, Ghana is chosen due to its good practice that could be exemplary for other African countries intended to use the best of CSR. African countries including Ethiopia have common problems like widespread and deeply rooted poverty, inadequate physical and social infrastructures, limited nonagricultural economic development, insufficient access to education, and environmental degradation.[49]Thus Ghana's experience in addressing these problems through the instrumentality of CSR would be an essential lesson for Ethiopia. Southeast Asian countries also have many similar socio-economic ontexts with Ethiopia. Even though the situations are not worse similar to the case in Ethiopia, Southeast Asian countries have multi-faced socio-economic problems. These countries have been struggling with higher population growth rate because of the overall backward economy and strong religious tradition. The high population growth in the region has slowed down economic growth, increased the foreign trade imbalance, and worsened poverty; and overburdened the area's educational system. Beyond these, the problems of the oversupply of labor, unemployment, and poverty have also become increasingly serious in the region. Due to these and other similar socio-economic situations, the

[47] Campbell (n 39) 953.
[48]Ibid.955, 956 & 958.
[49]Anna-Lena (n 37) 447.

experience of Southeast Asian countries in implementing CSR is relevant to be considered in Ethiopia context. In addition to these countries, the experiences of some European countries are also reviewed as they might have experiences that could be effectively adopted in Ethiopia regardless of socio-economic differences.

To start from Ghana,'' since recent times there has been a clarion call from the government on business organisations to undertake social programs, as government alone cannot handle societal problems and this has affected the implementation of the CSR in Ghana.''[50] In 2006, the Ghana Business Code (GHBC) was launched through the collaboration of the Association of Ghana Industries (AGI), Ghana Employers Association (GEA) and the Ghana National Chamber of Commerce & Industry (GNCCI) to introduce and deepen the practice of CSR in business operations, and sets norms to guide the conduct of business and acceptable standards with regards to the environment and anti-corruption in business.[51] However, complied to the very nature of CSR, organizations are not under obligation to sign up to the GHBC rather it is a voluntary measure, which allows the operations of organizations to be reviewed along four broad categories- human rights, labour standards, environment and anti-corruption.[52] Even though it is not mandatory to undertake CSR there is a mechanism of encouraging CSR by awarding certificate of good practice when operations of member organisations are found to be in line with the prescriptions in the GHBC.[53]In Ghana there are also institutions established to promote CSR. The Ghana Extractive Industries Transparency Initiative (GEITI) serving as an avenue for promoting CSR in the extractive industry is one of the institutional frame works devised in Ghana for the promotion of CSR.[54]

[50]KwesiAmponsah, 'Corporate Social Responsibility in Ghana', *International Journal of Business and Social Science,* Vol. 2, No. 17, PP. 107-112, p.109.
[51] Ibid.
[52] Ibid.
[53] Ibid.
[54] Ibid.

Similar to Ghana, many governments in the Southeast Asia have recognized that CSR is a key development tool that can help to address social and environmental issues.[55] For instance, Cambodia, Laos, Thailand, Vietnam, Malaysia, Indonesia, Singapore and Philippines have adopted some CSR-related laws and adhere to international agreements on human rights, labor rights, free trade principles, anti-child labor acts and environmental standards[56]. Countries such as Malaysia, Indonesia, Cambodia, Laos and Vietnam have numerous state-owned enterprises and these State-owned enterprises play a key role in setting the benchmark as models towards responsible, ethical and sustainable business practices.[57]The leading role of the state-owned enterprises is very important to ensure adherence from the private businesses to their CSR. Philippines also has laws that enable and promote the growth of non-government organizations and foundations; these organizations act as partners of companies in the implementation of their CSR programs.[58] To promote CSR in Malaysia, the Malaysian government recognizes CSR initiatives of companies through the Prime Ministers Award. Malaysian business associations promote CSR through awards.[59] Similarly, "the government of Singapore is using CSR to promote its agenda for sustainability. It wants to ensure that it has continuous business-friendly environment; however, the government realizes that this goal could be adversely affected by over-regulation. Thus, the government is instead developing a reward system for companies that operate in a socially responsible manner."[60] Accordingly, the government of Singapore, as a key player in CSR, provides rules containing incentives to ensure responsible business operations of Singapore-based companies principally at home and, to a certain extent, abroad.[61]The government also begun to integrate CSR into

[55] Ramon V. del Rosario, Corporate *Social Responsibility In Southeast Asia: An Eight Country Analysis*, Center for Corporate Social Responsibility, Asian Institute of Management, 2011, p.11.
[56] Ibid.
[57] Ibid.
[58] Ibid.
[59] Ibid.23.
[60] Ibid.29.
[61] Ibid.30.

the ministries and organizations such as the Singapore Compact for CSR (acts as a national society with members from different stakeholder groups including business, government and NGOs) take the lead in promoting the practice of CSR in the country.[62] In the Southeast Asian countries discussed so far, policy promotion and the incorporation of CSR into the strategies of the country have improved the cognizance and importance of CSR.[63]

In view of some European experiences, since 1979, a continuous dialogue on CSR was, for instance, made between the Swedish government and social partners. For effective understanding and implementation of CSR, the government has dispersed a handbook on the guidelines to the business entities based on internationally agreed conventions in human rights, core labour standards, sustainable development and corruption.[64]In Sweden, there are many governmental institutions such as Swedish International Development Cooperation Agency, the Swedish Business Development Agency and the Swedish Consumer Agency providing financial supports for CSR.[65]The Danish government also emphasized the importance of CSR for the development of the country and hence, the Copenhagen Centre has been established in 1998 as an autonomous institution to encourage voluntary partnerships between government and business for the aim of promoting social cohesion and opportunities for the disadvantaged to be self-supporting, active and productive citizens.[66]In May 2008, the government published its "Action Plan for CSR" with the aim to promote CSR among businesses, and to encourage sustainable growth both at the domestic and international level.[67]Similarly, in 2008, the parliament passed a law that requires all big corporations to make a public report on their CSR. This was provided with the view that require companies to be

[62] Ibid.31 &42.
[63] Ibid.45.
[64]Ramon Mullerat**,** Corporate Social Responsibility: A European Perspective, in Iordan Gheorge Bărbulescu and Federiga Bindi (eds.),*The Jean Monnet/Robert Schuman Paper Series*, Vol. 13, No.6, PP.1-22, Miami-Florida European Union Center of Excellence, 2013, P.12.
[65] Ibid.
[66] Ibid.
[67] Ibid.

more transparent about their CSR efforts, public pressure and desire for competitive advantage that will motivate companies to enhance their "triple bottom line" of people, planet and profit.[68]

5. Corporate Social Responsibility (CSR) in Ethiopia

5.1 The current status of CSR in Ethiopia

Ethiopia is one of the least developed countries of the world with multi faceted social, political, and economic problems. It has repeatedly suffered from unemployment, bad governance, emigration, violation of human rights, spread of diseases, wide spread poverty, inadequacy of clean water, famine, and drought. To alleviate these problems and bring sustainable development, the country has set different kinds of public policy objectives including economic and social objectives. With regard to economic objectives, the FDRE constitution, among others, provides that government shall have the duty to formulate policies which ensure that all Ethiopians can benefit from the country's legacy of intellectual and material resources; government has the duty to ensure that all Ethiopians get equal opportunity to improve their economic condition and to promote equitable distribution of wealth among them; and government shall endeavor to protect and promote the health, welfare and living standards of the working population of the country.[69]Concerning social objectives, the Constitution stipulates that to the extent the country's resources permit, policies shall aim to provide all Ethiopians access to public health and education, clean water, housing, food and social security.[70]It would, however, be impossible for the government alone to address all of the problems the people have been facing and to achieve the broader policy objectives set under the Constitution.

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[68] Ibid.13.
[69]FDRE Constitution, 1995, Art.89 (1), (2) & (8), Proc. No. 1/1995, *Fed. Neg. Gaz*, year 1, No.1.
[70] Ibid. Art. 90(1).

Even if the situation seem very challenging and importunate, not changing to the required rate, since 1991, the government of Ethiopia has always been formulating many economic, social and development policies and strategies that have aimed at addressing the aforementioned problems and bringing sustainable development in different aspects.[71]For instance, the government prepared GTPI (20 10/ 11 -20 14/ 15) and GTPII (2015/16-2019/20) in which poverty alleviation is the central focus to the plans. However, the policies and plans do not integrate and promote CSR as a tool to achieve their objectives. There is neither separate policy/action plan by the government for the promotion of CSR, nor institutional framework devoted for the development of CSR. The government of Ethiopia has also failed to mainstream the issues of CSR to the operations and objectives of its different ministries or other administrative agencies. Even the Commercial Code[72]of Ethiopia, governing business organizations in general, does not contain the word CSR entities in any of its provisions. The Code adopts a traditional shareholders approach of corporate governance and hence it disregards the interests and involvement of other stakeholders for whom the notion of CSR is developed in the operation of corporations. The Commercial Code does not even allow non-shareholders to be appointed as members of the board of directors.[73]If outsiders of companies are allowed to be appointed as members for a board of directors, it is very likely that they will be much eager than shareholders in bringing the concerns of the society in to the attention of the company's management. Therefore, the restriction of non-shareholders from being a member of board of directors is among the challenges for the promotion of CSR in Ethiopia. However, the draft Commercial Code of Ethiopia under its Article 296 (2) allows non-shareholders to be a member for the board of directors, but it states that they could not constitute more than one third of

[71] See for instance: the objectives of the National Employment Policy and Strategy of Ethiopia (2009) at p.13, Environment Policy of Ethiopia at p.3, Ethiopian Women's Development Package at p.17, and The Federal Democratic Republic of Ethiopia Cultural Policy at p,3.
[72] Commercial Code of the Empire of Ethiopia, 1960, , Proc. No. 166, Federal *NegaritGazzeta* (Extraordinary issue), 19th year, No. 3.
[73] Ibid. Art.347 (1).

the total number of the members of the board. Despite this, the draft Article does not provide the inclusion of non-shareholders as members of the board as a mandatory requirement.

Even though there are no clear and specified fiscal incentives aimed at promoting CSR in the legal system, some tax laws are incorporated providing tax deductions for the expenses incurred by businesses for CSR-related activities. However, the tax deductions law does not consider all aspects of CSR. The new federal income tax proclamation[74] under its article 24 provides deduction for the amount of a charitable donation. Nevertheless, to claim this deduction, the business organization should make the donation either to Ethiopian charities and associations formally established and registered according to the Organization of Civil Societies Proclamation No.1113/2019, or in response to a call for development or an emergency issued by the government to defend the sovereignty and integrity of the country, to prevent or provide relief in relation to manmade or natural disasters or an epidemic, or for any other similar cause. This provision denies deduction for donations provided for individuals or for the larger community directly by the corporation itself. On the other hand, the regulation subsequently enacted for the implementation of this proclamation extended deductions to be claimed by the tax payer for expenses incurred in the management of its/his/her own charitable activities in support of education, health, environmental protection or provided in the form of humanitarian aid other than for the tax payer's own employees.[75]The Proclamation does not entitle an employer to claim deductions for charitable donations made to employees even though it is one of the most important aspects of CSR that needs to be encouraged/incentivized, at least in the form of tax deductions. In fact, the existence of many tax deductions has a negative impact on the government revenue. Thus, charitable donations made

[74]Federal income tax proclamation, Art.24 (1)&(3), Proc. No. 979/2016, *Federal NegaritGazzeta*, 22nd year, No. 104.
[75]Council of ministers federal income tax regulation, Art.33(1)&(3), Reg. No.410 /2017, *Federal NegaritGazzeta*, 23rd Year, No.82.

to employees could be encouraged by providing a limit for which deductions are allowed, if it is difficult to grant a full deduction.

Despite of the aforementioned challenges, some corporations, operating in Ethiopia, participate in some form of CSR.[76]Multinational companies like East Africa Bottling Share Company MOENCO Ethiopia LTD and TOTAL Ethiopia have adopted their own policy on CSR shaped by Western approaches to involve in philanthropic aspects of CSR.[77]This, however, has not been the case for national companies. In recent times, some corporations have contributed a lot during the crisis happen in Ethiopia because of several circumstances. The 2016 drought, in some parts of the country, and the 2017 ethnic conflicts particularly occured in Oromiya and Ethio-Somali regional states were the typical instances that demonstrate the sense of moral obligation on Ethiopian business organizations and individuals. Beyond this, Ethiopian business community has contributed and is still contributing (through donation and bond) much for the construction of the "Grand Renaissance Dam" in response to a call to development made by the government. However, many corporations in Ethiopia do not involve in CSR either due to lack of awareness or lack of sense of social responsibility. Similarly, many business organizations in perceive CSR as a corporate philanthropy[78] and restrict their practices on those activities only. Most donor corporations also inclined to use their contributions for advertisement purposes. This shows how stakeholders' approach the corporate governance, a base for CSR, is far from being development agents among Ethiopian corporations. The failure of government policies and the legal system of the country in general to promote and advocate CSR highly contributes for the weak implementation of CSR policies by the government and businesses alike.

[76]KassayeDeyassa, *CSR from Ethiopian Perspective*, *International* Journal of Scientific & Technology Research, Vol.5, No.4, Pp.299-328, 2016, P.320.
[77] Ibid. 317.
[78] Ibid.320.

5.2 Lessons from the international experiences on the expected roles of the government

As discussed above, many countries in the world have promoted CSR using different mechanisms. Some have made best practices that have been modeled within similar contexts. Likewise, the government of Ethiopia has always strived to take lessons from these experiences to use the best of CSR as an instrument for the achievement of intended public policy objectives. Specifically it needs to formulate a policy, enact laws, and prepare guidelines for the promotion of CSR on voluntary basis. It should use incentives (fiscal and financial) and awards/certificates of recognition to secure voluntary engagement by businesses; establish institutions devoted for the promotion and implementation of CSR; mainstream CSR into its different policies and operations of governmental authorities at different levels; create awareness on the notion of CSR for the business community as well as its officials and help business organizations in developing their CSR policy; have a continuous discussion with corporations on CSR; device mechanisms for publication and reporting of CSR experiences to create competition among business organizations and make state-owned corporations the leading actors of CSR. To create motivation on the private sector, the government should also show its commitment towards CSR through its giant profit making enterprises like Ethio-telecom and Commercial Bank of Ethiopia.

6. Conclusion

CSR has no single and universally accepted definition. However, it is all about bringing the social, economic, environmental, political and other concerns of a society into the agendas and operations of different corporations mainly on voluntary basis. CSR offers so many advantages for the society at large as well as the business firms. CSR helps countries for the realization of different aspects of human rights and for the achievement of broad developmental goals. It is also advantageous for the business mainly by providing general social acceptance.

Many countries in the world such as Denmark, Singapore, and Sweden have promoted CSR by using a variety of mechanisms such as formulating CSR policies, establishing institutions for CSR, providing fiscal incentives and awarding best CSR practices. On the contrary, CSR in Ethiopia is generally at a lower stage of implementation. The business organizations implementing CSR mainly focus on philanthropic activities. The government does not have clear policy and any institutional framework on CSR that guide the implementation and promotion of CSR. More over, laws governing the operations of business organizations do not comprise, even the term, CSR. The Ethiopian government, therefore, needs to fetch international experiences and make measures improvements to promote CSR. This in return enables it to achieve its public policy objectives. It should also formulate a firm CSR policy aimed at ensuring active involvement of corporations in socially responsible activities mainly on a voluntary basis, establish institutions responsible for the promotion of CSR and a system of fiscal incentives and recognitions/awards for best CSR practices.

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The Predicament of Ethnic Identity and the Right to Self-Determination in Ethiopia: Overview of Procedural and Practical Issues of the House of the Federation

Behaylu Girma[♣]

Abstract

Ethiopia has established a federal state structure based on ethnic identity championing the right to self-determination as one of its salient features since 1995. The Constitution of the Federal Democratic Republic of Ethiopia empowers the House of Federation to be the guardian of this right. This study examines the procedural and practical issues of the House of the Federation in responding to the growing demand for separate ethnic identity and the right to self-determination in the country. The study employed a qualitative design in data collection where in-depth interviews were conducted with members of the House of Federation and Council of Constitutional Inquiry. A review of relevant literature was also used to interpret the qualitative data. Henceforth, the study unveiled that the twenty-five years' practice of ethnic federalism in Ethiopia has resulted in demand for separate ethnic identities and statehood posing a serious challenge for the federal government. This article argues that there are little or no clear laws, procedures and organized practices for entertaining the aforementioned claims. Therefore, it is now a high time for the federal government to revisit the constitutional provisions, related laws, and the practices of the House of Federation in order to be able to answer the increasing quest for separate ethnic identities with well-structured and organized system, which will impart a lesson and serve as a benchmark for future requests.

Key terms: *Ethiopia, Federalism, Ethnicity, Self-determination, House of the Federations*

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1. Introduction

Federalism is one type of state structure that organizes two layers of government owning common and different sets of responsibilities.[1] Despite the variations in the types and formation of federations, there are shared characteristics. The rule of law, constitutionalism, local autonomy, and representative federal government are some examples.[2] In federal state structure, member states of the federation are entitled to enjoy a considerable degree of shared rule and self-rule.[3] The right to self-determination, which is a bundle of different rights, is one of the basic characteristics of federal state structure.[4]

After a long experience of a unitary state structure, Ethiopia has constitutionally established a federal state structure in 1995.[5] The essence of the Ethiopian federation was built on conjoining self-determination and ethnic identity.[6] Article 39 of the Federal Democratic Republic of Ethiopia (FDRE) Constitution affirms; 'every nation, nationality, and peoples of Ethiopia have the right to a full measure of self-government, including the right to establish institutions of government in the territory they inhabit'.[7] To exercise these rights, the constitution opts for language and ethnic lines as the heart of the federation rather than geography or territorial convenience.[8] This assertion is supported by the reading of Article 46, as

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[1] Legesse Tigabu, 'Federalism as an Instrument for Unity and the Protection of Minorities: A Comparative Overview: Ethiopia, India and the US, Mizan Law Review, Vol. 10, No.2, December 2016, p.266

[2] Muhammad Habib, 'The Ethiopian Federal System, The Formative Stage, Friedrich-Ebert-Stiftung', 2010, p. 5

[3] Ronald L. Watts, 'The Contemporary Relevance of Federalism, Queen's University, Kingston, Ontario, Canada Ethiopian Journal of Federal Studies', Vol. 1, No. 1, 2013, p.3

[4] Supra note 2

[5] Habtu, Alem, 'Ethnic Federalism in Ethiopia: Background, Present Conditions, and Future Prospects' (2003). International Conference on African Development Archives Paper 57. <https://scholarworks.wmich.edu/cgi/viewcontent.cgi?article=1078&context=africancenter_icad_archive>accessd on Augest11,2020

[6] Ibid

[7] See The Federal Democratic Republic of Ethiopia Constitution, Article 39, Proclamation No.1/1995, Fed. Neg. Gaz, Year 1, No. 1

[8] Yonatan Fisseha, 'The original sin of Ethiopian Federalism', 2016, p.2

the geographical configuration of the federal state structure is demarcated on "the basis of settlement patterns, language, identity, and consent of the people".[9]

Thus, except for the Southern Nations, Nationalities and Peoples' Regional State (SNNPRS), Benishangul Gumuz, Gambella and the two city administrations,[10] the remaining regional sates "*Kilils*" are mainly delineated based on Ethno-linguistic lines, which take the dominant group as a benchmark.[11] Hence, most of the peoples who live in six of the ten regional states namely Tigray, Amhara, Oromia, Somali, Afar and Sidama are mainly dominated by a single ethnic group.[12]

The constitutional provisions also open the door for statehood and separate ethnic identity formation for other ethnic groups that would demand the establishment of a state of their own.[13] The 1995 constitution has empowered the House of Federation, which is a representative of the nations, nationalities, and peoples of Ethiopia, to ascertain the right to self-determination and the question of identities.[14] Currently, the issue of identity, particularly the quest for statehood *"kilil",* zone, special zone, woreda, and special woreda has been increasing from time to time and has become the subject of contestation by scholars and politicians. This article attempts to examine the procedures, approaches, and the practices of the House of

[9] See article 46 of the Federal Democratic Republic of Ethiopian Constitution

[10] During the transitional period proclamation no. 7/1992 had demarcated the SNNPRS, composed of more than 56 nations and nationalities, into five regional states based on territorial and ethnic identities. However, when the 1995 FDRE constitution approved, it has restructured and condensed the five regional states into one as SNNPRS mainly based on territorial demarcation. Thus, today the SNNPRS become the hotspot for the increasing demand for separate ethnic identities and the right to self-determination. In 2019 the Sidama which was one of the SNNPRS zones acquired its statehood and become the tenth regional state in the country. The city of Addis Ababa territorially and historically demarcated as the capital city of Ethiopia and constitutionally recognized by article 49 of the FDRE constitution. The city is responsible for the federal government. Nonetheless, there is no clear constitutional provision for Dire Dewa and it was established by Diredewa Administration Charter Proclamation No. 416/2005. The city is territorially demarcated and becomes responsible to the federal government.

[11] Supra note 5, p. 19

[12] Supra note 8

[13] Ibid, p. 3

[14] See article 62 (3) of the Federal Democratic Republic of Ethiopia Constitution

Federation in settling the demands for separate ethnic identity and the right to self-determination across the country.

2. The Right to Self-Determination and the Quest for Ethnic Identity

The right to self-determination is one of the basic human rights commonly incorporated in the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.[15] It is a right made of different sets of rights. It encompasses rights related to political, economic, social, and cultural aspects of self-determination. The right to self-determination is a right and a procedure for the enjoyment of other rights.[16]

The 1995 Ethiopian federal state structure has recognized the right to self-determination as one of the notable features of the constitution. It is considered as the vault and a means of the creation, holding together, and the secession of members of the federation.[17] Hence, the proper management and implementation of the right to self-determination can strengthen the democracy, rule of law, and unity in the multi-ethnic federal state structure. However, the reverse application will frequently increase the demand for separate ethnic identity, question of statehood, and secession as a last resort.

Article 39 of the FDRE constitution declares the right to self-determination as a right that consists of a set of different rights. It includes the right to speak, write, and develop one's own language; to express, develop, and promote one's s culture; and preserve one's history. It also entitles different nationality groups to a full

[15] See article one of both the International Covenant on Civil and Political Rights and International Covenant on Economic Social and Cultural Rights, 1966

[16] United Nations, Self-Determination Integral to Basic Human Rights, Fundamental Freedoms, Third Committee Told as It Concludes General Discussion, retrieved 10/12/2020 from https://www.un.org/press/en/2013/gashc4085.doc.htm

[17] The preamble of the 1995 FDRE constitution has specified that the Ethiopian federal state structure established by the free consent of the nation, nationality, and peoples of Ethiopia. Thus, article 39 and 47 of the constitution has asserted that the right to self-determination is a holding together or a means for the secession of member states of the federation.

measure of self-government, to establish institutions, and to have equitable representation at state and federal levels.[18]

For the last two decades, the Ethiopian federal state structure has played a decisive role in opening the political space for the ethno-nationalist forces, particularly in the areas of language, culture, local self-government, including the promotion of one's history.[19] The ethnic federal state structure has also intensified the demands for separate units of administration and the quest for statehood.[20]

Recently, different ethnic groups have claimed the status of statehood *"kililes",* and separate administrative units such as zones, special zones, weredas, and special weredas, and this has become one of the serious challenges threatening the Ethiopian federal state structure.[21] This is because, for the last twenty-five years, the federal government has not established a concrete institution and system that firmly responds to different demands of ethnic identities in the country. The need for a separate identity and the right to self-determination have increased from time to time coming from different corners of the country. Such demands from Argoba, Zay, Welene, Hadicho, Qucha, Dorze, Konso, Menja, Denta, Wolkait, Kimant, Sidama, Welayta, and Hadiya are just some instances.[22]

These claims followed different patterns. While some of them exhaust local remedies at the regional level, others directly bring their claims to the House of Federation, the Council of Constitutional Inquiry, and/or to the National Electoral Commission. Thus, as the subsequent parts of this paper reveal, responses of these institutions, including the federal and regional governments were disorganized, scattered, and lack precedents.

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[18] See article 39 (2) of the FDRE Constitution

[19] Solomon Goshu, Questioning Identity and Responding Accordingly, The Reporter, https://archiveenglish.thereporterethiopia.com/content/questioning-identity-and-responding-accordingly

[20] Ibid

[21] Ibid

[22] Ibid

3. Diverse Approaches in Ethnic Identification and Determination

The question of identity is mainly blended with the concept of self-determination.[23] However, there is no clear definition of ethnic identity and the meaning varies depending on the motives of the researchers, scholars, and politicians in consideration.[24] Particularly, in a state with a federal-state structure, the concept of ethnicity is subject to different interpretations and becomes difficult to determine the ethnic identity of an individual.[25] Though there are various approaches /theories/ and definitions on ethnic identity determinations, they can mainly be categorized under three school of thoughts, primordialist, instrumentalist, and constructivist.[26]

The primordial approach, also called naturalist and socio-biological, considers ethnic identity as natural.[27] This view defines ethnic identity as inherent and directly acquired from parents. In the extreme sense, ethnic identity is related to the biological and genetic ties of individuals.[28] Primordialists regard ethnic identity as immutable. Cultural changes should be viewed as a process of evaporation of the group's identity rather than its redefinition.[29] They argue that cultural change or assimilation of different groups cannot change the hereditary ethnic identity of an individual.[30] This approach advocates an individual ethnic identity determined by

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[23] Susanne Dybbroe, 'Questions of identity and issues of self-determination, Études/Inuit/Studies', Vol. 20, No. 2, IMAGE ET IDENTITÉ / IMAGE AND IDENTITY (1996), p. 42

[24] Lubo Teferi, 'The post-1991 'inter-ethnic' conflicts in Ethiopia: An investigation, Journal of Law and Conflict Resolution', Vol. 4(4), 2012, p. 63

[25] Tsegaye Tegenu, 'The Model and Making of Ethnic Federalism in Ethiopia: Identifying the Problems to Find the Solution', 9th International Conference of African Development, Addis Ababa University, 2016, <https://www.diva-portal.org/smash/get/diva2:934164/ATTACHMENT01.pdf> accessed August 11/2020

[26] Federalism, Federations and Ethnic Conflict: Concepts and Theories, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/13839/chapter%20two.pdf?sequence=13> accessed August 11/2020

[27] Ibid

[28] Wsevolod W. Isajiw, 'Definition and Dimension of Ethnicity: A theoretical Framework, Challenges of measuring an ethnic world: Science, Politics and Reality', 1993, p. 2

[29] Kenea Yadeta, 'Causes, Intervention Mechanisms, and Challenges of Ethnic Conflict in Ethiopia: The Case of Oromia and the Somali Regional States' (Ph.D. Dissertation, Ethiopian Civil Service University, 2019), P.93

[30] Ibid, P. 94

his/her hereditary relationship and excludes others who are born from heterogeneous ethnic groups.[31] Primordialism may have a dangerous leaning towards racism; institute conflict between different ethnic groups; and it is essentially mono-causal.[32] Besides, this approach is silent regarding children born from two different ethnic identity parents. This method only advances biological and genetic ties as the basic source of identity determination.[33]

The instrumentalist approach ascribes ethnicity as a dynamic phenomenon and argues that ethnicity is determined by the mobilization, organization, and interaction between and among communities.[34] In this approach, ethnicity is determined by the justification of actions.[35] Ethnic identity is considered as an ideological mask employed and advanced by some groups to secure their interest.[36] Ethnicity is used as an instrumental tool to provide strategic ways to form coalitions, obtain economic resources or political power.[37] Accordingly, under the instrumentalist approach, ethnic identity can be used by an ethnic entrepreneur as an instrument for political mobilization.[38] In doing this, individuals' ethnic identity can be determined by an ethnic entrepreneur. Besides, an individual who is born from two ethnic parents may calculate the benefits and associate himself/herself with different ethnic identity at different times depending on the likely benefits of associating with one or the other.

The third view is the constructivist approach and it determines ethnicity as the product of the social, economic, and political dynamics of the society.[39] Ethnic identity is socially constructed as a fluid entity that can be formed and changed

[31] Ibid
[32] Ibid
[33] Supra note 28
[34] Supra note 29
[35] Supra note 28
[36] Bonny Ibhawoh, 'Beyond Instrumentalism and Constructivism re-conceptualizing Ethnic identities in Africa, Humanities today', vo. 1, no. 1, 2010, p. 223
[37] Supra note 29
[38] Ibid
[39] Supra note 28, p. 224

throughout history.[40] The ethnic identity of an individual is neither biological nor decided by ethnic entrepreneur; rather it is determined by the socialization process of an individual.[41] An individual can be a member of a certain ethnic group without genetic ties of that group, but s/he is expected to understand the culture of that society. Using such features as language, religion and culture, people may imagine the essence of the community of which they want to be a part of.[42] This can be inferred from the objective and subjective characteristics of the individual.

The objective aspect can be observed from the existence of institutions, including that of kinship, descent, and overt behavioral patterns of individuals.[43] This can be related to speaking an ethnic language, practicing ethnic traditions, and participation in ethnic personal networks like family, friendships, and institutional organizations.[44]The subjective dimension refers to attitudes, values, and preconceptions whose meaning has to be interpreted in the context of the process of communication.[45]

In Ethiopian history, different ethnic groups have been influenced by centuries of migration and interaction between people, who have created a complex pattern of ethnic, linguistic, and religious groups.[46] For a long period, the country has also established a monarchical and unitary state structure.

Yet, in the aftermath of 1995, Ethiopia introduced a federal-state structure having the right to self-determination and ethnic identity at the centre of its politics of governance. The new arrangement of the federal state structure incites the

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[40] Supra note 29
[41] Supra note 28
[42] Supra note 29
[43] Supra note 28, p. 5
[44] Ibid, p. 8
[45] Ibid
[46] Ethnicity, State and Human Rights in Ethiopia retrieved 12/30/2018, from <https://webcache.googleusercontent.com/search?q=cache:fT0nt6wqrSYJ:https://www.uio.no/studier/emner/jus/humanrights/HUMR4501/h05/undervisningsmateriale/Ethnicity_Ethopia_Patienceh05.doc+&cd=1&hl=en&ct=clnk&gl=et> accessed August 11/2020

questions of ethnicity and becomes the subject of contestation and discourses at the federal and regional government levels.[47]

Article 46 (2) of the FDRE constitution stipulated that consent of the people, ethnicity, language, and settlement patterns are the foundation for self-determination. However, this constitutional provision did not define ethnicity and lacked clarity on its approaches. The definition provided under Article 39 of the constitution does not add much clarity either.

During the transitional period, members of the de facto federation were fourteen, and in the 1995 FDRE constitution, they were condensed to nine regional states including Addis Ababa and Dire Dawa as city administrations directly controlled by the federal government. The delimitation and reorganization of the state structure did not involve and consider the interest of the public; rather the politicians mainly conducted it.[48] The demarcation of the Ethiopian federal state structure was top-down architected by the then ruling party of EPRDF.[49] This has implied that, in Ethiopia, ethnic identification and self-determination were essentially made by politicians based on the primordialist and instrumentalist approaches.[50] Further, the prevailing practices have manifested that the primordialist and instrumentalist approaches have profoundly influenced the popular perception and political discourse rather than the constructivist view.[51] For instance, descendants of the 19th century northern settlers who moved to different parts of the country and settled there for many years are now identified by the

[47] Andereas Eshete, 'Federalism: New Frontiers in Ethiopian Politics, Ethiopian Journal of Federal Studies', Vol. 1, No. 1, 2013, p. 57

[48] Kinkino Kia, 'The Quest For Regional Statehood And Its Practicability Under The Post-1991 Ethiopian Federation: The Discontents And Experience Of Sidama Nation, Global Journal Of Politics And Law Research', Vol.7, No.7, November 2019, P.3

[49] Ibid

[50] Article 46 (2) of the FDRE constitution has specified four criteria for the delimitation of regional states and two of these criteria (language and identity) manifest the primordialist approach and the rest settlement pattern and consent related to the constructivist approach of identity determination. Nonetheless, the constructivist element of consent and settlement pattern is not emphasized and recognized in the formulation of Ethiopian federal state structure.

[51] Supra note at 28, p. 38

"indigenous" community as '*Amhara'* or "*Mete*" or "Settlers", even if, many of them shared the local community's culture, language and formed inter-ethnic marriages.[52] The local population perceived ethnicity as primordial, and such perceptions have recently become causes for the displacement of more than 3 million individuals in the country.[53] This practice is also supported by ethnic entrepreneurs since they have used ethnicity as an instrument for their political gains.[54] This is evident from the incidents that occurred in the Oromia region, particularly in Shashemene Town, in the aftermath of artist Hachalu Hundessa's assassination in June 2020. The instrumentalists conceive ethnicity as dependent variable and employed it to achieve their goal.[55] As a result, different individuals were killed, their property was destroyed, and they were displaced to other regions because of their perceived different ethnicity.[56]

This has implied that the prevailing practice of ethnic identity determination rests with the primordialist and instrumentalist approaches, even though some individuals and societies have identified themselves in a constructivist approach. This is also dominantly manifested in the recently increasing demands for recognition as separate ethnic identities and the quest for statehood, which are examined in the subsequent parts.

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[52] Supra note 46

[53] The 2018 half-year report of the Internal Displacement Tracking Matrix revealed that Ethiopia becomes the first country having near to 3 million internally displaced persons and the causes of the displacement were violence and ethnic conflict, available at 201809-mid-year-figures.pdf (internal-displacement.org)

[54] Demissew, B., 2016. *Inter ethnic conflict in south western Ethiopia: the case of Alle and Konso* (Doctoral dissertation, MA thesis, Addis Ababa University), P. 19

[55] The assassination of Hachalu Hundessa was used as an instrument by the opposition political leaders and the government. After the assassination, the situation ignited protects and conflicts in Addis Ababa and the surrounding Oromiya region which was resulted in the death and displacement of individuals, and some political leaders to be arrested.

[56] Ethiopian Observer, Ethnically-motivated attacks in Shashemene and elsewhere, <https://www.ethiopiaobserver.com/2020/07/06/ethnically-motivated-attacks-in-shashemene-and-elsewhere/> accessed August 13/2020

4. The House of Federation and Identity Determination

"In much of African states, ethnicity is the hub around which individual and community life revolves".[57] An individual's life is controlled and determined by rules emanating from the individual ethnic group.[58] Besides, in Africa, ethnic politics becomes an instrument to mobilize respective groups for controlling power and local resources.[59] In Ethiopia, the quest for separate ethnic identity has become an active political agenda as different groups currently demand the right to self-determination and separate ethnic identity.[60]

4.1.Right Holders and Claimants

The right to self-determination is a collective right, exercised by a group of individuals or the community.[61] Every individual member of the communities is the holder and beneficiary of the right to self-determination. Article 39 and 47 of the FDRE constitution specified every nation, nationality, and peoples of Ethiopia as the holder of the right to self-determination. However, the question of who can request/claim on behalf of the community is blurred. Article 39 (5) of the FDRE constitution gives a general and vague definition of what nation, nationality, and peoples mean as:

> *a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identity, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory.*

[57] Alemante G. Selassie, Ethnic Identity and Constitutional Design for Africa, William & Mary Law School Scholarship Repository, 1992, P. 13
[58] Ibid
[59] Ibid
[60] Dessalegn, B. and Afesha, N., 2019. The Quest for Identity and Self-Determination in the SNNP Region of Ethiopia. *Mizan Law Review*, *13*(1), pp.63-90, p. 19
[61] Claudia Saladin, 'Self-Determination, Minority Rights, and Constitutional Accommodation: The Example of the Czech and Slovak Federal Republic', 13 MICH. J. INT'L L. 172 (1991) <https://repository.law.umich.edu/mjil/vol13/iss1/7> accessed August 11/2020

Thus, the constitution is far from giving a precise definition as to who are nation, nationality, and peoples and who are the claimants of the right to self-determination. There is no clear constitutional provision that designates whether an individual or a group of individuals have the right to demand recognition of their distinctive ethnic identity. Particularly, the issue becomes complex when the constitution lacks a clear approach towards ethnicity and this can be easily manipulated by the government and ethnic entrepreneurs.

In the Silte case, for instance, the request for the right to separate identity and self-determination, in the beginning, was made by two applicants who claimed to represent the community. Later on, one person who was a member of the House of People's Representatives and the Silte Democratic Unity has joined the application.[62] Accordingly, one of the contested issues among members of the House of Federation was the minimum number of claimants who have the right to lodge a claim on behalf of the claiming community.[63] Since there was no clear constitutional provision or precedent, it was difficult for the House to accept or reject the applicants' claims. Some members of the House argued that the application must be supported by 500 individuals while others asserted that it is the right of every individual in which one individual can apply too.[64] Finally, in this specific case, the house decided that it is the right of every individual to represent the community and demand the right to self-determination. The House also emphasized and decided that the subsequent procedures would help examine the sincere concern of the community.[65]

However, when proclamation 251/2001, Consolidation of the House of Federation and the Definition of its Powers and Responsibilities (hereinafter proclamation 251/2001), was enacted, it has specified that the initiation of identity question has

[62] Getahun Kassa, 'Mechanism of Constitutional Control: A Preliminary Observation of the Ethiopian System, Africa Focus', Vol. 20, Nr. 1-2, 2007, p. 90
[63] The House of Federation of the Federal Democratic Republic of Ethiopia, Constitutional Decision Journal Vol. 1, P. 76
[64] Ibid, p. 76&79
[65] Ibid, p.76

to be supported by the signature of five percent of the population.[66] This prerequisite again becomes vague and it indicated restrictions for the exercise of the right to self-determination. The proclamation is not clear on how the House will examine and make sure the five percent is a real signature to show it was a concern of the community. Furthermore, different from the case of Silte, the proclamation has specified that at the time of the application, the House of Federation will require the power of representation to ascertain whether the question is the concern of the people or elite-motivated.[67] These kinds of procedural formalities can look like a legitimate criterion to identify the real interest of the society. On the other hand, such types of procedural formalities can be gripped by political entrepreneurs and might suppress the real demand of individuals or the community by wicked interpretation of the law. Furthermore, these procedural rules can be regarded as a pre-condition and might challenge the unconditional rights to self-determination of every nation, nationality, and people.

4.2.Who Determines?

As per Article 62 (3) of the FDRE Constitution, it is the House of Federation which will decide on the rights to self-determination of Nations, Nationalities, and Peoples of Ethiopia, including secession. Proclamation 251/2001 has provided detailed laws and procedures in discharging this responsibility.

On the other hand, article 52 (2) (a) of the FDRE constitution has impliedly expressed that the regional governments have the power to decide on the establishment of a state administration to advance their self-government. This assertion of the constitution concurrently empowered both the House of Federation and Regional Governments to decide on issues related to self-administration including the request of distinct ethnic identity.

[66] See article 21 of proclamation 251/2001 Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities
[67] Ibid

The first case that the House of the Federation has examined was the Silte question of separate ethnic identity from Gurage. The Silte people demanded self-rule in local government within the SNNPRS by specifying the community of Silte with a distinct identity based on language, territory and history.[68] The State Council of the SNNPRS has brought the case to the attention of the House of Federation, and the House after a long process of consultation with the region and the Council of Constitutional Inquiry, received the case and decided to entertain the identity issue as one part of its mandates.[69] Then, the House decided that a referendum be held only by the claimant Silte community. The referendum was organized by the SNNPRS in cooperation with the Federal Government. Finally, the referendum was conducted and the Silte people gained recognition as a distinct ethnic group and established a separate zonal administration seceding from the Guraghe.[70]

In the decision of the Silte case, the House of Federation emphasized the need for the exhaustion of local remedy. This decision of the House respected and recognized article 52 (2) (a) of the FDRE constitution that state governments have the power to decide on regional matters. This decision and practices of the House of Federation was latter on incorporated in proclamation 251/2001 and specified as the exhaustion of local remedy as a prerequisite. This would empower the regional governments to decide on issues of the right to self-determination and limit the power of the House of Federation to entertain only appealed cases.

Following the case of Silte, various claims of separate ethnic identity and the right to self-determination were brought to the federal and regional governments. The Manjo/Menja[71] case was the one which was instituted at the Council of Nationalities of the SNNPRS.[72] Nonetheless, different from the case of Silte, the Council of Nationalities of the SNNPRS did not hold a referendum; rather it

[68] Supra note 63
[69] Ibid
[70] Ibid
[71] Manja is one of the ten wereda of Kaffa and located in 765 kilometers away from Addis Ababa in Shaka Zone of the Southern Nation Nationality and Peoples Region of Ethiopia
[72] Supra note 19

decided and specified Menja as not having distinct identity. The case was brought to the House of Federation, and the House upheld the decision of the Council of Nationalities of the SNNPRS.[73] The same decision was given to the case of Kontama[74], and the House emphasized that the question of mistreatment and discrimination of minorities cannot be a pretext for the quest for separate ethnic identity.[75] In these two cases, the society did not get the power to conduct any referendum and decide on their demand for separate identities. Rather it was the Council of Nationalities of the SNNPRS and the House of Federation that made the decision at the top.

On the other hand, the case of Kemant/Qimant/[76] was decided by the Amhara Regional State Council and the House of Federation. First, the case was brought to the State Council of the Amhara Regional Government, and after many years of wrangling, the Council decided that the Kimant group has a separate identity.[77] However, conflict arose when the number of wereda and kebele administrations were demarcated. As a result, they have appealed against the decision of the Amhara National Regional State Council to the House of Federations. Afterwards, the House in collaboration with the Regional Government, had tried to resolve some of the problems on the contested kebeles with a referendum though the case is pending and not operationalized yet. In this specific case, the quest for separate ethnic identity was decided by the Amhara Regional State Council and the demarcation of Kebeles was made through a referendum by the community in which the Kimant society resides.

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[73] Ibid

[74] The kontama people live in Mareqo wereda, Gurage Zone, Southern Nation Nationality, and Peoples Region of Ethiopia

[75] Supra note 19

[76] Kimant also known as Qimant community located in North Goder Zone of Amhara National Regional State

[77] The Qimant community request was separate ethnic identity and the right to self-determination in 126 kebeles located in eight weredas. However, the Amhara Regional Council decided on 42 kebeles located in two weredas, and the Qimant quest for self-determination brought to the federal level.

Compared to the Silte case, certain aspects of the Kimant case are unique. The Kimants do not live in a predominantly contiguous territory which is one of the constitutional criteria for a distinct identity.[78] Accordingly, this decision of the House has established a precedent that sharing the same territory is not a prerequisite for the enjoyment of the right to self-determination. The Kimants also do not meet the language criteria as they are currently not communicating in Kimantigna language.[79] Thirdly, the case of Kimant was first treated by the unilateral decision of the Amhara State Council and supported by the order of the House of Federation's referendum to be conducted at the disputed weredas and kebeles.[80]

Different from the above cases, the statehood quest of the Sidama people had witnessed the participation of additional parties and the probability of unilateral determination. The statehood claim of the Sidama people was first approved by the Sidama zone, and the SNNPRS Council endorsed the decision and subsequently wrote a letter to the National Electoral Board to facilitate a referendum as provided by the constitution.[81] Article 47(3/a) of the FDRE constitution specified that a referendum should be held within a year from the time the request has been approved by the council of SNNPRS.[82] Nevertheless, the constitution is silent on what happens if the referendum is delayed or when the federal government kept silent on the issue.

Thus, having this constitutional gap, after one year of submitting their request to the federal government, the Sidama people attempted to express their unilateral

[78] Wasihun Bedelu, 'The Legality of Self Determination Right: The Case of Kemant People in Amhara National Regional State' 2018, (MA thesis Addis Ababa University), p. 44
[79] Ibid
[80] Ibid
[81] Yohanan Yokamo, 'The Sidama people, the false marriage with nations and nationalities and the need for legal divorce, commentary', Addis Standard, 2019, <http://addisstandard.com/commentary-the-sidama-people-the-false-marriage-with-nations-nationalities-and-the-need-for-legal-divorce/> accessed August 11/2020
[82] See article 47 (3/a) of the FDRE Constitution

declaration of new regional statehood on 11/11/11 in the Ethiopian calendar.[83] However, after a violent confrontation in mid-July, the referendum was conducted on November 20/2019 by the National Electoral Board and the participation of Federal and SNNP Regional Governments.[84] Afterwards, the Sidama people became the tenth regional state in the country even though the FDRE constitution recognized only nine regional states. The constitution the SNNPRS which recognizes the zones by name also regards Sidama as a zone and is not amended yet.

Thus, the above practices and decisions of the House of Federation have revealed that the question of separate ethnic identity and statehood can be determined through a referendum, by the Regional State Council or by the House of Federation. These different decisions of the House and Regional State Councils lack consistency and lead us to question the existence of a working rule of procedures of the House of Federation.

4.3.What Procedures?

Identity recognition is the foundation for the enjoyment of the rights to self-determination. Article 39, which is a well-known and contested provision of the FDRE constitution, blends the internal and external aspects of the right to self-determination. The internal aspect mainly deal with the rights of the nation, nationalities, and peoples within the state. That is, every nation, nationality, and peoples have the right to speak, to write and develop its language, to promote, and to develop its own culture and to preserve its history.[85] Hence, in Ethiopia, the current demand for separate ethnic identity and statehood is an internal aspect of the right to self-determination.

[83] Supra note 82
[84] Ermias Tasfaye, Southern Comfort on the Rocks, 2019, Ethiopian Insight, <https://www.ethiopia-insight.com/2019/11/20/southern-comfort-on-the-rocks/> accessed August 11/2020
[85] Article 39 (2) of the FDRE Constitution

However, the constitutional provision is not clear on the procedures of separate ethnic identity determinations. The heading of Article 39 (4) specified the right to self-determination including the secession of every nation, nationality, and people of Ethiopia. However, the subsequent procedures are only limited to the external aspect of the right to self-determination i.e., secession. None of these procedures deal with the internal quest for identity determination.

The other provision of the constitution that is related to the issues of self-determination is article 47, which deals with the member states of the federation. Particularly article 47 (3) specified the procedures and the conditions for a nation, nationality, or peoples to form its own separate regional state. These procedures are only limited to the question of statehood and it does not address separate ethnic identity determination within a certain region.

This has implied that the constitution has recognized the question of ethnic identity as one part of the right to self-determination, but there is no clear procedural safeguard for its implementation. Besides, article 62 (3) of the FDRE constitution has empowered the House of Federation to adjudicate issues related to the question of identity, but it does not specify the necessary procedures. The constitution, in fact, is not required to stipulate detailed procedural rules. It is, thus, proclamation 251/2001 that has attempted to fulfil the gaps by stipulating some of the procedures. Hence, article 19 and 20 of this proclamation have identified the question of self-identification as one part of self-determination, and empowered the regional governments to have the first jurisdiction. They have emphasized the exhaustion of local remedies by reaffirming the provision of article 52 (2) (a) of the constitution. Additionally, the proclamation has specified a pre-condition, which includes procedural formalities such as: the request to include written application with details of the question; names, address and signature of at least five percent of the members of the nation, nationality or people in question; and the official seal

and signature of the administration that presents the question for the exercise of the right to self-determination.[86]

However, these procedural formalities described in the proclamation have hindered the enjoyment of the right to self-determination which is the unconditional right of every nation, nationality, and people of Ethiopia.[87] The specific requirement in the proclamation that request for identity determination has to be supported by the names, addresses, and signatures of at least five percent of the population of the Nation, Nationality or People concerned seems to put a pre-condition for the enjoyment of such rights. This can, in the name of procedures, undermine the question of nations, nationalities, and peoples who have the support of less than five percent of the inhabitants. Besides, because of fear of discrimination and abuse by the local government/s, individuals may be unwilling to give their names, address, and signatures to support the question of identity. This may make the 'five percent pre-condition' a daunting task.

Additionally, we are witnessing lately that different groups of individuals and political entrepreneurs who crown themselves as "Group X's identity claimant committee" becoming the subject of contestation between politicians and the government. Sometimes these individuals are recognized by the government as members of opposition political party, so the government becomes reluctant to answer the real demand of the society. On the other hand, there are circumstances when these individuals also use their representation and the demand for separate ethnic identity as a means for the accumulation of power and wealth.

Therefore, the procedural preconditions specified in proclamation 251/2001 do not adequately solve the problem posed by the inadequate rules and procedures. Furthermore, for more than twenty-five years, the House of Federation does not

[86] Article 21 of proclamation 251/2001
[87] Article 39 of the FDRE Constitution

have a working rule of procedures.[88] This has been evident in that the responses of the House to different cases have followed different working rule of procedures that seemed politically motivated. For instance, in the statehood and separate ethnic identity demands of different nations, nationalities, and peoples who live in the SNNPRS, the federal and the regional government addressed some of the demands while denying or prolonging the others.[89] This has implied that the decisions of the federal and regional governments are essentially dominated by the political will rather than the law and constitutional provisions. Furthermore, the government is recently trying to answer the questions of separate identity and the demand for statehood by establishing a commission and the Prime Minister also established 80-member committee to resolve the increasing demands of different nations, nationalities and peoples in the SNNRS.[90]

5. The Contested Administrative Boundary and Identity Issues Commission and the House of Federation

In February 2019, the House of Peoples' Representatives approved a disputed proclamation by a majority vote, with four abstentions, and 33 disapprovals.[91] The one-party dominated House manifested unusual debates in which the approval process hinted at the development of democracy. On the other hand, those against the proclamation were representatives of one regional state, and because of the current wrangling between the Federal Government and the Tigray Regional Government, there is scepticism on the sincere participation and democratic process of the House.

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[88] Interview conducted with The House of The Federation of Ethiopia Ethnic Identities Determination Directorate Director, December /2018 3

[89] The SNNPRS has made Konso as Zone, split Gamo-Gofa into two Zones and others. The statehood demands of the Sidama people also resolved, while delaying the others including the quest of the Wolayta Peoples.

[90] Kulle Kursha, Respecting Self-determination could prove good governance model for Ethiopia's Southern Nations, Ethiopian Insight, September, 20202, retrieved from, Respecting self-determination could prove good governance model for Ethiopia's Southern Nations - Ethiopia Insight (ethiopia-insight.com)

[91] Fanna Broad Cast Corporation, https://fanabc.com/english/2018/12/house-approves-draft-bills-developed-to-amend-defense-forces-proclamation-establish-border-and-identity-commission/

However, whatever the approval process, the proclamation has intended to solve the prevailing problem of ethnic identity determination and the question of administrative boundaries.[92] Hence, the proclamation vied for the establishment of a commission and empowered it with two main tasks: boundary administration and determination of identity issues.[93] The commission has a responsibility to study and solve issues of boundaries, self-government, and identity questions that repeatedly occur between regions and nationalities in a lasting manner.[94] However, the quest for self-government and identity is a constitutional right, and it can and will be raised at any time. Hence, the intent of the proclamation to resolve the issue of self-government and identity for good seems contradictory to the objective of the constitution and the task of the House of Federation. Because nations, nationalities and peoples may demand the right to self-determination at any time when they deem that such right is being suppressed by the majority or become aware of having a separate ethnic identity.

Besides, at the definition of terms, the proclamation fails to define the question of identity since it has incorporated it as one issue of boundary administration.[95] However, the question of identity is beyond the issue of a boundary; it is the quest for self-determination of every nation, nationality, and people within Ethiopia. At the same time, article 3 of the proclamation has stipulated the establishment of two commissions where one such commission deals with the question of identity. This has implied that the question of identity is a separate quest of self-determination, which may or may not relate to the issue of boundary administration.

Members of the identity question commission are appointed by the House of Peoples' Representatives through the recommendation of the Prime Minister and

[92] Administrative Boundary and Identity Issues Commission Establishment Proclamation, preamble part, Proclamation No. 1101 /2019, (Fed. Neg. Gaz.) Year 25, No. 29
[93] Ibid article 3
[94] See the preamble of proclamation No. 1101/2019
[95] See definition of terms of the proclamation No. 1101/2019

are accountable to the Prime Minister.[96] On the other hand, the constitution has declared that the question of identity is the issue of every nation, nationality, and people.[97] To determine such issues, the constitution empowered the House of Federation, which is a representative of the nations, nationalities, and peoples of the country.[98] Furthermore, the House of Federation is the responsible organ in the interpretation of the constitution and it is also considered as the guardian of the constitution.[99] To consolidate the task of the House, the constitution has established the Council of Constitutional Inquiry composed of legal experts intended to assist the House in the interpretation of the constitution.[100]

Thus, if the establishment of the identity commission is necessary and mandatory, it has to follow the establishment procedure of the Council of Constitutional Inquiry. Hence, the members of the commission needed to be recommended by the president and be appointed by the House of Peoples' Representatives. This will minimize the politicization of the appointment procedure and limit the task of the commission to giving an opinion and recommendation like the Council of Constitutional Inquiry. The task of the commission will also be accountable to the House of Federation rather than the Prime Minister. Furthermore, the proclamation is not clear on the role of regional state governments which have the primary jurisdiction on the question of identity. It is blurred on how and when the commission will commence its tasks. It is not clear whether the commission has jurisdiction on fresh cases, cases decided by the regional governments, or cases entertained by the House of Federation. Moreover, the duration of the commission is for three years, and two years have already lapsed without resolving even the pending cases of the House of Federation.

[96] Ibid
[97] Article 39 of the FDRE Constitution
[98] Article 62 of the FDRE Constitution
[99] Ibid
[100] Ibid

Therefore, the power and the establishment of the commission need to be re-examined under the mandates of the House of Federation. This will respect the regional government's autonomy and as part of the power of the House of Federation, the jurisdiction of the commission needs to be limited to appealed cases. This type of structure would respect the power of the regional governments, the House of Federation, the commission, and the constitution in general.

Conclusion

Despite the clear and explicit provisions of the constitution on self-determination, the constitution is either vague or silent providing no clear procedure on ethnic identity, the right to self-determination, and how to establish regional states, zonal and wereda administrations. The practices of the House of Federation, as presented in this paper, have demonstrated that there is inconsistency and it follows different procedures at different times. Besides, the House has no comprehensive working rule of procedures on the quest for separate ethnic identity and the right to self-determination yet.

This deficiency of well-structured system and the increasing demand for separate ethnic identity and the right to self-determination have become sources of a serious challenge to the federal and regional governments. To address such issues, the federal government has recently approved a proclamation that deals with the establishment of commissions for Administrative Boundaries and Identity Issues. Nonetheless, the proclamation did not resolve the procedural gaps in the constitution and other laws; rather it became another vague and blurred law. In addition, the proclamation did not illustrate the role of the commission and its accountability. Besides, two-third of the duration of the commission has already lapsed without giving any solution, even to the pending cases of the federal and regional governments.

Therefore, the federal and regional governments have to revisit the current procedural aspects and fill the gaps to properly address the increasing demands for separate ethnic identity and the right to self-determination,. The establishment of the Administrative Boundary and Identity Issues commission may be considered as a blessing to give structured and organized responses to the increasing quest for internal boundaries and separate ethnic identity claims. However, the establishment of the commission has to be revisited and needs to be restructured under the umbrella of the House of Federation. It has to be responsible and accountable to the House rather than to the Prime Minister. Furthermore, enacting the comprehensive working rule of the House of Federation is an urgent task that will have a great impact to create consistency in the future decisions of the House.

Reviewing the Regional State Constitutional Review System in Ethiopia: The Case of Amhara National Regional State

Muluken Kassahun Amid♣

Abstract

In Federal Ethiopia, all regional states have established their own regional constitutional review mechanisms. In this regard, the Revised Amhara national regional state Constitution has vested such powers to the Constitutional Interpretation Commission (the final interpreter) and the Regional Council of Constitutional Inquiry (the advisory body). These organs are entrusted to review all constitutionality claims on any laws and decisions of the regional government organs. Each organ is empowered to entertain abstract and concrete cases, political and non-political questions, as well as constitutional complaints. This article aims to examine whether the region's constitutional review system is designed in a manner that ensures regional constitutional supremacy. The article argues that, because the Constitutional Interpretation Commission is composed of non-professional constitutional interpreters, the system is institutionally subject to lack of independence and impartiality, and fusion of powers. Besides, both the Council of Constitutional Inquiry and the Constitutional Interpretation Commission are not practically in a position to regularly perform their constitutional interpretation mandates. This may make the organs less trustworthy to be regarded as guardians of people's and individual rights set out under the region's constitution.

Key Words: Revised Amhara National Regional State Constitution (Revised ANRS Constitution), Constitutional Interpretation Commission (CIC), Council of Constitutional Inquiry (CCI), Proclamation No. 224/2015, Proclamation No. 225/2015.

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1. Introduction

The majority of federal systems establish sub-national constitutions or their functional equivalents.[1] In most of those systems, constitutional control mechanisms are designed to limit the power of state governments, guarantee protection for the rights of citizens, and umpire power disputes among state organs. However, the institution responsible for constitutional control/review differs from one federation to another. In the USA, for instance, regular state courts are empowered to review the constitutionality of state acts, laws, and decisions.[2] In some jurisdictions such as Germany, however, the lander/state constitutions are interpreted by the lander/State Constitutional Courts.[3] Still, in other federations such as Switzerland, some cantons have established a constitutional court (like canton of Jura, Vaud, and Graubünden) while regular Courts of Appeal are entrusted with the task of state constitutional interpretation in other cantons.[4]

Despite their variations in terms of institutional structure and powers vested on them, the constitutional review organs are attributed to minimum standards of institutional personnel and finance, independence and impartiality, competency,

[1] Currently, sub-national constitutions are found in the federations of Argentina, Australia, Austria, Brazil, Ethiopia, Germany, Malaysia, Mexico, Russia, Sudan, Switzerland, the USA, and Venezuela. In South Africa, a decentralized unitary system with a federal character, only one province has such a constitution. Provinces in Canada have what has been termed constitutional statutes. In Spain, a quasi-federal country, Autonomous Communities have autonomy statutes. In other federations, such as Nigeria and India have not sub national constitutions. (Jonathan L Marshfield, 'Models of Substantial Constitutionalism' (2011) 115 Penn St L Rev 1158; Tsegaye Regassa, 'Sub-National Constitutions in Ethiopia: Towards Entrenching Constitutionalism At State Level' (2009) 3 Mizan L Rev 38).

[2] Anne Twomey, 'The Involvement of Sub-national Entities in Direct and Indirect Constitutional Amendment within Federations' <http://camlaw.rutgers.edu/statecon/workshop11greece07/workshop11/Twomey. pdf> Accessed 06 November 2019.

[3] Werner Reutter, 'Sub national constitutional courts and judicialization in Germany' (2020) Eur. Pol. Sci. 3.

[4] Pascal Mahon, 'Judicial Federalism and Constitutional Review in the Swiss Judiciary' in Andreas Ladner *et. al* (eds) *Swiss Public Administration: Making the State Work Successfully* (Palgrave Macmillan 2019).

and fair trial guarantees.[5] This helps the organs to effectively perform the task of constitutional control, and ensure better and dual protection of citizen rights.

In Ethiopia, the development of regional constitutions and their respective constitutional interpretation mechanisms had started during the Transitional Period (1991-1995).[6] Following the coming into effect of the 1995 Federal Democratic Republic of Ethiopia (hereinafter, FDRE) constitution, all regional states adopted their respective regional constitutions.[7] In all states, state legislative councils were the interpreters of state constitutions.[8] These state constitutions were revised after 2001 in which the function of constitutional interpretation was moved to a separate organ called Constitutional Interpretation Commission.[9] Exceptionally, the

[5] Adem Kassie Abebe, 'The Potential Role of Constitutional Review in the Realization of Human Rights in Ethiopia' (LLD dissertation, University of Pretoria2012); OSCE Office for Democratic Institutions and Human Rights (ODIHR), 'Legal Digest of International Fair Trial Rights' (2012) < https://www.osce.org/odihr/94214> Accessed 30 November 2020.

[6] Accordingly, the transitional period (1991-1995) Proclamation No.7/1992 has established 14 regional self-governments and empowers them to issue their respective constitutions (A Proclamation to Provide for the Establishment of National/Regional Self Governments No. 7/1992, Art. 3 (1) (Transitional Period National/Regional Self Governments Establishment Proclamation)). Based on this proclamation guarantee, several self-governments adopted their transitional period regional constitutions. The current *Tigray* (then Region One), *Amhara* (then Region three) and *Oromia* (then Region Four) can be mentioned as an example. Moreover, the State Supreme Court is empowered to interpret the constitution by the self-government constitution (like in the case of Region four) and by Court establishment proclamation (like in the case of Region three). (Muluken Kassahun, 'The Constitutional Review System of Oromia and Tigray Regional States and the Basic Rules of Fair Trial' (2018) 3 Int'l Jo. Eth. Leg Stu 30; A Proclamation to Establish the Courts of the Transitional Government of Region Three No. 3/1993, Art. 14 (ANRS Transitional Period Court Proclamation).

[7] Later, the 1995 FDRE constitution established nine regional states with their respective legislative, executive, and judicial organs. The state council, the state legislature, is empowered to draft, enact, execute, and amend the regional constitution consistent with the federal constitution. However, the Federal constitution is silent towards the body interprets the state constitution, unlike three-tier ordinary state courts that established by the FDRE constitution to interpret state laws and delegated federal jurisdictions. This constitutional space gives an opportunity for each regional state to design and establish their constitutional review mechanisms. (*See* Federal Democratic Republic of Ethiopia Constitution No. 1/1995, Art. 50(2), 50 (5), 52 (2b), 78 (3) (FDRE Constitution)).

[8] In doing such function, the regional State Councils was assisted by the organ called the regional Council for Constitutional Inquiry (Constitutional Court in the case of ANRS). The organ composes prominent legal experts who examine cases of constitutional disputes and send their recommendations to the legislative councils. (A Proclamation to Provide for the Establishment of the Constitution of *Amhara* National Region No. 2/1995, Art. 66 (1995 ANRS Constitution)).

[9] The composition of the commissions is different from one region to another. However, in all most all states the selection directly or indirectly considers ethnic identity and political membership.

Southern Nations, Nationalities, and Peoples' regional state authorized the Council of Nationalities (structurally an upper legislative house) to render a final decision on constitutional claims. In all the states, Council of Constitutional Inquiry was established to serve as an advisory body to the final constitutional interpreter organs of state constitutions.[10]

Amhara National Regional State (ANRS) had its own constitution as 'Region three' constitution starting from the Transitional Period.[11] At the time, the State Supreme court was entrusted with the task of constitutional interpretation while the 1995 constitution of the region gave the function of constitutional interpretation to the State Council (as the final interpreter). It also established an advisory body known as the Constitutional Court. Later on, when the 1995 regional constitution was revised in 2001, the power of the final interpreter was transferred from the legislature to the new organ called the 'Constitutional Interpretation Commission' and the former Constitutional Court was renamed as the 'Council of Constitutional Inquiry'. The detailed legal and institutional frameworks for each of these organs were enacted by the State Council.

This article examines the effectiveness of the legal and institutional frameworks of the region's constitutional review system to ensure constitutional control at the regional level. In the following sections, the paper: highlights the historical development of the constitutional review system in ANRS; reviews the membership and the model adopted by the ANRS constitutional review system; examines the power and function of the ANRS Constitutional Interpretation Commission' and the Council of Constitutional Inquiry'; analyzes the potential

(Christophe Van der Beken, 'Subnational Constitutional Autonomy and the Accommodation of Diversity in Ethiopia' (2016) 68 Rutgers UL Rev *1556).*

[10] Ibid.

[11] Region Three Transitional Period Constitution No. 2/1993(ANRS Transitional Period Constitution). The constitution composes 51 articles that are grouped into five parts and 7 chapters. This indicates that the region has its own constitution, where the central government is ruled by a transitional charter.

limitations of the ANRS constitutional review system; and finally provides concluding remarks.[12]

2. Historical Development of Constitutional Review System in Amhara National Regional State

The current ANRS was established during the transitional period (1991-1995) as region three.[13] The regions established during this period were vested with legislative, executive and judicial powers including the power to issue regional constitutions under proclamation No. 7/1992.[14] Consequently, region three adopted its own transitional period regional constitution under the regional Proclamation No. 2/1993. However, this constitution was not provided with the mechanism and body that interprets it.

Instead, the region's transitional period court establishment proclamation vested the power to interpret the constitution to all regional courts. The proclamation adopted a decentralized constitutional review model at the regional level.[15] Accordingly, 'the region's courts were vested with the power to review and repeal any administrative measures or orders in the region that contradicts with the transitional charter and the region's constitution'.[16] However, as per this proclamation, the final authoritative constitutional review power rested with the region's Supreme Court. In this regard, Art. 14 of the region's transitional court establishment proclamation reads as follows:

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[12] In this paper, the terms 'constitutional review' and 'constitutional interpretation' are interchangeably used to refer to the review of legislations and administrative or judicial actions for conformity with the regional constitutions.

[13] Transitional Period National/Regional Self Governments Establishment Proclamation, Art. 3 (1). The region at the time composes three ethnic groups namely *Amhara*, *Agaw Kamirgina*, *Agaw Awongigna*. Though, the Transitional period Region 3 Constitution extends the recognized nation, nationalities of the region to all inhabitants of the region and entitled express recognition to *the Oromo* nation. (*See* ANRS Transitional Period Constitution, Art. 2(4)).

[14] Transitional Period National/Regional Self Governments Establishment Proclamation, Art. 2(3) & 15(1A).

[15] ANRS Transitional Period Court Proclamation, Art. 5. The proclamation established three-tier regional courts namely Supreme Court, High Courts, and *Woreda* courts.

[16] Ibid, Art. 6 (4).

The Supreme Court of the region shall have the following judicial powers;

1. It shall have appellate jurisdiction over cases that come from the high courts; and its decisions shall be final.
2. It shall be in its power to give a final interpretation in 'legal disputes' emanating from the regional constitution and other laws passed by the council.

Accordingly, the Supreme Court had the power to render a final decision on the claims of constitutionality. The proclamation empowered the regional Supreme Court to give a final decision on constitutional disputes on the constitution and laws passed by the state legislature i.e., state proclamations. Concerning the constitutionality of subordinate legislations and acts (such as administrative regulations and directives), all regional courts were empowered to review and quash those acts.[17] Regarding this, the region's Supreme Court has appellate jurisdiction and the power to render the final authoritative constitutional review decisions.[18]

Later, under the 1995 FDRE constitution, the ANRS was recognized as a member state of the Ethiopian federation.[19] This constitution empowered the regional state legislatures to draft, adopt, and amend their respective regional constitutions.[20] In effect, the ANRS constitution replaced the transitional period constitution with the 1995 regional constitution. This constitution vested the power to interpret regional constitutions to the State Legislature and an advisory body known as the constitutional Court.[21] Accordingly, the Constitutional Court was mandated to receive cases having a constitutional dispute, investigate the same, and where it deems there is a necessity to interpret the constitution, submit its recommendation to the State Council.[22] The Constitutional Court's power and selection of its

[17] Ibid.
[18] Ibid, Art. 14(1).
[19] FDRE Constitution, Art. 47(1/4).
[20] Ibid, Art. 50(5).
[21] 1995 ANRS Constitution, Art. 66-68.
[22] Ibid, Art. 67 and 68(1).

members were almost identical to the current federal and regional Council of Constitutional inquiries, except for its naming.[23] The State Council renders a final decision on the constitutional dispute claim.[24] The constitution limits the power of the courts only to referral, like a centralized constitutional review approach. However, the constitution adopted a non-judicial model of constitutional review system, in contrast to the Transitional Period model. Empowering the State Council, the body mandated to interpret the constitution, however, violated the notion of separation of power as the legislature was entitled to examine the constitutionality of a law of its own making.

In 2001, the 1995 ANRS State Constitution was Revised (Revised ANRS Constitution) by Proclamation No. 59/ 2001. This constitution is still in force with few amendments.[25] The Revised ANRS Constitution entrusted the power to interpret the regional constitution to the Constitutional Interpretation Commission (CIC) and Council of Constitutional Inquiry (CCI). The CIC members are drawn by way of representation, from every Nationality and Woreda/District Councils found throughout the region,[26] whereas the CCI members' composition, selection, power and function is made in an almost exact manner to that of the former Constitutional Court.[27] Both organs started operation in 2015 following their establishment by Regional Proclamation No. 224/2015 and 225/2015, respectively.

[23] The Constitutional court here is not as such equivalent with Centralized judicial review system Constitutional Courts. Instead of that, it serves as an advisory body of the State Council in resolving constitutional claims. The court consists of 11 (eleven) members. Those are; the President and Vice President of the regional Supreme Court serve as Chairperson and Vice-Chairperson of the Court, respectively, six legal professionals of acknowledged integrity, to be appointed by the regional council, upon presentation by the head of the regional government and three representatives of the council of the regional state, to be elected from among its members. (Ibid, Art. 66).
[24] 1995 ANRS Constitution, Art. 67 (2).
[25] The Revised Constitution of the *Amhara* National Regional State No.59/2001 (Revised ANRS Constitution); The Revised *Amhara* National Regional Constitution Amendment No. 1 Approval Proclamation No.112/2005; The Revised *Amhara* National Regional Constitution Amendment No. 2 Approval Proclamation No. 127/2006.
[26]Revised ANRS Constitution, Art. 70 (1).
[27] Ibid, Art. 72.

3. The Institutional Framework and Model of the Current Amhara National Regional State Constitutional Review System

3.1. Selection, Composition and Termination of Constitutional Interpretation Commission and Council of Constitutional Inquiry Members

The ANRS CIC is empowered to resolve any constitutional dispute arising out of ANRS laws/acts. By doing so, it has been mandated to ensure regional constitutional supremacy. The body consists of the representatives nominated, based on the double standard of the principle of territoriality and identity, from administrative District Councils and Nationality Councils, respectively.[28] Currently, the ANRS CIC has 172 (one hundred and seventy-two) members.[29] The body has its own secretariate and also, elects its own chairperson and secretary from its members.[30] The secretariate of the State Council serves as the office of CIC Council.[31]

Morover, the CCI has a mandate to investigate the existence of a constitutional dispute and submit its recommendation to CIC for a final decision.[32] The body comprises of 11 members: the President and V/President of the ANRS Supreme Court, who shall serve as Chairperson, and V/Chairperson of CCI, respectively; six lawyers appointed by state legislature upon the recommendation of the regional head based on their professional efficiency and code of conduct; and three persons designated by the State Council who are submitted by speaker of State Council for approval.[33] The later three persons are designated from the state legislature.[34]

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[28] Ibid, Art. 70 (1); A Proclamation Enacted to Establish ANRS Council of Constitutional Inquiry No. 225/2015, Art. 4 (ANRS CCI Proclamation).
[29] Members of ANRS CIC members (2015-2020). On file with the author.
[30] A Proclamation Enacted to Establish ANRS Constitutional Interpretation Commission No. 224/2015, Art. 5 (2) (ANRS CIC Proclamation).
[31] Ibid, Art. 14(1).
[32] *See* Revised ANRS Constitution, Art. 72(2); ANRS CCI Proclamation, Art. 5.
[33] Accordingly, the ANRS CCI composes the first two members from the judiciary, the appointment of those six legal experts involves the role of the executive and legislative and the last three

Regarding the termination of CIC and CCI members, in principle, their termination is at the end of their term of office.[35] But, each member may be removed on various grounds before the end of the term of office. A member of CIC may be removed when the district or nationality council, which delegated them, decides so, upon the initiation/request of the representatives.[36] In the case of CCI, the chairperson and the vice-chairperson are removed when they are removed from their appointments as President and Vice President of the Supreme Court of the region, respectively. Other members of the CCI may be removed on the grounds of individual requests or on the request of the body that appointed them, disciplinary measures, or incompetency.[37] Such a removal should be approved by a majority vote of the regional State Council.[38]

The ANRS constitutional review system design has several potential strengths. These include, among other things, ensuring dual protection for constitutional rights guaranteed by the regional constitution and the FDRE constitution. For instance, property right is guaranteed by both the federal and regional constitutions. This entitles a claimant to seek a constitutional remedy before regional or federal constitutional review organs. Secondly, adopting a non-judicial review approach of constitutional review prevents judicial tyranny by limiting the role of the judiciary.[39] Thirdly, the representation within the CIC accommodates the administrative and internal diversity of indigenous ethnic groups of the region.

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members represented from legislature itself. Moreover, the selection of all ANRS CCI members are directly or indirectly involves State Council.

[34] Revised ANRS Constitution, Art. 71 (2D); ANRS CCI Proclamation, Art. 4 (4).

[35] *See* ANRS CIC Proclamation, Art. 6; ANRS CCI Proclamation, Art. 6; Revised ANRS Constitution, Art. 76 and 89(3). In this regard, it's important to differentiate the term office of five years applied in case of CIC and CCI. The term office of CIC members is based on term of office of local election for *Woreda*/ Nationality Council. While the CCI members term office is based on regional election for State Council as those members are designated and appointed by State Council except Chairperson and its Vice.

[36] *See* ANRS CIC Proclamation, Ibid, Art. 8.

[37] ANRS CCI Proclamation, Art.8.

[38] ANRS CCI Proclamation, Art.8 (3).

[39] Assefa Fisseha, 'Constitutional Adjudication in Ethiopia: Exploring the Experience of House of the Federation' (2007) 1 Mizan L Rev 11.

Accordingly, all administrative districts are represented by one person, including administrative districts of five recognized minority indigenous ethnic groups.[40] Currently, for instance, out of 172 members of the CIC, Argoba ethnic group is represented by one, Awi ethnic group, represented by twelve, Oromo and Waghimra ethnic groups are represented by eight members based on the number of administrative districts they have.[41]

Fourthly, the periodical replacement of members of CCI and CIC every five years indirectly ensures the constitution belongs to the living generation (living constitution).[42] In this regard, the term of office of the CIC is based on the term of office of administrative Woreda/ Nationality Council based on the time span of local elections.[43] The CCI members' term of office is based on regional election time schedule for members of the State Council, except for the Chairperson and the Vice. This opens room for the younger generation, not only to become a member of each organ, but also to interpret the constitution based on the interest of the living generation. The institution is also in a better position than ordinary court judges to entertain socio-economic rights, since the composition of the CCI (advisory body) is made up of multi-disciplinary professionals.[44]

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[40] The minority indigenous ethnic groups recognized to have their own nationality Administrations in ANRS are *Argoba*, *Awi*, *Kimant* and *Oromo* and *Waghimra* ethnic groups. The Nationality Administrations works on ensuring the right to self rule and group rights of each ethnic groups within their respective territorial administrations (Revised ANRS Constitution, Art. 73-82).

[41] ANRS Constitutional Interpretation Commission Members Form (2016) On file with the author.

[42] For instance, one of the critics of several USA State Supreme Courts are judges appointed for life cannot satisfy the needs of future generation to make a constitution alive. However, in the case of ANRS constitutional review, this is less problematic due to the system opens room for younger generation that makes 'the earth belongs . . . to the living' as Thomas Jefferson declared it, which one generation cannot bind another. (Jack L Landau, 'Some Thoughts about State Constitutional Interpretation' (2011) 115 Penn St L Rev 853).

[43] Revised ANRS Constitution, Art. 76 and 89(3); ANRS CIC Proclamation, Art. 6.

[44] For instance, when data for this research collected in 2018, the eleven members of the ANRS CCI are President and Vice President of State Supreme Court, Legal advisor of Chief Regional Administrator, Legal Advisor of State Council Speaker, Head of Regional Justice Bureau, One Instructor of Law at *Bahirdar* University, Head of Regional Civil service Bureau, Head of Federal Consumers Association, Head of Regional Environmental Protection Bureau, Head of Trade Bureau, and one Member from former ruling party (former *Amhara* Peoples Democratic

However, the above potential strength doesn't mean that the institution is immune from drawbacks that hinder it from ensuring regional constitutional supremacy. The potential limitations and drawbacks related to the institutional and legal frameworks including composition of members has been analyzed in section 5 of this article.

3.2. Model of Amhara National Regional Sate Constitutional Review System

Constitutions across the world have broadly devised two approaches of constitutional review. Those are constitutional review tasks carried out either by the regular court/diffused model or specialized constitutional court/centralized model.[45] In the diffused model, all courts at different levels entertain constitutional cases. In the centralized model, the special constitutional court disposes of the constitutional issue centrally. Still, there are approaches in which constitutionality of issues are entertained by a political body or through a referendum.[46]

In the case of the Revised ANRS constitution, the CIC and CCI were structurally established under chapter seven of the Constitution. The English version of the Constitution's chapter caption entitled as 'structure and powers of the judiciary' and the Amharic version (final legal authority) caption could be literally translated as 'structure and power of courts'.[47] On the basis of this, the CIC and CCI can be considered as independent judiciary[48] that may lead to the argument that the ANRS constitutional review system follows the centralized review model. However, looking at the composition and proceedings of the CIC, it seems to also tilt towards

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Movement). The diversity of composition of members from different sectors gives a chance to CCI members to examine one case from different professional disciplines. (On file with the Author).

[45] Andrew Harding (2017), The Fundamentals of Constitutional Courts, International IDEA <https://www.idea.int/publications/catalogue/fundamentals-constitutional-courts> Accessed 25 October 2020.

[46] Ibid.

[47] The Amharic version caption of Chapter seven says '□□ '□□□ □□□' □□□□□ □□ □□□□'. This could be literally translated as 'structure and power of courts'.

[48] *See* Revised ANRS Constitution, Art. 64-72.

a non-judicial model of political review system as almost all members of CIC are politicians who are gathered from administrative districts or representatives of Nationality Councils.[49] Furthermore, the decision-making procedures also resemble that of a parliament session, which is conducted without the hearing of parties.[50] Besides, since the final say is based on the take of politicians,[51] the review system more or less can be attributed to a political review system.

4. The Power and Jurisdiction of ANRS CIC and CCI vis-à-vis Effects of their Decisions

The scope of power and jurisdiction of constitutional review organs is usually interlinked with the model they have adopted. In the diffused system, ordinary courts interpret constitutionality of acts incidental to concrete, real and justiciable cases to minimize active involvement in the competence of the legislative and executive branches.[52] In contrast, the functions of constitutional court have apparent judicial and political characters in countries that have adopted centralized review model. To this effect, there is an extensive and wide-ranging power and jurisdiction given to the constitutional court.[53]

Moreover, in federal states having a state constitution, the model of regional constitutional review is mostly similar to that of the approach of the central government.[54] For instance, in Argentina, Australia and Mexico, the constituent units adopted the decentralized/diffused model of constitutional review equivalent to that of the federal government.[55] Consequently, the claim for constitutional review is based on justiciable and concrete cases or controversies.[56] Similarly, in

[49] Revised ANRS Constitution, Art. 70 (1); ANRS CIC Proclamation, Art. 4.
[50] Ibid, Art. 13 and 19 (4).
[51] Regassa (n 1) 42.
[52] Fisseha (n 39) 8.
[53] Rudolf Streinz, 'The Role of the German Federal Constitutional Court Law and Politics' (2014) 31 Ritsumeikan L Rev 96.
[54] Marshfield (n 1) 1161; Marko Stanković, 'The Significance of Judicial Review of Sub-National Constitutions and Laws in Federal States' (2014) 3 Belgrade L Rev 83.
[55] Ibid.
[56] Ibid; Fisseha (n 39) 8.

the centralized constitutional review model, states such as Germany (lander), the sub-national governments have also established centralized constitutional courts at the constituent unit levels.[57] The constitutional court is vested with the power to entertain abstract and concrete cases, political and non-political questions, and constitutional complaints including rendering advisory opinions.[58] In such a system, the role of ordinary courts is usually limited to referring constitutionally suspected cases to the constitutional court.

In some jurisdictions such as Switzerland, the cantons are free to establish a constitutional court that can review all the laws and ordinances of the canton.[59] Some cantons have done so, including the canton of Jura (Art. 104 Constitution of Jura), the canton of Vaud (Art. 136 Constitution of Vaud), the canton of Graubünden (Art. 55 Constitution of Graubünden), and the canton of Geneva (Art. 124 Constitution of Geneva). Other cantons prefer Courts of Appeal to act as a constitutional court.

In the case of the ANRS constitutional review system, even though Articles 70-72 of the Revised ANRS Constitution provide for the power and function of CIC and CCI, the Revised ANRS Constitution has not been clear regarding their respective scope of power and jurisdiction. For these reasons, it seems the State Council has enacted the establishment laws of the CIC and CCI. Each proclamation further defines the power and function of each body through Proclamation No. 224/2015 and 225/2015. However, various scholars oppose the State Council's issuing of laws that regulate acts of the constitutional adjudicator on the ground of conflict of

[57] Twomey, (2); Arne M. M. Nova vas, 'Individual Complaint as a Domestic remedy to be exhausted or Effective within the meaning of the ECHR; Comparative and Slovenian Aspect' (2011) <http://www.concourts.net/lecture/constitutional%20 complaint1.pdf> Accessed 19 November 2019.
[58] Donald Horowitz, 'Constitutional Courts; A Primer for Decision Making' (2006) 17 Jo. of Dem. 125.
[59] Mahon (n 4) 149.

interest between the two.[60] In other words, the legislature designs such a law in a manner satisfying their political appetite that enables the body to dictate what legislatures and executives must or must not do by blocking the popular will.[61]

The following subsequent sections examine the specific power and functions entrusted to the ANRS constitutional review organs.

4.1. Abstract and Concrete Review

Abstract review is a kind of review not incidental to cases while concrete review is an instance of an event of the case.[62] Abstract review is recognized in the ANRS CCI statute.[63] Accordingly, the Council of Constitutional Inquiry (CCI) is empowered to handle constitutional interpretation cases on any non-justiciable matters (cases that cannot be entertained by courts). The political organ of the State Council and regional executive bodies are the only authorized bodies that are entitled to submit an abstract case to the CCI supported by at least one-third of their members.[64] The claim can be raised on the power of issuance of laws or other matters related to the division of power. The application for abstract review should include the disputed constitutional provision that needs to be interpreted, the provision of the relevant international agreement ratified by the country, if necessary, and the potential impact of the contested law.[65] The concerned higher official of the body requesting constitutional review should sign the application.

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[60] Regassa (n 1) 57; Antonio Baldassarre, 'The Constitutional Court of Italy - the guarantee for its independency', *Proceedings on the Role of the Constitutional Court in the Consolidation of the Rule of Law*, European Commission For Democracy Through Law (Venice Commission), 48*(1994)* <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD%281994%29010-e >Accessed 01January 2021.

[61] Mahon (n 4) 149.

[62] Adem Kassie Abebe and Charles Manga Fombad, 'The Advisory Jurisdiction of Constitutional Courts in Sub-Sahara Africa' (2013) 46 Geo Wash Int'l L Rev *55*.

[63]ANRS CCI Proclamation, Art. 18(2C).

[64] ANRS CCI Proclamation, Art. 18(2C). This sub-article, dictates that CCI has power to deal with the issue of political and non-political questions at the regional level, like that of centralized constitutional court states.

[65]ANRS CCI, The Procedure of Constitutional interpretation applications, Admission, Investigation, and Decision making Directive No. 2/2016, Art. 5(2) (ANRS CCI Constitutional Interpretation Claim Procedure Directive).

Moreover, ANRS CCI directive on Constitutional Interpretation Claim Procedures empowers different organs to submit claims on the constitutionality of laws. The parties entitled to claim for the constitutionality of laws are individuals having vested interest, political parties, governmental and nongovernmental organizations (NGOs).[66] Yet, the directive neither comprehensively provides for the list of each body nor identifies whether or not the claim is only related to non-justiciable matters. However, since the law expressly limits the bodies and procedures to claim for the constitutionality of non-justiciable matters, the provision impliedly entitles organs with vested interest to claim for an abstract review on justiciable matters. In such a case, the law neither requires the parties to have a real case (except cases brought before the court) nor exhaustion of local remedies.[67]

Concrete review is another review mechanism which is constitutionally guaranteed under the Revised ANRS Constitution and subordinate regional legislations.[68] The existence of dispute and contestation of law as unconstitutional implies that entertaining of cases is incidental to conflicting parties on the issue. Such contests may be brought before courts or administrative bodies. Unlike abstract review, there is a wide range of parties entitled to submit cases for concrete review including individuals, Human Rights activists, NGOs, political parties, Human Rights Commission, and the Ombudsman.[69] The claim of constitutionality over concrete cases can be submitted to the CCI by the court which was entertaining the case, or by parties in dispute. The court forwards a case to the CCI when the

[66] Ibid.
[67] Ibid.
[68] *See* Revised ANRS Constitution, Art. 72(2); ANRS CCI Proclamation, Art. 18(2A-B). Art. 72(2) of the Revised ANRS Constitution reads 'Whenever a case arises alleging that law', regulation and directive issued by the regional state organs have contravened or come into conflict with this constitution and is thereby submitted to it either by the pertinent court or parties in dispute the council shall present such findings as may have been obtained out of its examination and investigation on the commission for the latter's final decision'.
[69] Revised ANRS Constitution, Ibid, Art. 72(3A). Getahun argues the power to initiate cases for constitutional review by a number of actors including individuals Human Rights NGOs, political parties, and that could include the established national Human Rights institutions. (*See* Getahun Kassa, 'Mechanisms of Constitutional Control: A Preliminary Observation of the Ethiopian System' (2007) 20 Afrika Focus *75*).

concerned party presents his/her request before the court and only if it believes there is a need for constitutional review in deciding the case. Where the court rejects the constitutionality claim/s over the case, the party can submit his/her request to the CCI within 30 days from the date the court decided not to forward the claim to the CCI.

Thus, both abstract and concrete review procedures are entertained through a posteriori review system where the law is contested after its enactment.[70] In this respect, the Revised ANRS Constitution and other ANRS laws do not anticipate the possibility of a priori constitutional review in which the review of constitutionality of laws is initiated by political organs before they are enacted by the legislature, or after they have been enacted but before they are put into implementation.[71] Abstract review is important to: enhance constitutionalism by fixing doubts surrounding the constitutionality of proposed laws; helps to overcome the legislative-executive political deadlock; and helps to avoid the socio-political and economic cost that any delay in enacting laws may cause.[72]

4.2. Constitutional Complaints

Constitutional complaint represents an instrument to claim violation of constitutionally guaranteed fundamental rights of individuals through an act of state authority. It can be claimed in the form of a popular complaint (actio popularis), in the interest of the public, and for private interests.[73] Many member states of federal countries recognize constitutional complaints. For instance, member states of the Russian Federation (Adigea, Baskiria, Buryatia, Dagestan, the Kabardino-Balkar Republic, Karelia, Koma) and in Germany, the lander, Constitutional Courts of Bavaria, Berlin, Hessen, and Saarland recognize

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[70] 'Constitutional Review in New Democracies', Briefing paper, Democracy Reporting International, (2013) <http://democracy-reporting.org/files/dri-bp-40enconstitutional_review_innewdemocracies2013-09.pdf> Accessed 10 January 2020.
[71] Ibid.
[72] Abebe and Fombad (n 62) 115.
[73] Nova vas (n 57) 4.

constitutional complaint system.[74] In our case, even if the Revised ANRS Constitution is silent about constitutional complaint, the ANRS CCI proclamation entitles 'any person who alleges that his/her fundamental rights and freedoms have been violated by the rendered final decision by a government institution or official may present his/her case to the CCI for constitutional interpretation'.[75] The term 'any person' embraces both natural and legal persons having vested interest, giving both the right to claim for constitutional complaint.[76] A legal person can also submit a constitutional complaint on behalf of the public.[77] For instance, civil society organizations engaged in environmental rights may present a constitutional complaint to the CCI on the violation of the right to clean and healthy environment after exhausting final decisions from the concerned government organ. Under such a circumstance, the applicant is required to have a final decision against which no appeal exists along the same path.[78]

At this juncture, it is important to note the role of courts in constitutional interpretation. Regular courts have a judicial referral role in entertaining constitutional disputes.[79] Whenever any constitutional issue arises in judicial proceedings, courts are required to submit cases to the CCI, if they believe that there is a need for constitutional interpretation.[80] Such referral power presents courts with the opportunity to undertake preliminary constitutional interpretation. Courts have the discretion to determine whether there is a constitutional issue and whether resolving such an issue is necessary to resolve the dispute before them. If they find that a constitutional dispute exists, courts will have no authority to continue

[74] Ibid, 5.
[75] ANRS CCI Proclamation, Art. 20(1).
[76] ANRS CCI Proclamation, Art. 2(1H) & 20(1).
[77] Ibid.
[78] Ibid, Art. 20(2).
[79] Ibid, Art. 19.
[80] The Revised ANRS Constitution centralizes all constitutionality issues to be entertained by CCI and CCI irrespective of the hierarchy of laws/acts including regulation, directives, decisions of government body, public officials, and other acts. (Revised ANRS Constitution, Art. 72 (2)).

entertaining the case and must refer the case to the CCI.[81] However, there is no specific guideline or principle of constitutional interpretation employed to decide whether the issue at hand satisfies court referral or not.

4.3. Advisory Opinion

Advisory opinion is vital especially before the enactment of a law, to prevent the legislative-executive paralysis of a certain law.[82] In some jurisdictions, constitutional adjudicators give an advisory opinion to government organs. Such as in the 11 states of the USA, state courts render an advisory opinion at the request of the political organ on important legal or constitutional questions.[83] In contrast, the USA Supreme Court rejects the request for an advisory opinion based on the principle of separation of powers and the 'case or controversy' requirement in Art. III of the USA Constitution.[84]

In the case of ANRS constitutional review system, the Revised ANRS Constitution, ANRS CIC, and CCI laws neither anticipate the procedure for seeking advisory or consultative opinions on constitutional disputes nor such has occurred in practice. Instead, the ANRS CIC and CCI seek advice from other experts and institutions.[85] The lesson from Tigray Regional state shows that the region's CIC consensually renders an advisory opinion (consultancy service) on constitutional interpretation.[86] This implies that the Tigray National Regional State system is engaged in proactive approach to resolving constitutionality issues before

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[81] If a constitutional dispute exists the CCI passes its recommendations on the issue to the CIC for a final decision. However, if a constitutional dispute doesn't exist, the CCI sends the case back to the court that referred it.

[82] Abebe and Fombad (n 62) 106.

[83] Accordingly, the constitutions of Colorado, Florida, Maine, Massachusetts, Michigan, New Hampshire, Rhode Island, and South Dakota authorize their supreme courts to give advisory opinions. In Alabama and Delaware, judicial advisory opinions are authorized by statute. North Carolina's court gives advisory opinions without express statutory or constitutional authorization. (Mel A Topf, 'The Jurisprudence of the Advisory Opinion Process in Rhode Island' (1997) 2 Roger Williams U L Rev207).

[84] Abebe and Fombad (n 62) 62.

[85] *See* ANRS CIC Proclamation, Art. 19-20; ANRS CCI Proclamation, Art. 24.

[86] A Proclamation Enacted to Determine the Power and Function of *Tigray* National Regional State Constitutional Interpretation Commission No. 228/2012, Art. 7(2) (*Tigray* NRS CIC Proclamation).

the laws are enacted (priori review system), in addition to posteriori review of constitutional cases.

In my view, even the CIC members in ANRS are less competent to give an advisory opinion (as they are political electorate rather than professional experts), but such is not a problem in the case of CCI since most of its members are highly qualified legal experts. If the CCI renders a pro-active advisory role to other bodies, it helps prevent harm and avoid the wastage of resources on enacting and enforcing unconstitutional rules. Particularly, it is beneficial when this is exercised before the adoption and enforcement of laws.[87] Moreover, the informative role of an advisory opinion is very crucial both in the ANRS and Ethiopian context, primarily because the implications of constitutional provisions cannot be subjected to adequate judicial scrutiny.[88]

4.4. Effect and Status of the Constitutional Interpretation Commission decision

Sub-national governments with different mechanisms of constitutional interpretation follow their own approach towards the effect of constitutional review. In some instances, if the constitutional interpreter finds that any review of the statute would be unconstitutional, the whole statute is declared unconstitutional, even though the statute might have some other provisions that are consistent with the constitution. In other states, where a provision of a statute may be held as unconstitutional, parts of the statute consistent with the constitution remain applicable.[89] Under the Revised ANRS Constitution, the effect of unconstitutionality of laws or decisions is null and void when CIC declares it

[87] *See* Abebe and Fombad (n 62) 114.
[88] Ibid 109.
[89] Horowitz (n 58) 130.

unconstitutional.[90] Unless otherwise necessary, the effect of the final decision shall remain limited to only that very law/provision.[91]

Accordingly, in principle, the CIC decision quashes only the provision of the law interpreted, and not the whole statute. This dictates that the decision of CIC prevails over the interpreted provision. In other words, if an interpreted provision is a regulation, the CIC decision is above such provision and the same to other hierarchy of laws. Besides, the decision on constitutional interpretation prevails over the decision of courts/tribunals with the decision of the ANRS Supreme court in its cassation bench. The CIC decision has a binding (precedent) effect on future similar cases, unlike the ANRS Supreme Court cassation decisions. [92]

When the constitutional review process involves a decision of the unconstitutionality of laws, the CIC may inform the body that issued such a law. This helps the constitutional reviewers to know the intention of the framers on a contested law, on the one hand, and to notify the body to reform such laws in conformity to the constitution, on the other. That is why Art. 25(2) of the CIC law provides that the CIC may notify the 'regional government's legislative body' to amend, change or repeal the law in question within six months before a final decision over its unconstitutionality is made.[93]

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[90] Revised ANRS Constitution, Art. 9(1) cum Art. 70; ANRS CIC Proclamation, Art. 22.
[91] ANRS CIC Proclamation, Ibid, Art. 22.
[92] Ibid, Art. 21(1).
[93] In this regard, there is a variation between Amharic and English Version on who is going to be communicated. English version refers to communication to the regional government legislative body (State Council), while the Amharic version says communication is to the body enacts the law. In my view, the later is preferable for two main reasons. Firstly, the Revised ANRS Constitution empowers CIC to dispose of the constitutionality issue of all laws enacted by any government organ including executive and judiciary. Thus, for instance, if executive law is going to be unconstitutional it's important to communicate to the concerned organ in order to inform them to update the law. Secondly, Amharic is the final legal authority if variation happened between Amharic and English Version of ANRS laws. (See ANRS Zikre-Hig Gazette Establishment Proclamation No. 1/1995, Art. 2(4) (ANRS Zikre Hig Proclamation)).

5. Limitations of Amhara National Regional State Constitutional Review System

The ANRS constitutional review system has a number of shortcomings in light of minimum standards of constitutional review. Some of them are discussed below.

5.1. Independence of Constitutional Interpretation Commission and Council of Constitutional Inquiry

The independence of constitutional review organs is required in both diffused and centralized models of review. In diffused systems, ordinary courts have the power to review the constitutionality of acts. Hence, the basic rules of fair trial rights, including independence and impartiality of the organ and its members, apply to those judicial organs.[94] In the centralized model, constitutional courts should be independent of any other organ to ensure the effective control of the three government organs.[95] The prerequisite of independence, in its broadest sense, refers to institutional, decisional, and personal aspects.[96]

In this regard, the independence of the ANRS CCI and CIC can be examined both in light of their member composition and the institutions themselves. First, most CIC members represent a political party at the District Council level. Besides, all CCI members are directly or indirectly required to have state legislature approval. In the current context, it needs the consent of the ruling party since all State

[94] Fisseha (n 39) 1; OSCE (n 5) 56-61.
[95] Streinz (n 53)96.
[96]Institutionally, the organ should be independent from political interference by the executive and legislatures. In decision making aspects of independence, which also related to impartiality, the existence of adequate guarantees protecting the organ and its members from external pressures, on one hand, and an outward appearance that the organ determines whether a body can be considered to be independent and impartial, on the other. Personally, the procedure of appointment and removal, guarantees relating to their security of tenure, remuneration, conditions of service, and pensions of judicial officers of the organ including shall be adequately secured by law (UN Human Rights Committee, General Comment No. 32, Art. 14: 'Right to equality before courts and tribunals and to a fair trial', U.N. Doc.CCPR/C/GC/32 (2007), Para. 19 <https://www1.umn.edu/humanrts/gencomm/hrcom32.html> Accessed 25 January 2020).

Council members are also members of the ruling party.[97] Moreover, as the term of office of the CIC and most CCI members are equivalent to the term of office of electorates of District and State Council,[98] respectively, the winners of each election will become constitutional adjudicators. In addition, there are no rules governing the security of tenure and possible reappointments of members of the CCI. Nor are there term limits. This can create a situation where the ruling party can influence decisions, for instance, through a promise of reappointment.[99]

Furthermore, eight out of eleven CCI members, particularly all legal professionals, including the Chairperson and the Vice are nominated by the regional head of government, who is both a member of the ruling party and State Council.[100] In such a case, it's hard to think s/he nominates those six legal experts free of political influence. Thus, the opportunity to maintain the impartiality of members and accommodating different interests, mainly in politically motivated cases, will be rare.[101] Besides, there is no legal guidance that orders each member to act impartially and neutrally in making decisions.

At this juncture, it is obvious that the constitution is apparently a legal and political document. Hence, the framers might have intended to balance both interests by giving such power to CIC and CCI. As it is a legal document, it is first investigated and recommended by CCI members who are composed of legal experts. Then, the proposal of legal experts is reviewed by the CIC members for a final decision, as the constitution is also a political document.[102] However, the CCI advisory role

[97] In the last two elections, the ruling party won 100% votes both at regional and local elections. Thus, there is no possibility that opposition party member to become a member of CIC, as its members gathered from the *Woreda* Council. In the case of CCI, even there is a member of CCI that selected from the regional ruling party (then *Amhara* National Democratic Movement).
[98] *See* ANRS CIC Proclamation, Art. 6; ANRS CCI Proclamation, Art. 6.
[99] Abebe (n 5) 84.
[100] *See* Revised ANRS Constitution, Art. 59(1), 68(1), 71(2C).
[101] In this regard, it is difficult to analyze the reality on the ground since there are no cases brought before each organ.
[102] Abebe and Fombad (n 62) 84.

makes less impact to balance the CIC decision as the former has no binding effect.[103]

Moreover, if a member of CIC or government body of a certain location like administrative/ nationality Woreda/Zone has a conflict of interest on the outcome of the case, there is no prohibition clause that orders withdrawal of those representatives during decision making. This may worsen particularly if the litigation is between an individual and a certain district/Zone. The individual litigants have no chance to express their views, unlike such a representative who has a seat in the CIC.

Besides, structurally, the ANRS CIC members, particularly representatives selected from Woreda, originally represent Kebele (lowest order of government) at District Council.[104] They are entrusted to review, even quash, laws adopted by the State Council (highest Organ of the region) in the CIC. In such a case, the lowest order of Woreda electorate of CIC will be in a psychologically very difficult position to control the highest state electorates law/act, since the former are found in the lowest political hierarchy compared to members of the State Council. Still, the details of the founding, power and function of the CIC and CCI laws are enacted by the State Council. Thus, as the institution and its members of CIC are under the control of State Council, the State Council enacts directly through the proclamation and indirectly through administrative hierarchy and financial allocation,[105] 'the CIC members are less likely to reverse or quash a law or act made by a body found in a higher hierarchy.'[106]

[103] Actually, in the case between *Bahirdar City Development and Construction office vs. Bruhans Beuty Salon and Training PLC*, the decision of CIC is almost verbatim copy of CCI recommendation.
[104] Revised ANRS Constitution, Art. 96(1).
[105] In connection to the detail of financial allocation of State Council to CIC and CCI, *see* section 4.4.
[106] Kassahun (n 6) 42.

Besides, concerning the personal independence security and tenure of the ANRS CCI and CIC members, they have no constitutional or statutory immunity for being a member of each organ. This affects their decisional independence because there is no guarantee for their security. The exception to this being the three members of the State Council designated to serve in the CCI that have constitutional immunity, but this is on the account of their membership to the state legislature.[107]

5.2. Problem Related to Separation of Powers

Separation of Power is about the tripartite division of powers among the legislative, executive, and judiciary organs in order to guard against abuse and concentration of government power. However, a complete separation of powers is neither practicable nor desirable for an effective government. Moreover, the nature of politics determines the nature and scope of separation of powers.[108] In the context of the concentrated constitutional review system, the constitutional court is considered as the fourth branch of government that controls the acts of the three government wings. On the other hand, the function of entertaining constitutional dispute in the diffused system belongs to the judicial organ[109] whereas the power belongs to the legislature or a parliamentary committee in the political review system.

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[107] State Council members' immunity is limited to the immunity from arrest or charge with a crime without the permission of State Council except in the case of *flagrante delicto* of serious crimes. Because, the immunity on account of vote s/he casts or opinion expression has been limited to sessions of State Council, not extended to the CCI meetings. Thus, legally speaking, their Freedom of expression in CCI meetings is not as such free as that of State Council session. (*See* Revised ANRS Constitution, Art. 48(4-5)). Also, the FDRE constitution can't guarantee immunity to any member of state organs. This implies that they can't raise legislative immunity as a defence in relation to offences/faults of Federal jurisdiction. (Dejene Girma, *A Handbook on the Criminal Code of Ethiopia*, (Printed by Far East Trading P.L.C 2013) 117-118.

[108] For instance, parliamentary system of government is attributed by the fusion of legislative and executive power and the socialist constitution organizes government on the basis of the Unity of government power.

[109] Harding (n 45).

As we discussed earlier, the ANRS constitutional review system is institutionally attributed to the political review approach while functionally characterized by a centralized constitutional review model. In fact, there is a clear breakdown of the separation of powers since the composition of the organ has strong ties to political institutions. In these cases, it is difficult to limit the government authority and ensure human rights protection without an independent body that can determine whether the government has exceeded the limits of constitutional authority or not. In this regard, the ANRS constitutional review system is additionally subjected to institutional deficits that affect the overall process of constitutional review.

Regarding personnel separation of powers, all members of CIC primarily act in two capacities, namely legislature at nationality/Woreda Council and constitutional adjudicator at the regional level. Secondly, three members of state lawmakers delegated to work in the CCI act as a legislature in the State Council and constitutional adjudicator at the CCI. They can even act as a member of the executive body simultaneously, since there is no prohibition clause on the issue. Thirdly, the six legal experts appointed by the State Council can be nominated from anywhere because there is no expressed provision for a specific criterion to qualify for nomination. In such a case, s/he may be nominated from the executive and legislative bodies.[110] This implies that there is a possibility of a fusion of power that is concentrated in the hands of a single organ. Resultantly, the act deteriorates check and balance among each organ of government.

Concerning the problems of functional separation of power, even if interpreting the law and resolving disputes is the inherent power of regular courts, they are totally excluded from disposing of any constitutional dispute except for referral of

[110] In relation to this, it is not as such difficult if judges of the court were appointed as a legal expert in CCI, because in both organs they entertain the case. The difference lies; in court, they dispose of ordinary law cases, while in CCI entertains constitutional dispute, which is better to ensure the quality of CCI decision or recommendation to CIC.

constitutionally suspect cases.[111] The ANRS CCI and CIC have monopolized entertaining the constitutionality of any law irrespective of their hierarchy.[112] Thus, since the independent judiciary cannot control the constitutionality of acts of legislative and executives, it is futile to expect that the ANRS CCI and CIC can restrain the appetite of politicians, ensure check and balance, and limit government powers. Instead of that, the political dimension of CIC/CCI controls independent court decisions, but not vice versa.[113] Lastly, in light of the institutional separation of power, even if Revised ANRS Constitution has established CIC under the judiciary/court structure (chapter 7 of Revised ANRS Constitution), Proclamation No. 224/2015 and 225/2015 put the office of the CIC/CCI under the secretariat of the State Council.[114] The establishment of the CIC office within the office of State Council deteriorates the apparent impartiality of the organ because it will make it a fused political institution with State Council rather than a separate, independent and impartial judicial organ.

5.3. Competence of Constitutional Interpretation Commission Members

The notion of competence in the context of constitutional interpretation organs refers to a tribunal staffed with qualified and experienced persons. Individuals who decide on the issue of constitutionality are expected to have the technical knowledge required to deeply understand the content of legislations.[115] Conversely, the profile of almost all CIC members reveals that they are political electorates, not

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[111] The constitution largely limits the role of regular courts in entertaining constitutional disputes. Whenever any constitutional issue arises in judicial proceedings, the courts are required to submit cases to the CCI, if they believe that there is a need for constitutional review. Then, if a constitutional dispute doesn't exist the CCI rules and sends the case back to the court that referred it. But, if a constitutional dispute exists the Council passes its recommendations on the issue to the CIC for a final decision. (*See* Revised ANRS Constitution, Art. 72(3)).

[112] The Revised ANRS Constitution expressly centralized all constitutionality issues to be entertained by the ANRS CCI and CCI irrespective of the hierarchy of laws/acts including regulation, directives, decisions of government body, public officials, and other acts. (*See* Revised ANRS Constitution, Art.72(2)).

[113] *See* ANRS CCI Proclamation, Art. 19.

[114] *See* ANRS CIC Proclamation, Art. 14; ANRS CCI Proclamation, Art. 17(1).

[115] Yonatan Tesfaye Fessha, 'Judicial Review and Democracy: A Normative Discourse on the (Novel) Ethiopian Approach to Constitutional Review' (2006) 14 Afr J Int'l & Comp L 75.

lawyers and most of them lack the basic and sufficient legal knowledge. Moreover, there is no qualification needed to be a member of CIC, except being selected from, and by Woreda/ nationality Council.

The educational status of current ANRS CIC members shows that 10 persons (6%) out of 172 representatives are holders of Master's Degree, 69 persons (40%) are BA Degree holders, and the remaining 93 persons (54%) hold academic qualifications below a BA degree.[116] Moreover, the data shows that law-related professionals among the representatives are less than ten individuals. Constitutional interpretation cases often present the most complicated issues of the society, and the right to be entertained by competent individual judicial officers is part of the right to a fair trial that serves as one guarantee for access to constitutional justice. Hence, the selection and recruitment of persons who serve in a position of constitutional interpreter should fulfill the minimum qualification irrespective of the model of review adopted by the state. For instance, in Germany, the sub-national/ landers constitutional court judges are selected from judges working in ordinary courts, professors of law at universities, lawyers in law firms, or other non-judicial professionals.[117] However, the CIC in ANRS is composed of many officials who do not have the necessary professional insight about the constitution. One may argue that the problem of competency can be resolved by prominent experts of CCI who prepare the initial draft and recommendation of the constitutional case at hand. However, legally speaking, the CCI (legal experts) recommendation cannot bind the CIC members. In effect, there is a possibility to disregard the CCI experts' draft proposal up on their wish.[118]

[116]ANRS Constitutional Interpretation Commission Members Form (2016) On file with the author.
[117] Reutter (n 3) 4.
[118] Actually, it is a little bit problematic as observed in one CIC decision as it is almost the verbatim copy of the regional CCI decision.

5.4.Financial Autonomy and Benefits

The financial autonomy of the constitutional review organ and the benefits cosseted for the judicial officers of the organ affect the success or failure of constitutional review. Without financial autonomy, no plan is effectively prepared and executed. The ANRS CIC gets secretarial and financial 'support' from the State Council.[119] Legally speaking, the term 'financial support' is not equivalent to 'budget allocation' in terms of financial autonomy. The term 'support' gives wider discretion to State Council on preparing and administering CIC's budget. This implies that, comparatively, the financial autonomy of the institution is even below the three arms of government. Similarly, the CCI gets financial support from the State Council.[120] In effect, the law expressly authorizes the CCI and CIC to meet on a part-time basis.[121] Such financial dependency indirectly obstructs the right of access to constitutional justice and contributes to the delay of cases and poor-quality decisions. In other words, lack of financial autonomy can make the institution operate under the control of the state legislature.[122]

Furthermore, the CIC and CCI members are only entitled to allowance and transportation expenses during meetings when it comes to remuneration and benefits.[123] Members have no permanent salary or remuneration for being a

[119] Revised ANRS Constitution, Art. 70(4).
[120] ANRS CCI Proclamation, Art. 17 (2L).
[121] As per Art. 13 of ANRS CIC Proclamation, they only meet up on calls where necessary to discharge the constitutional responsibility and as pursuant to Art.13 (1) of the ANRS CCI Proclamation, the CCI meet once in three months, except extra ordinary meeting called.
[122] The Federal HOF and CCI experience shows each organ separately prepare and submit their budget to the House of Peoples Representatives, and administer their own budget, up on approval. (A Proclamation to Consolidate the House of the Federation and the Definition of its Power and Responsibilities No. 251/2001 (HOF Proclamation), Art. 32; Federal Amended Council of Constitutional Inquiry Proclamation No. 798/2013, Art. 31(Federal CCI Proclamation)).
[123] ANRS CIC Proclamation, Art. 7. To this connection, the CCI issued directive that regulates the allowance of CCI members during meeting and they travel to carry out such functions. Accordingly, during the CCI meeting, the Chairperson should be getting eight hundred birr allowance and other members entitled to seven hundred birr allowance per day. When they travel from their residence to carry out the function of the institution their allowance is regulated by government appointees' directive. (*See* ANRS CCI members Meeting and Travel Allowance Directive No. 1/2016, Art. 3-5) (ANRS CCI members Allowance Directive).

member of each organ. Moreover, in the case of exiting their responsibility, except the Chairperson and the vice chairperson of CCI and three designated State Council members to CCI,[124] all appointed legal experts of CCI and all members of CIC are not entitled to get the rights and benefits of parting officials.

5.5. Abstract Claim by Local Governments

Abstract constitutional claim helps defend local government autonomy if dispute happens between the regional and local governments or among local government bodies regarding constitutionally guaranteed powers and functions.[125] It is also a better mechanism to protect the regional government organs' intrusion on the constitutionally guaranteed powers and functions of the Nationality Councils. However, the ANRS CCI law only empowers the State Council and regional executive bodies to submit an abstract case.[126] In other words, the power to submit abstract cases is centralized at the state level, which is only entitled to the regional legislature and executives.

The administrative hierarchies and Nationality Councils established by the regional Constitution such as Zonal, Woreda, and Kebele organs of government are not guaranteed to submit abstract reviews, at least, on their constitutionally guaranteed powers and functions. This could have enabled them to protect local governments' autonomy in the event of a conflict of interest that arises with a higher level of government.[127] Hence, the only way to challenge such kind of interference is

[124] Here, bearing in mind that, those members entitled to such right and benefits are not due to their membership of CCI, rather in the case of Chairperson and its Vice's, they are entitled being act as President and Vice President of ANRS Supreme Court and in the case of three State Council designated members to get such rights as per Art. 12-22 of the statute (*See* A Proclamation Issued to Provide for the Rights and Benefits of Out-going Government Senior Government Officials, Members of Parliament and Judges of ANRS No. 172/2010, Art. 12-32) (ANRS Outgoing Officials Proclamation).

[125] Reutter (n 3) 8; Marshfield (n 1) 1189.

[126] *See* ANRS CCI Proclamation, Art. 18(2C).

[127] *See* Revised ANRS Constitution, Art. 73-82 (Organization and powers of nationality administration), Art. 83-95 (Organization and powers of *Woreda* administration) and Art. 96-107 (Organization and powers of *Kebele* administration). Currently, this is not as such problematic due to all legislative and executive bodies are occupied by the ruling party, vertically and horizontally,

through empowered regional organs to claim for an abstract review. However, it is difficult to expect that the regional organ that has a big opportunity to intrude the constitutionally guaranteed organization and power of sub-regional structures will claim for the constitutionality of its own ruling.

5.6. Problem with Exhaustion of Local Remedy

Exhaustion of local remedy refers to situations where claims of violations of individual rights have to first be brought before the competent first instance tribunals, and these judicial remedies have been pursued, without success, as far as permitted by local law and procedures.[128] The rule of exhaustion of local remedies is one of the requirements for admissibility of constitutional complaints under the Ethiopian legal system. At the federal level, the exhaustion of local remedy is required for constitutional complaints and justiciable cases entertained by administrative organs.[129] Such exhaustion is not a precondition for cases entertained by regular courts. The Federal CCI law has not provided an exceptional circumstance where individuals bring their cases for constitutional review.

In some federations such as in the USA, Switzerland and Germany, it has to be checked by the top federal judiciary or constitutional court to avoid the risk of unconstitutional constitutional interpretation by states though diversity is still possible in state courts.[130] In the USA, for instance, the Federal Supreme Court can only review state court decisions when it violates the 'federal law'.[131] In Ethiopia, there is a federal law supremacy clause over state law in the FDRE constitution.

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and they can easily dispose of the issue by party channel. But, if the opposition parties win and start to administer a certain *Woreda*, the situation becomes a little bit problematic as bureaucracies became more stringent.

[128] Cesare P. R. Romano, *The Rule of Prior Exhaustion of Domestic Remedies: Theory and Practice in International Human Rights Procedures*, (T.M.C. Asser Press, 2013) 561.

[129] Federal CCI Proclamation, Art. 3(2b), 5(1).

[130] Celin Fercot, 'Diversity of Constitutional Rights in Federal Systems: A Comparative Analysis of German, American, and Swiss Law*' (*2008) 4 European Const L Rev 320.

[131] In USA, based on the doctrine of 'adequate and independent state ground', the Federal Supreme court has no jurisdiction to review a state decision which is adequately based on state grounds. However, the Federal Supreme Court can review state decisions when it violates the federal law. (Ibid, 318).

However, the FDRE Constitution adopts the doctrine of constitutional supremacy in which any law/acts or decision of government organ that contradicts with the constitution shall be null and void.[132] This indicates that, if the regional states constitutional review organ decides contrary to the federal constitution, the federal CCI/HOF has the mandate to correct such decision according to Articles 9(1), 62(1) and 84 (1) of the FDRE constitution.

In ANRS, the regional CCI law requires exhaustion of local remedies for the constitutional claim on cases decided by courts and outside of courts.[133] The law provides that the final decision is a decision where the case has been finally investigated and no appeal lies afterwards. The ANRS CCI Directive No. 2/2016 on Constitutional Interpretation Claim Procedure defined the term 'final decision' as limited to exhaustion before the regional government organ. However, the law doesn't incorporate exceptional grounds for exemption to the exhaustion of local remedies as applied in other jurisdictions and human rights conventions. Some of the instances where the applicant can get exemption from showing exhaustion of local remedies are: if local remedies do exist but they are very difficult to access; if no effective remedies exist; if tribunals refuse to administer justice or they are not independent and impartial or they render manifestly unfair judgments; and in case of urgent issues or unreasonable prolonging of cases. [134]

Sometimes, the delay in resolving a constitutional issue may have devastating consequences. It may even lead to denial of rights, such as election right at the time of election and other urgent issues. Unfortunately, the ANRS CCI/CIC laws have

[132] Muluken Kassahun 'The Relationship Between the Federal and Regional States' Constitutional Review System in Ethiopia: The Case of *Oromia* Regional State' (2018) 7 Oromia LJ 22.
[133] *See* ANRS CCI Proclamation, Art. 18(2b) and Art. 20(2). These provisions imply the exhaustion of local remedy applies to cases decided outside of courts, whereas the ANRS CCI Procedure of Constitutional interpretation applications, Admission, investigation and decision making directive No. 2/2016 (Art. 9 cum Art. 2(3)) extends exhaustion of local remedy, for constitutional complaint, to decisions given by three wings of government.
[134] Silvia D' Ascoli et. al., The Rule of Prior Exhaustion of Local Remedies in the International Law doctrine and its application in the Specific Context of Human Rights Protection (2007)13, EUI Working Papers LAW 2007/02 < http://ssrn.com/abstract=964195 > Accessed 25 January 2020.

failed to consider those issues. In this regard, the provisional remedies guaranteed in the civil procedure code, such as injunctions would partially fix/mitigate the legal lacuna based on requirements provided for each temporal remedy.[135]

5.7. Minorities' Rights Protection

Minorities usually, among others, demand recognition of their identity, forming a local government, fair representation, power, and resource sharing at various levels. [136] In this regard, the Revised ANRS Constitution grants sovereign power to the peoples of the ANRS. Accordingly, the regional constitution has framed the sovereign power of the region in a manner that accommodates diversity. In other words, the Revised ANRS Constitution assures the rights of ethnic minorities in the region. The constitution guarantees the establishment of a nationality council for indigenous minority nationalities of Awi, Oromo, and Waghimra, in addition to the subsequently recognized ethnic groups of Argoba and Kimant. Currently, there are five ethnic local governments that are established in ANRS regional state.[137]

The Revised ANRS Constitution further mandates the CIC to be composed of representatives of each ethno-national group.[138] Currently, ethnic groups of Argoba (1), Awi (12), Oromo (8), and Waghimra (8) are represented in the CIC of 172 members,.[139] Such recognition is crucial to balance the interests of the majority and minority ethnic groups of the region. Minorities will have the chance to defend/present their concerns on matters affecting their particular interests. However, without giving each minority veto powers, particularly on matters that directly affect their interests, such representation only becomes symbolic.

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[135] For instance, *see* Art. 154-159 of the 1965 Ethiopian Civil Procedure code in the case of temporary injunctions.
[136] Assefa Fisseha, 'Intra-Unit Minorities in the Context of Ethno-National Federation in Ethiopia' (2017) 13 Utrecht L Rev 170.
[137] Ibid
[138] Revised ANRS Constitution, Art. 70 (1).
[139] On file with the author (however, the file doesn't show whether the *Kimant* is represented in the CIC, who recognized as a new ethnic group recently).

Moreover, the above representation is not all-inclusive, as non-indigenous ethnic groups have no guarantee to be represented in the CIC.[140]

Some Practical cases regarding constitutional interpretation in ANRS

Among limited number of cases brought before the ANRS CCI, only one appeal case was decided by CIC. This case was between Bahir Dar City Development and Construction office and Bruhans Beauty Salon and Training PLC.[141] The constitutional claim was brought by Bahir Dar City Development and Construction office against Bruhans Beauty Salon and Training PLC (the respondent). The Case was initially started at Bahir Dar city First Instance Court. The base of the claim is the agreement between officials of the claimant with the respondent to transfer urban land lease holding through negotiation, contrary to the regional construction bureau's order of transferring such land via auction. For this, the latter sent a letter to quash the contract between the parties. The respondent opened a suit at Bahir Dar city First Instance Court to deliver the landholding according to their contract. The court decided in favor of the claimant by reasoning the contract of land lease holding is void as it is formed contrary to the regional government's order.

The respondent appealed to the City's high court and the court reversed the decision of the lower court and decided in favor of the respondent arguing that the contract was formed based on relevant regional and federal laws that allow the transfer of urban land lease holding through negotiation. The claimant appealed to the regional Supreme Court and federal Supreme Court cassation bench in which

[140] Indigenous minorities are those ethnic groups that have traditionally lived in the territory of the region. The non-indigenous groups are considered to be those groups that have migrated to the region and that are indigenous to another region. Indigenous minorities have a right to their own sub-regional territorial administration and a representation in the regional institutions including in the constitutional interpreting organ. However, non-indigenous minorities do not enjoy such specific protection in the region, and they can merely claim individual rights. (Christophe Van der Beken, 'Federalism, Local Government and Minority Protection in Ethiopia: Opportunities and Challenges' (2015) 59 J Afr L 161).

[141] *Bahir dar City Development and Construction office v Bruhans Beauty Salon and Training PLC* [2017], ANRS CIC Decision 01/2009 [2017].

both confirmed the state high court's decision. Finally, when the respondent opened an execution of judgment file at Bahir Dar city first instance court, the claimant alleged that the decision is contrary to Art. 40 (3) and 40 (6) of the regional constitution and requested a judicial referral to the regional CCI.[142] The court rejected the case by invoking that, there is no constitutionality issue to be entertained at an execution stage. But, the claimant appealed the case to ANRS CCI.

The CCI rejected the case by reasoning that there is no constitutionality issue based on the invoked constitutional provision. Concerning the procedure of transfer of the landholding, Art. 4(2) of the former Federal urban land lease proclamation No. 272/2002 and Art. 4 of regional regulation No. 6/2002 allow the transfer of land lease holding through negotiation and auction. Hence, transferring of land lease holding through negotiation is legally guaranteed at the time. The CCI reasoned that disregarding the order of higher officials doesn't entail constitutionality issues. The claimant, finally, appealed to the regional CIC, but the CIC also confirmed the decision of CCI.

The summary of the case indicates that the court executing the decree rejected the constitutionality issue based on the justification that a final decision has been rendered by the federal Supreme Court cassation bench and files opened for the execution of judgment are not subject to constitutional review. On the other hand, the ANRS CCI and CIC rejected the case by examining the merit of requested constitutional provisions. This raises the following main issues. Can a litigant party claim for the constitutionality of an issue at stage where the judgment has reached the stage of execution? Can the final decision of federal Supreme Court cassation

[142] The invoked constitutional provisions read as follow; 'Art. 40- The Right to Property…3. The right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the state and the people as a whole. Land is a common property of the peoples of the regional state and hence shall not be subject to sale or to other means of exchange.
6. Without prejudice to the people's right to the ownership of land, the regional state shall ensure the right of private properties to the use of land on the basis of payment arrangements established by law.'

be subject to regional constitutional review? Are the constitutional provisions invoked for constitutional interpretation relevant to the issue?

Concerning the first issue, the court executing the decree rejected the case by assuming that the final decision of the court at the execution stage is not subject to constitutional review. The CCI and CIC decisions did not address whether the final decision at execution stage is subject to constitutional review or not. In fact, after the final decision, the CCI law allows claiming constitutional review directly to CCI for individuals who allege their fundamental rights and freedoms have been violated.[143] In other words, the constitutionality claims by a legal person, including the claimant (Bahir Dar City Development and Construction office), after the final decision is not expressly recognized. However, the CCI law is empowered to investigate requests that any decision contravenes with the constitution.[144] Moreover, the CCI law entitles the interested party to present his request of constitutional interpretation to the court handling the case irrespective of the stage of the case (whether hearing or execution) and if the court rejected the claim, the party can submit his/her request to the CCI within the prescribed period.[145]

Concerning the Federal Supreme Court Cassation bench (FSCCB) decision, the court executing the decree indirectly assumed that a final decision rendered by the FSCCB is not subject to regional constitutional review. But, the regional CCI and CIC decision only examines the constitutionality of the Bahir Dar City Development and Construction office transfer of land lease holding through negotiation without touching upon the decision of the FSCCB decision. Basically, there is controversy among scholars on the cassation power of the federal Supreme Court over cassation bench decisions of regional state Supreme Courts, especially in the context of their constitutionality and compatibility with the overall federal

[143] ANRS CCI Proclamation, Art. 20.
[144] Ibid, Art. 18.
[145] Ibid, Art. 19.

system.[146] In the above case, even if the decisions of the regional CCI and CIC indirectly confirm the decision of FSCCB, the action indicates the possibility of regional constitutional review organs to review FSCCB's decision of cassation over cassation. In doing so, the regional CCI/CIC considers whether the constitutional claim is based on the regional constitution or not.

Concerning the merit of the case, the court executing the decree did not examine the claimed constitutional provision to reject the request. The CCI/CIC investigated and rejected the case, mainly, based on the textual principle of constitutional interpretation. In entertaining the case, the CCI and CIC did not hear the response of the other party (judgment creditor).[147] The decision of CIC confirmed the decision of CCI. It is agreeable that there is no constitutionality issue in the case. Because there is a mismatch between the constitutional provisions requested for review and the fact of the case. Art. 40 (3) and 40 (6) of ANRS constitution deal with public and state ownership of land, the prohibition of land sale, using of the land based on payment established by law, whereas the constitutional claims base is the land lease holding transferred to the respondent through negotiation, contrary to regional bureau order to transfer through auction. The relevant federal and regional laws recognized auction and negotiation as a means to permit urban land lease holding. However, each law doesn't differentiate the circumstances and authority to decide whether the land lease holding permit is either given through negotiation or auction.[148]

Bahir Dar City Development and Construction office (claimant) officials violated superior order rather than constitutional and legal provisions. The respondent should not be liable for the claimant's official failure to observe superior order.

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[146] *See* Muradu Abdo, 'Review of Decisions of State Courts over State Matters by the Federal Supreme Court' (2007) 1 Mizan L Rev 60; Mehari Redae, 'Cassation over Cassation and its Challenges in Ethiopia' (2015) 9 Mizan L Rev 175.

[147] The opportunity to be heard is based on the discretion of CCI/CIC and it is not available as a right.

[148] Re-enactment of Federal Urban Lands Lease Holding Proclamation No. 272/2002, Art. 4 (2); ANRS urban Land Lease Holding Execution Regulation No. 6/2002, Art. 4.

This case further indicates tthe need to regulate the problem of forum shopping, which disputant parties may use the plurality of jurisdictional options of cassation over cassation and regional constitutional review to affect the outcome of a lawsuit in one's favor.

Conclusion

This paper has attempted to address the extent of ANRS constitutional review system in ensuring the regional constitutional supremacy at the state level. The organs entrusted with constitutional interpretation (ANRS CCI and ANRS CIC) are functionally attributed to the centralized constitutional review approach, whereas structurally characterized by the political review model. The winners of periodical elections establish their own constitutional adjudicators. Moreover, deficits in the institutional structure, manpower composition and financial capacity of these organs may make that supremacy lies not with the regional constitution but with the political group that controls government power. The system itself is not only designed to be part of and work in harmony with political organs but also the law leaves no room for the judiciary to entertain constitutional matters.

In the absence of effective constitutional control design that can actually limit the exercise of power, the notion of rule of law, check and balance, protection of fundamental rights and freedoms of citizens guaranteed in the constitution became an empty promise or constitutional poetry. Actually, the case disposed by the regional CCI/CIC is a good starting point to entertain cases. Even if the regional government and the claimant have interest on the outcome of the case, the CCI and CIC decided against them based on fact and regional constitution. However, impartiality and competency of the organs have not been brought to test by this single case. The case, instead, indicates the need to regulate the problem of forum shopping that parties may happen due to a plurality of jurisdictions between federal and state organs.

Therefore, the real progress that needs to be undertaken should be reforming the institution in conforming independent and competent constitutional adjudicators that perform their functions regularly. Regular courts should be empowered to review the constitutionality of subordinate legislations. The power and function of the constitutional review organ should also be extended to rendering an advisory opinion on the draft law and receiving abstract claims from local government on their constitutionally guaranteed powers. The law should also provide further guarantees for minorities and more specific provisions towards the exhaustion of local remedies with its possible exceptions.

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አልዩ አባተ ይማም*

Abstract

One of the main manifestations in the pluralistic aspect of the Ethiopian legal system is the adjudication of disputes arising from personal and family relationships in accordance with sharia law. Sharia courts of the country have a long existence in the country's justice alongside regular courts for over half a century. The personal and family laws of Sharia as well as its general legal framework has been developed by two legal disciplines of Islam i.e. Usul al-Fiqh (Islamic Jurisprudence) and Fiqh (Islamic law). These two fields of law are developed by the schools of law (Madhahib) of Sharia that have been evolving and contributing since the formative periods of Sharia law. Since the late 19th century, a wave of contemporary Sharia jurists have arisen across the world bringing new insights to the Sharia jurisprudence, besides the intellectual legacy of Madhhabs for fourteen centuries. As a response to the long entrenched problem of blind following of Madhhabs (Taqlid) and the coming into decay of original thought in the intellectual and legal tradition of the Muslim civilization, the modern day jurists and leaders of Muslim communities have introduced various educational and structural reforms to the understanding and application of Sharia law in the modern period. Such reforms include the compilation of Fiqh Encyclopedias which made access to the widely dispersed corpus of Fiqh ruling cross Madhahib's legal literature. Further, the 19th and 20th century reform movements have brought about the establishment of national and international Islamic Law Academies which have engaged in pronouncing rulings on the most controversial Fiqh issues of the time. The content and approach to the study of Sharia law has been advanced in a way that nourish fresh jurisprudential thought. This has contributed to the unified interpretation of Sharia law in Muslim communities across the world. Such new developments in the discourse of Sharia law would provide a good example for national jurisdictions like Ethiopia where application of Islamic law needs to be informed by the prevailing national and local realities.

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አህጽሮተ-ጽሑፍ

የኢትዮጵያ የፍትሕ ሥርዓት የብዝኃነት አይነተኛ መገለጫዎች መካከል አንዱና ዋነኛው ሸሪዓ ፍ/ቤቶች ከመደበኛው የፍትሕ ሥርዓት በተጓዳኝ የግልና የቤተሰብ ግጭቶችን በሸሪዓ ሕግ አማካይነት እልባት እየሰጡ መገኘታቸው ነው፡፡ የሸሪዓ ሕግ ሲባል ሁለት መሠረታዊ ክፍሎችን ሊወክል ይችላል፤ እነሱም የሕግ መርሆዎች *(ኡሱል አል-ፊቅሕ)* እና ዝርዝር ሕግጋት *(ፊቅሕ)* ናቸው፡፡ ጠቅላላ የሸሪዓ የሕግ መርሆችንና ዝርዝር የግልና የቤተሰብ ሕጎችን በማዳበር ረገድ፣ ጥንታዊ አነሳስ ያላቸው የሱኒ እና የሺዓ የሕግ ት/ቤቶች ቀዳሚና ሰፊ ድርሻ አላቸው፡፡ ከ19ኛው መቶ ክፍለ-ዘመን ማብቂያ በኋላ የተነሱ የቅርብ ዘመን የሸሪዓ ምኑራን ደግሞ የቀደመውን የሕግ እውቀት አሻራ ተቀብለው ሸሪዓ የዘመኑን መስሊም ማሕበረሰብ ተጨባጭ እውነታዎች መሠረት ያደረገ ቅርጽ እንዲኖረው፣ ለሚነሱ አዳዲስ የሕግ ጥያቄዎች ምላሽ እንዲሰጥና ችግር ፈቺ መሆን ይችል ዘንድ፣ በነባሩ የሸሪዓ ፍልስፍናዎችና ዝርዝር ሕጎች ላይ ምርምር *(ኢጅቲሓድ)* በማድረግና አዲስ ምልከታዎችን በማቅረብ ላይ ይገኛሉ፡፡ በተጨማሪም በቀደመው የሙስሊሙ ዓለም ሥነ-እውቀታዊ ባህል ውስጥ ሥር ሰዶ እሰካለንበት ዘመን ድረስ የዘለቀውን የጭፍን ተከታይነት *(ተቅሊድ)* እና የሕግ እሳቤ ትምህርት ቤቶችን ወገንተኝነት ችግር በዓለም-አቀፉ የሙስሊም ሥልጣኔ ላይ የደረሰ ትልቅ ቀውስ መሆኑን በመገንዘብ ይህን ችግር ለመቅረፍ ተቋማዊ እና የተቀናጀ ጥረቶችን በማድረግ ላይ ይገኛሉ፡፡ ከእነዚህም ጥረቶች መካከል፣ ተደራሽነታቸውን ለማረጋገጥና ቡድናዊ የእሳቤ ውስንነትን ለመቅረፍ ይቻል ዘንድ በተለያዩ የሕግ ት/ቤቶች እና ሊቃውንት ድርሳናት ውስጥ ተበታትኖ የሚገኘውን ሸሪዓዊ የሕግ ብይኖች ማጠናቀር፣ የሸሪዓን ተገማችነት ለማረጋገጥ እንዲሁም የጋራ የሸሪዓ አረዳድ እና አፈጻጸም ሊያዝባቸው በሚገቡ፣ እና የብዙሓኑን አማኝ ማህበረሰብ በሚያወዛግቡ ጭብጦች ላይ ወጥ ብይን ማሰተላለፍ ይቻል ዘንድ ብቁ የሸሪዓ ሊቃውንት ያቀፉ ምክር-ቤቶችን በሃገር፣ በክፍለ-አህጉር እና በዓለም-አቀፍ ደረጃ በማደራጀት፣ ገለልተኛና ሳይንሳዊ የጥናት ዘዴን የሚከተሉ የከፍተኛ ትምህርት ተቋማት አካል የሆኑ እንዲሁም ራሳቸውን የቻሉ የሸሪዓ ጥናት ማዕከላትና ተቋማትን ማቋቋም፣ ተጠቃሽ ዘመነኛ እድገቶች ናቸው፡፡ እነዚህ ዓለም-አቀፍ የሸሪዓ ተሃድሶ ምሁራዊ ንቅናቄዎች፣ ሸሪዓ በፍ/ቤቶች እና በሃገራችን ሊቃውንትና ማህበረሰብ በሚተገበርበት አግባብ ውስጥ ሃገራዊ እውነታዎችና የአስተሳሰብና የሥልጣኔ ደረጃዎች ታሳቢ ያደረገ መሰል ሃገራዊ የሸሪዓ አረዳድ እና የአተገባበር ማሻሻያዎችን እውን ለማድረግ ትምህርት ሊወሰድባቸው የሚገቡ መልካም ተሞክሮዎች ናቸው፡፡

ቁልፍ ቃላት

የሕግ ብዝኃነት፣ ሸሪዓ፣ *ፊቅሕ*፣ *ኢጅቲሓድ*፣ የሕግ ምርምር፣ *መጅተሒድ*፣ ዘመነኛ እድገቶች

1. መግቢያ

የዚህ ጽሑፍ ርዕሰ-ጉዳይ ለኢትዮጵያ የሕግና ፍትሕ ሥርዓት ያለዉ አግባብነትና ፋይዳ ምንድን ነው የሚል ጥያቄ የተነሳ እንደሆነ፣ ምላሹ የሸሪዓ ሕግና ፍ/ቤቶች ከሃገሪቱ የሕግ ሥርዓት ጋር ባላቸው ትስስር እና አግባብነት ላይ የተመረኮዘ ይሆናል። በኢፌዲሪ ሕገ መንግሥት አንቀጽ 34 እና 78 መሠረት፣ የግል እና የቤተሰብ ግጭቶች፣ በባህላዊ እና ሃይማኖታዊ ሕጎች መሠረት እልባት ሊሰጣቸው እንደሚችል፣ እንዲሁም ተቋማዊ አመሠራረታቸውን እና አደረጃጀታቸውን በተመለከተ፣ ሃይማታዊ እና የባህል ፍ/በቶችን እንደ አስፈላጊነታቸው በሕዝብ ተወካዮች ምክር ቤትና የክልል ምክር ቤቶች እውቅና ሊሰጣቸውና ሊቋቋሙ እንደሚችሉ ይገልጻል።[1] የሕግ አውጪ አካላት ውሳኔ እንደተጠበቀ ሆኖ፣ በእነዚህ ድንጋጌዎች ላይ ተንተርሶ ልዩ ልዩ የባህል እና የሃይማኖት ፍ/ቤቶች ሊቋቋሙ እና ከመደበኛው ፍርድ ቤቶች በተጓዳኝ፣ የግልና የቤተሰብ ጉዳዮችን ሊዳኙ የሚችሉበት፣ እና በሃገሪቱ የሕግና ፍትሕ ሥርዓት ውስጥ የሕግ ብዝኃነት ሊሰፍን የሚችልበት ሰፊ ሕገ-መንግሥታዊ ማዕቀፍ እንዳለ መረዳት ይቻላል። በኢትዮጵያ የሕግ ብዝኃነት መድረክ ላይ፣ ከግማሽ ምዕተ-ዓመት በላይ መንግሥታዊ እውቅና አግኝተው ከመንግሥት ፍ/ቤቶች ጎን-ለጎን ተሰልፈው የብዛኃነቱ ተዋናይ ለመሆን የቻሉት ሸሪዓ ፍ/ቤቶች ብቻ እንደሆኑና፣ ሌሎች ሃይማኖታዊ የባህል ፍ/ቤቶች ባለፉት ዓመታት ውስጥ ተቋቁመው የሰሩበት አጋጣሚ የሌለ መኖሩ የታወቀ ነው።

በኢትዮጵያ የሕግ ሥርዓት ታሪክ፣ ሸሪዓ ፍ/ቤቶች ከዘዉዳዊው የሐይለ-ሥላሴ ዘመነ-መንግሥት በፊት ተቋቁመው ሲሰሩ እንደነበረ የሕግ ታሪክ ድርናት ያስረዳሉ።[2] ሆኖም የመጀመሪያውን ሕጋዊ እውቅና ያገኙት በዘውዳዊው የአገዛዝ ዘመን፣ በ1934 በወጣው የቃዲ ፍ/ቤቶች ማቋቋሚያ አዋጅ ቁጥር 2/1934 አማካይነት ነው። በኋላም በቃዲዎችና የናኢባ ምክር ቤቶች አዋጅ ቁጥር 62/1936 አማካይነት እንደገና ተደራጅተዋል። ከዚህ ጊዜ ጀምሮ፣ በፍ/ቤቶቹ አደረጃጀትም ሆነ በአሰራራቸው ላይ ለውጥ ሳይደረግባቸው፣ ንጉሳዊ ሥርዓቱን ተሻግረው፣ በደርግ አገዛዝ ዘመን ሲሰሩ ከቆዩ በኋላ፣ በ1987 ዓ.ም የኢፌዲሪ ሕገ-መንግሥት ሲጸድቅ፣ የሸሪዓ ፍ/ቤቶችን ሕጋዊ አቋም የሚያጠናክሩ፣ ከላይ የተጠቀሱት አንቀጾች የሰነዱ አካል ተደረጉ። በዚህ ረገድ፣ ሸሪዓ ፍ/ቤቶች የፌዴራል ሕገ-መንግሥቱ ሥራ ላይ ከመዋሉ በፊት በመንግሥት እውቅና አግኝተው ሲሰራባቸው የነበሩ በመሆኑ፣[3] ለፍ/ቤቶቹ እውቅና መስጠትና ማደራጀት በፌዴራሉ እና በክልል ሕግ

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[1] የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ (ኢፌዲሪ) ሕገ-መንግሥት፣ 1987 ዓ.ም፣ ፌዴራል ነጋሪት ጋዜጣ፣ ቁጥር 1፣ አንቀጽ 34(5) እና 78(5)።

[2] Mohammed Abdo, Legal Pluralism, Sharia Courts, And Constitutional Issues In Ethiopia, *Mizan Law Review*, Vol. 5 No.1, 2011, p. 78፣ በተጨማሪም፣ ዛኪ ሙስጠፋ፣ በኢትዮጵያ ውስጥ በሚገኙት የእስላም ፍርድ ቤቶች የሚሰራበት ሕግ፤ ለሸሪዓ ሕግ በሥራ ላይ መዋል መቀጠል ምክንያት የሆኑ ነገሮች፣ የኢትዮጵያ ሕግ መጽሔት፣ ቅጽ 9፣ ቁጥር 1፣ 1965፣ ገጽ 173 ይመለከቷል፡

[3] የፌዴራል ሸሪዓ ፍርድ ቤቶችን አቋም ለማጠናከር የወጣ አዋጅ ቁጥር 188/1992 ዓ.ም፣ መግቢያ፣

አውጪ አካላት ላይ የተጣለ ሕገ-መንግሥታዊ ግዴታ ተደርጓል።[4] ባህላዊና ሃይማኖታዊ ፍ/ቤቶችን ማቋቋም፣ በሕግ አውጪ አካላት ይሁንታ ላይ የተመሠረተ እንደመሆኑ፣ ከሕገ-መንግሥቱ መጽደቅ በፊት መንግሥታዊ እውቅና የነበረው የዳኝነት አካል ሸሪዓ ፍ/ቤቶች ብቻ በመሆናቸው፣ አቋማቸው ወይም ሕልውናቸው በሕግ አውጪዎቹ ፈቃድና ውሳኔ ላይ የተመሰረተ ሳይሆን፣ ራሱ ሕገ-መንግሥቱ እውቅና የሰጣቸው መሆኑ[5] ወደፊት ሊቋቋሙ ከሚችሉ ሌሎች የሃይማኖት ወይም የባህል ፍ/ቤቶች የተለየ ያደርጋቸዋል።

የሸሪዓ ፍ/ቤቶችን አቋም በተመለከተ፣ በሕገ-መንግሥቱ የተጣለውን ግዴታ መሠረት በማድረግ፣ የፌዴራሉ ፓርላማ እና የክልል ምክር ቤቶች፣ የሸሪዓ ፍ/ቤቶችን አቋም የሚያጠናክሩ አዋጆች *(Consolidation Proclamations)* አውጥተው፣[6] ልክ እንደ መደበኛ ፍ/ቤቶች ሁሉ፣ ባለ ሦስት እርከን መዋቅር ይዘው፣ የመጀመሪያ፣ ከፍተኛ እና ጠቅላይ ሸሪዓ ፍ/ቤት በሚል ተዋረድ፣ በአገሪቱ ዙሪያ በመስራት ላይ ይገኛሉ።[7]

በፌዴራል ሸሪዓ ፍ/ቤት ማጠናከሪያ አዋጅ አንቀጽ 4 ላይ እንደተገለጸው፣ ለሸሪዓ ፍ/ቤቶች የሚቀርቡ የግልና የቤተሰብ ጉዳዮችን ለመፍታት ተፈጻሚ የሚሆነው የሸሪዓ ሕግ ነው። ሸሪዓ፣ ከዓለማዊ የፍትሕ እሳቤ በተለየ፣ በኢስላም የሃይማኖት ማዕቀፍ ሥር ያለ፣ መለኮታዊ መሠረት ያለው የሕግ ሥርዓት ነው።[8] ሸሪዓ ሲባል ሁለት የሕግ ክፍሎችን ሊወክል ይችላል፤ *አሱል አል-ፊቅሕ* እና *ፊቅሕ*። *አሱል አል-ፊቅሕ* ለዝርዝር የሸሪዓ ሕግጋት መሠረት የሆኑ ጥቅል የሕግ መርሆዎችን የሚመለከት እና የሚያጠና የእውቀት መስክ ሲሆን፤ *ፊቅሕ* ደግሞ በልዩ ልዩ የሰው ግለሰባዊና ማህበራዊ እንዲሁም ሃገራዊ ጉዳዮችን የሚገዙ ዝርዝር ሕግጋትን የሚመለከት የጥናት ዘርፍ ነው።[9] እነዚህ ሁለት የኢስላም የሕግ ሳይንሶች፣ የራሳቸው የሆነ የረዥም ምዕተ-ዓመታት የምርምር እና የሥነ-ጽሁፍ እድገት ያላቸው ሲሆን፣ በዓለም ዙሪያ በሚገኙ የሙስሊም ሃገራት ውስጥ፣ በተለያየ ደረጃ ተፈጻሚ ሲደረጉ የነበሩና እና በመደረግ ላይ ያሉ በመሆኑ፣ በንድፈ-ሐሳብ ደረጃም ሆነ ተጫባጭ ሕብረተሰባዊ ችግሮችን በመፍታት ረገድ፣ ጥልቅና የዳበረ የእውቀት እና የተሞክሮ አሻራ ያላቸው ኢስላማዊ የሕግ ጥናት መስኮች ናቸው።[10]

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[4] የኢፌዲሪ ሕገ-መንግሥት፣ አንቀጽ 78(5)

[5] ዝኒ ከማሁ

[6] ለምሳሌ፣ በፌዴራሉ ፓርላማ የወጣው የሸሪዓ ፍ/ቤቶች አዋጅ፣ የፍርድ ቤቶቹን አቋም ለማጠናከር የወጣ እንጂ ማቋቋሚያ አዋጅ እንዳልሆነ ከአዋጁ አጭር ርዕስ (አንቀጽ 1)፣ ‹‹የፌዴራል ሸሪዓ ፍርድ ቤቶችን አቋም ለማጠናከር የወጣ አዋጅ ቁጥር ፩፻፹፰/፲፱፻፺፪›› መረዳት ይቻላል።

[7] የፌዴራል ሸሪዓ ፍ/ቤቶች አቋም ለማጠናከር የወጣ አዋጅ፣ አንቀጽ 3 ይመለከቷል።

[8] Muhammad Hashim Kamali, The Sharia: Law as the Way of God, in Vincent J. Cornell (ed.), Voices of Islam (5 vols.), vol I: Voices of Tradition, Wesport, CT: Praeger Publishers, 2007, p. 149.

[9] Mohammad Hashim Kamali, *Sharia Law: An Introduction*, (Oxford:Oneworld Publications, Oxford, 2008), pp. 40-41

[10] Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, (Cambridge:The Islamic Texts Society, 1991), pp. xi-xvii. See also: kamali, Sharia law, supra note 9, pp. 249-250

ሸሪዓ፣ በኢፌዲሪ ሕገ-መንግሥት በተፈቀደው የተፈጻሚነት ወሰን ውስጥ በመሆን፣ ለግልና የቤተሰብ ዝርዝር ሕግጋት አረዳድ እና አተገባበር መሪ መርሆዎችን በመርሆ ማዕቀፉ በአሱል አል-ፊቅሕ አማካይነት ይዘረጋል። ዝርዝር የግልና የቤተሰብ ድንጋጌዎችን በተመለከተ፣ ቀዳሚ የሸሪዓ ምንጮች በሆኑት በቁርአንና ሱናሕ[11] ውስጥ የተካተቱ ጥቅል የሕግ መርሆዎች እና ልዩ ድንጋጌዎች ላይ በመመርኮዝ፣ በቀደምት እና የዘመኑ የሸሪዓ ሊቃውንት የተለያየ አተረጓጎም ሲሰጣቸው ቆይቷል። የሕግ አረዳድ ልዩነት *(ኢጅቲሓድ)*፣ ከጥንትም ከሸሪዓ አነሳስ ጀምሮ በግለሰብ ሊቃውንት እና በቡድን (ት/ቤቶች- *መዛሂብ)* ደረጃ ሲንጸባረቅ የኖረ፣ አይነተኛ የሸሪዓ መገለጫ ነው።[12] በኢትዮጵያ ሸሪዓ ፍ/ቤት እየቀረቡ ያሉ የቤተሰብ ግጭቶችን ለመፍታት ተፈጻሚ የሚደረጉትን የሸሪዓ ሕግ መርሆዎች *(አሱል አል-ፊቅሕ)* እና ዝርዝር የቤተሰብ ሕግጋትን *(ፊቅሕ)* ከማጥናት በፊት፣ የእነዚህን የጥናት መስኮችን ታሪካዊ ዳራ እና የወቅቱን ጠቅላላ የእድገት ደረጃቸውን ማወቅ፣ የሸሪዓ መርሆዎችንና ድንጋጌዎች በተገቢው መንገድ ለመረዳትና ተፈጻሚ ለማድረግ እጅግ አስፈላጊ ነው። በተቃራኒው፣ የሸሪዓን ጠቅላላ እድገት፣ የሕግ ት/ቤቶች ሊመሰረቱና ሊዳብሩ የቻሉበት ዓላማ፣ እና የእርስ-በርስ ግንኙነታቸውን በቅጡ አለመገንዘብ፣ በ*መዛሂብ* አማካይነት የዳበረውን የግልና የቤተሰብ የ*ሥረ-ነገር* ሸሪዓ ሕጎች *(Substative Laws of the Sharia)* በተሳሳተ እና ግልብ አረዳድ ተግባራዊ እንዲሆኑ የሚያደርግ አብይ ምክንያት ነው።[13]

ይህ ጽኑፍ የሸሪዓ ሕግ መሠረት ከተጣለባቸው ጥቂት አስርተ ዓመታት እና በመካከለኛው የሙስሊም ሥልጣኔ ዘመናት በተመዘገበው የሸሪዓ እድገት በወፍ በረር ከማስቃኘት ጀምሮ ባለፉት መቶ ዓመታት ዉስጥ የተስተዋሉ ቁልፍ ሸሪዓዊ ኩነቶችን አደራጅቶ የሚያብራራ ሲሆን፣ እነዚህ ኩነቶች ለጠቅላላው የሸሪዓ እድገት ካላቸው ታካይነት፣ እና በዚህ ረገድ ለኢትዮጵያ ሙስሊም ሕብረተሰብ የሸሪዓ እውቀት አሻራ ካላቸው አሰተምህሮት በተጨማሪ በኢትዮጵያ እየተሰራበት ላለው የሸሪዓ ፍትሕ ሥርዓት ባላቸው አግባብነት እና አንድምታ ላይ ምልከታዎችን ያካተተ ትንታኔ ያቀርባል።

2. የሸሪዓ ታሪካዊ አነሳስ እና ቀዳሚ እድገቶች ታሪካዊ ቅኝት

የሸሪዓ ሕግ ታሪካዊ እድገት ከተለያዩ ታሳቢዎች እና አተያዮች አኳያ ተፈርጆ ሊተነተን ይችላል። ከነዚህ ታሳቢዎች መካከል፣ አንዱ ለእድገቱ ቁልፍ ሚና የተጫወቱ ሊቃውንትንና እና የእሳቤ ትምህርት ቤቶችን የታሪካዊ አቀራረቡ እንደ ዋነኛ አምዶች በመውሰድ ትምህርት ቤቱ የነደፏቸውን ወይም ያዳበሯቸውን የሕግ አተረጓጎሞችን

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[11] ቁርአንና *ሱናሕ* በመለኮታዊ ራዕይ የተገለጹ መለኮታዊ የሸሪዓ ምንጮች ሲሆኑ፣ ቁርአን በቃሉም ሆነ በሐሳቡ ፍጹም መለኮታዊ የሆነ የፈጣሪ ቃል ሲሆን፣ *ሱናሕ* ደግሞ መልዕክተኛ እና ለሰው ልጅ አርዓያ ሆነው የተመረጡትን የመጨረሻውን የአምላክ ነቢይ፣ የሙሀመድ ኢብን ዓብዲላሕ ንግግሮችና ተግባራትን የሚወክል ቃል ነው። የነቢዩ *ሙሀመድን* ንግግሮችና ተግባራት የተላለፉባቸው ዘገባዎች ደግሞ *ሀዲስ (አሃዲስ)* ይባላሉ። Kamali, *Principles*, supra note 10 , pp. 14-44 *ይመለከቷል*።

[12] Kamali, Sharia Law, supra note 9, p. 9.

[13] Ibid, p. 10

መዳሰስ አንደኛው አቀራረብ ነው። ሆኖም የዚህ አይነትና በዘርፉ ሥነ-ጽሁፍ በስፋት የምናገኛቸው እና መሰል የሸሪዓ ሕግ ታሪክ እድገት ዳሰሳዎች ሸሪዓን እንደ አንድ ወጥ የሕግ ሥልጣኔ በመውሰድ፣ ቁልፍ ታሪካዊ ኩነቶችን የራሱ የሸሪዓ እድገቶች አድርጎ ከማቅረብ ይልቅ በሊቃውንትና የሕግ እሳቤ ትምህርት ክፍሎች አስተዋጽኦዎች አድርጎ ማቅረብ፣ እንዲሁም ማህበረሳባዊ እውነታ መለወጥ እና የእውቀት አስፈልጎት አኳያ ጊዜና ሒደት የወለዳቸው የሕግ እሳቤ ውጤቶች ሳይሆን አንዱ ከሌላው አንጻር እተገናዘበ እና እየተሃየሰ የሚቀርብበት አካሔድ ነባሩን የእሳቤ ወገንተኝነት እና የጭፍን ተከታይነት ባህል የሚያጠናክር በመሆኑ ደካማ አቀራረብ ነው። ስለሆነም የሸሪዓ ሕግ እድገቶች ታሪክ አቀራረብ ለአንድ ሊቅ ወይም የእሳቤ ቡድን አቋምና አተያይ አጽንኦት በሚሰጥ አኳኋን ሳይሆን ኩነቶቹ ባላቸው የእድገት ምንነት ተተንትነው፣ ገለልተኛና ወሳኝ በሆኑ ርዕሶች ስር ተጠቃለው፣ የራሱ የሸሪዓ እድገቶች ተደርገው መቅረብ ይኖርባቸዋል። ተጻራሪ የእድገት ኩነቶች ቢያጋጥሙ እንኳ የሸሪዓው የሐሳብ ብዝሓነት አካል ተደርገው የሚቀርቡበት ዘዴ ገንቢ እና በርዕሰ-ጉዳዩ ላይ ነጻና ገለልተኛ ግንዛቤን የሚያስጨብጥ መሆኑ ሊስተዋል የሚገባው ነጥብ ነው።

በሙስሊም ማህበረሰቦች ውስጥ የሸሪዓን አዎንታዊም ሆነ አሉታዊ እድገት አቅጣጫ ወሳኝ ኩነት የሆነው አመክንዮኣዊ እሳቤ *(ኢጅቲሓድ)* ባለው የትግበራ ደረጃ ነው። ስለሆነም ከዚህ ቁልፍ ሸሪዓዊ ኩነት አኳያ የሸሪዓ እድገት በሁለት ጥቅል የእድገት ምዕራፎች ተከፍሎ ሊታይ ይችላል። የመጀመሪያው ምዕራፍ ሸሪዓ ከተጠነሰሰበት፣ ከነቢያዊ የተልዕኮ ዘመናት፣ በተለይም ቁርኣናዊ ድንጋጌዎችና መርሆዎች መውረድ ከጀመረባቸው የመዲና ዓመታት ጀምሮ የኢጅቲሓድ ሥልጣኔ እየተዳከመ በምትኩ የጭፍን እሳቤና ተከታይነት *(ተቅሊድ)* ባህል እያደገ መጥቶ በ11ኛው ምዕተ-ሒጅራ መጨረሻ ገደማ የሙስሊሙ የእውቀት ሥልጣኔ አይነተኛ መገለጫ *ተቅሊድ* እስኪሆን ድረስ ያለውን ዘመን ይሸፍናል። በዚህ የሸሪዓ እድገት ምዕራፍ ላይ የመጀመሪያዎቹ ሦስት ምዕተ-ዓመታት በመለኮታዊ ራዕይ አማካይነት የሕግ መርሆዎች እና ጥቂት ዝርዝር ድንጋጌዎች የወረዱበት ሲሆን፣ በእነዚህ ሁለት ዐስርት ዓመታት ውስጥ ከነቢዩ ሙሀመድ ይተላለፉ የነበሩ መመሪያዎች እና ሕግጋት በተገቢው አኳኋን ያልተሰነዱ በመሆናቸውና በተከታዩ መቶ ዓመታት እና ከዚያ በላይ ለሚሆን ጊዜ ሳይዘገቡ በሥነ-ቃል ብቻ የቆዩ በመሆናቸው፣ በውጤቱም ውስን ተደራሽነት የነበራቸው በመሆኑ እና የተዓማኒነት ጥያቄ የሚነሳባቸው በመሆኑ ከነቢያዊ/ዘገባዊ ሕግጋት ይልቅ፣ የሰብዓዊ-አመክንዮአዊ ምርምር ውጤት የሆኑ ሕጎች እና ብይኖች ሰፊውን ድርሻ ይዘው ነበር።[14] ይህ ሸሪዓዊ እውነታ በአንደኛውና ሁለተኛው መቶ ዓመታት ተነስተው በነበሩ የሸሪዓ ትምህርት-ቤት መስራቾች እና ተማሪዎቻቸው፣ እንዲሁም የነቢያዊ ዘገባ *(ሀዲስ)* ተዓማኒነት ምዘና ተማራማሪዎች አማካይነት እየተከናወነ ከቀጠለ በኋላ ነቢያዊ መሠረት አላቸው ተብለው ይነገሩ የነበሩ ዘገባዎች ተዓማኒነት የሚመዘንበት ሥርዓት ከሞላ ጎደል እያዳበረ መምጣቱን ተከትሎ የ*ሀዲስ* ዘገባዎች ከፍ ያለ የአስረጅነት ዋጋ እያገኙ

[14] አልዩ አባተ ይማም፣ የሸሪዓ እድገትና ቀዳሚ የሕግ ትምህርት ቤቶች፡ ከኢትዮጵያዊ ምልከታዎች ጋር, *Haramaya Law Review* 8, (2019), ገጽ 81::

መጥተዋል።[15] ይህም አመክንዮኣዊ ምርምር ቀደም ባሉት ዓመታት ይሰጠው በነበረው ተቀዳሚነት ላይ ማሻሻያ እንዲደረግበት አድርጓል። ይህ በራሱ መልካም ሊባል የሚችል አዎንታዊ እድገት ቢሆንም፣ በነቢያዊ አመራር ተገገርነት ስም ከአመክንዮኣዊ እሳቤ ይልቅ ደካማ እና ኢ-ተዓማኒ ዘገባዎች ተቀዳሚ የአስረጅነት ደረጃ እያገኙ የመጡበት የትውፊታዊነት *(Traditionalism)* ምሁራዊ ባህል እየጎለበተ መምጣቱ በሸሪዓዊ የአመክንዮኣዊ እና ፈጠራዊ የእሳቤ እሴት ላይ አሉታዊ ተጽእኖ ያሳረፈ የመጀምሪያው የሙስሊም ሊቃውንት የእውቀት አቀራረብ ነው። የዚህ ምሁራዊ ኩነት ዋነኛ መነሻ በኢማም አሽ-ሻፊዒ የሸሪዓ ምንጮችና መርሆዎችና የአስረጅነት ሥርዓትና ተዋረድ መጠናቀር በኃላ ነው።[16] በሻፊዒ በኩል ከቀደምት የ*መዛሒብ* ሊቃውንት በተለየ ከአመክንዮኣዊ የሕግ ምንጮች ይልቅ ለዘገባ ምንጮች ተቀዳሚነት የሰጡበትን ገገር እውነታ ስንመለከት በወቅቱ በቀደሙት የ*መዛሒብ* መስራቾችና ሊቃውንት ወቅት የሌለ፣ የ*አሃዲስ* ስብስቦች መጠናቀራቸውን እና ከቀደሙት ዘመናት በተለየ የዘገባዎች ተዓማኒነት ደረጃ የሚለይበት የምዘና ሥርዓት በመስኩ ሊቃውንት የተዘረጋበት በመሆኑ ነቢያዊ ዘገባዎች ከአመክንዮ የቀደመ የአስረጅነት አቅም ማረጋገጣቸው አሳማኝና ተገቢ ነው። ሆኖም ይህ የትውፊታዊነት ጥንስስ አንድም የተዓማኒነትን ኬላ በመተላለፍ፣ እንዲሁም ደግሞ ሕግ ተፈጥሯዊ የሂደታዊነት እና የተለማጭነትን ባህርይውን በሚጻረር ደርጃ ምክንያትዊ ትንታኔ የሸሪዓን ተለማጭነት በሚይሳካባቸው መስተጋብሮችና ጭብጦች ላይ ሁሉ ዘገባዊ ድንጋጌዎችና እነዚህን መሰረት ያደረጉ ግትር አተረጓጎሞች ተቀዳሚ የሚደረጉበት ዘዴ የሻፊዒን እሳቤ መነሻ አድርጎ በተከታይ ዘመናት ተተግብሯል።[17] ይህ የሕግ አቀራረብ እንደ ኢብን ሀንበል እና ተማሪውቻችው ባሉ ሊቃውንት መራመዱ፣ በቀጥታም ሆነ በተዘዋዋሪ መልክ *ሲጅሊሓድን* በማዳከም ቀኖናዊ የሕግ አረዳድ እና የጭፍን ተከታይነት ባህል ያጠናከር ኩነት ነው።[18] ይህ ሂደት በተከታዮቹ በርካታ አመታት የእሳቤ ጥገኝነትን እና እስረኝነትን በሚያጠናከሩ ልዩ ልዩ ኩነቶችና መስተጋብሮች አማካይነት ስር እየሰደደ ቀጥሎ በመጨረሻ በዐባሳዊ የከሊፋ ሥርዓት መውደቅ (11ኛው ም.ሐ አጋማሽ) በኃላ ጭፍን እሳቤ፣ የከረረ የሕግ ትውፊታዊነት እና ደረቅ የቃል በቃል የሕግ አረዳድ የሙስሊሙ ዓለም ዋነኛ መገለጫ ለመሆን በቅቷል።[19] ይህ ረዥም ዘመናትን ያስቆጠረውና የሰፊው የዓለም ሙስሊም ማህበረሰብ እውነታ አመርቂ ለውጥ ሳይታይበት እስካለንበት ዘመን ድረስ የቀጠለ የሸሪዓ እድገት ምዕራፍ ነው።[20]

ሦስተኛው የእድገት ምዕራፍ የዚህ ጽሁፍ ዳሰሳ አጀንዳ የሆነውና ዘመነኛ የሸሪዓ እድገት መገለጫ ተደርጎ ሊወሰድ የሚችለው የ20ኛው ክ/ዘመን የሙስሊም ተሃድሶና ለውጥ ዓለም-አቀፍ ንቅናቄን የሚመለከት ነው። ከላይ እንደመለከተው ሸሪዓን ጨምሮ

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[15] ዝኒ ከማሁ

[16] SUHA TAJI-FAROUKI, *Modern Muslim Intellectuals and the Quran*, (Oxford University Press 2006), p. 250.

[17] አልዩ፣ የሸሪዓ እድገት፣ *ግርጌ ማስታወሻ* 14፣ ገጽ 81::

[18] ዝኒ ከማሁ፣ ገጽ 81-82

[19] ዝኒ ከማሁ፣ ገጽ 75

[20] ዝኒ ከማሁ

የሙስሊሙ ዓለም ሃይማኖታዊና የሳይንስ ሥልጣኔ እያሽቆለቆለ መጥቶ 11ኛው ምዕተ-ዓመት ግድም ማብቂያ ገደማ ሙስሊም የክሊፋ ሥርዓቱ ሲንኮታኮት እና ግዛቱ ሊከፋፈል፣ ለምዕራባዊ የግዛት ማስፋፋት ወረራዎች ሊጋለጥ ችላል።[21] በውጤቱም ድረስ የሙስሊሙን እንጥፍጣፊ የእሳቤና የእውቀት ሥልጣኔ በውጪ ገዥ ኃይል ባህል እና አስተሳሰብ ተጽእኖ ስር እንዲሆን አድርጎታል። ይህ ምዕራባዊ ተጽእኖ አዎንታዊ ገጽታ ሊኖረው የሚችል መሆኑ እንደተጠበቀ ሆኖ፣ ሸሪዓን ጨምሮ ከምዕራባዊ ርዕዮትና ባህል ጋር ተራማጅት የሌላቸው፣ ለግዛት ቁጥጥርና ፖለቲካዊ አገዛዝ ቀጥተኛም ሆነ ተዘዋዋሪ ጫና አላቸው ተብለው የታመኑ የሙስሊም የእውቀትና የአስተዳደር እሴቶች ፖለቲካዊ የማዳከም እርምጃዎች ተወስዶባቸዋል። ይህ እውነታ ከአውሮፓ ቅኝ-አገዛዝ ለመላቀቅ የነጻነት ትግል እስካቆጠቆጠባቸው የ20ኛው ክ/ዘመን የመጀመሪያዎቹ ዓስርተ ዓመታት ድረስ ከቀጠለ በኋላ፣ ከአርበኝነት ትግሎች በተጓዳኝ በተለያዩ የዓለም ሙስሊም ማህበረሰቦች ዘንድ የተነሱት ምሁራዊ የሙስሊም ሥነ-እውቀት ተኃድሶ ንቅናቄዎች በሸሪዓ የከፍታና ውድቀት የረዥም ዘመናት ታሪክ መጨረሻ የተከሰተ ዘመነኛ የሸሪዓ እድገት ምዕራፍ ነው።[22]

3. የዘመነኛው ሸሪዓ እድገት አብይ መገለጫዎች

ከሁለተኛው የዓለም ጦርነት በኋላ፣ ከቅኝ አገዛዝ የተላቀቁ እና ነጻነታቸውንና ሕዝባዊ ሉዓላዊነታቸውን ያወጁ የአረብ ሃገራት፣ የሰሜን አፍሪካ እና ሌሎች አብላጫ የሙስሊም ቁጥር ያለቸው ሃገሮች ውስጥ ያቆጠቆጠው ኢስላማዊ ንቅናቄ አንዱና ዋነኛ ጥያቄው የነበረው፣ ከቅኝ ግዛት በፊት የነበረው የሸሪዓ ሕግ ሥርዓት ተፈጻሚነት እንደገና ወደነበረበት ሊመለስና በመንግሥት የሕግና አስተዳደር መዋቅር ውስጥ ቀዳሚ ድርሻ ሊሰጠው ይገባል የሚል ነበር።[23] በሌላ በኩል ደግሞ፣ ሸሪዓ በሃገራዊ የመንግሥት አወቃቀር እና ሕዝባዊ የፍትሕ አስተዳደር ውስጥ የመሪነት ሚና ይሰጠው ዘንድ፣ ለዘመናዊ የመንግሥት ፍትሕ አስተዳደር ምቹ እንዲሆን ተደርጎ ያልዳበረ በመሆኑ፣ ለወቅቱ ትክክለኛው አቀራረብ ምዕራባዊ የሕገ-መንግሥትና የሕግ እሳቤዎችንና ተቋማትን ተምሳሌት ያደረገ ዓለማዊ የሕግ እና ፍትሕ ሥርዓት ሊዘረጋ ይገባል የሚሉ ወገኖችም ነበሩ።[24] ሁለተኛውን እይታ የሰነዘሩት በምዕራባዊ የትምህርት ሥርዓት ውስጥ ያለፉ፣ ለዘመናዊነት እና ለዓለማዊነት *(Secularism)* የሚከራከሩ የመንግሥት ካድሬዎች፣ አመራር አካላትና ምሁራን ነበሩ። ነገር ግን ሰፊው የሃገራቱ ሕዝበ-ሙስሊም የሸሪዓን ማንሳራራት የሚደግፍ በመሆኑ፣ በኢጅቲሓድ አማካይነት አስፈላጊውን ማሻሻያ እና ጭማሬ በማድረግ፣ ሸሪዓ የሕግ ሥርዓቶቹ መሪ ተዋናይ መሆን አለበት የሚለው የመጀመሪያው አቋም፣ ሕዝባዊ ድጋፍን ለማግኘት ችሏል።[25]

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[21] ዝኒ ከማሁ

[22] ዝኒ ከማሁ

[23] SUHA, *Modern Muslim Intellectuals and The Quran*, supra note 9, p. 250

[24] Ibid. pp. 249-250

[25] Ibid. pp. 250

ሁለቱን ፍላጎቶች ያማከለ በሚመስል መልክ፣ ብዙዎቹ የሙስሊም ሃገሮች፣ ኢስላምን የመንግሥት ሃይማኖት፣ ሸሪዓን ደግሞ የሕግ ምንጭ መሆኑን የሚያረጋግጡ አንቀጾች በሕገ-መንግሥታቸው ውስጥ አካተዋል፤ ነገር ግን ለጊዜው ሸሪዓ ቀጥተኛ እና ልዩ ምላሽ የማይሰጥባቸው ዘርፈ-ብዙ ጉዳዮች ያሉ በመሆኑ፣ በእነዚህ ጉዳዮች ላይ በምዕራባዊ የሕግ ፍልስፍናን፣ የበለጸጉ እሳቤዎችንና ተቋማዊ አደረጃጀቶችን በመውሰድ ራስ-ገዝ ሉዓላዊ የመንግሥትና የሕግ ሥርዓት ዘርግተዋል።[26]

በጥቅል አነጋገር፣ የዘመነኛው የሸሪዓ እድገት አይነተኛ መገለጫ በመሆን የሚጠቀሰው እውነታ፣ ለቀደምት *የመዝሓብ* የሕግ ብይኖችና ምልከታዎች ጭፍን ተገዥር መሆን *(ተቅሊድ)* ተቀባይነት እያጣ መምጣቱ፣ እና አዲስና ፈጠራዊ የሕግ እሳቤ ከፍተኛ ትኩረት እየተሰጠውና ይህን መሠረት በማድረግ የሚሰነዘሩ አዳዲስ ሸሪዓዊ የሕግ አስተያየቶች ተቀባይነት እያገኙ መምጣታቸው ነው። ለዚህም ዋናው መነሻ ምክንያት፣ ሸሪዓ በትውልድ ቅብብሎሽ ውስጥ ሲያልፍ፣ ተለዋዋጭ ማህበረሰባዊ እውነታዎችን ማገናዘብ እንዲችልና ለተለያዩ አስፈልጎቶች ተገቢውን የሕግ ምላሽ መስጠት ይችል ዘንድ፣ ከ*ተቅሊድ* የተላቀቀ፣ ኦርጂናል የሕግ ምርምር ማድረግ አስፈላጊ በመሆኑ ነው።[27]

የዘመነኛ የሙስሊም ንቅናቄ መገለጫዎችን፣ በተለይም ደግሞ ሸሪዓዊ የተሃድሶ እንቅስቃሴዎችን ፕሮፌሰር ከማሊ በአምስት ፈርጆች ስር አጠቃለው አስቀምጠዋቸዋል። እነዚህ ምልከታዎች በዚህ ርዕሰ ጉዳይ ላይ ዘመነኛ የሸሪዓ እድገቶችን ከሚዳስሱ የርዕሰ-ጉዳዩ ድርሳናት መከከል ዘመነኛ የሸሪዓ እድገቶችን አቃፊና ብሩህ በሆነ የሐሳብ አደረጃጀት የሚያቀርብ በመሆኑ ፕሮፌሰሩ በያዛቸው ርዕሶች ስር ቁልፍ የሆኑ ዘመነኛ የሸሪዓ እድገቶችን እንደሚከተለው በአራት ርዕሶች ስር ቀርበዋል። እድግቶቹ ለኢትዮጵያዊው የሸሪዓ ሕግ አረዳድ እና አፈጻጸም ባላቸው አግባብነት መጠን ሃገራዊ ምልከታዎችና ምክረ-ሐሳቦችም በርዕሶቹ ስር ተካተዋል።

3.1. የሸሪዓ ሕግ መጠናቀር

የሸሪዓ ሕግ ከጥንት ጀምሮ በተለያዩ *መዝሓቦችና* ሊቃውንቶች እንደተተነተነው፣ ለዘመኑ የዳኝነት ሥርዓት እና የሕግ ጥናት አመቺ ባልሆነ መልክ በተለያዩ የመስኩ የሥነ-ጽሁፍ ሥራዎች ውስጥ ተበታትኖ ይገኛል፤ በመሆኑም፣ አንድም በቀላሉ ተደራሽ እንዲሆን ለማድረግ፣ ብሎም የአንድ የሸሪዓ *መዝሓብ* ብቻ ተከታይና ተገዥር የመሆን ችግሮችንና፣ በውጤቱም የሕብረተሰብ ተጨባጭ ለውጦችን ማገናዘብ የማይችል ግትር የሕግ አተረጓጎም ለማስወገድ ይቻል ዘንድ፣ ሁሉንም *መዝሓቦች* ያማከሉ፣ የተደራጁ ሕብረ-ሕግጋት *(Sharia Codes)* ማጠናቀር አስፈላጊ ሆኖ ተገኝቷል። በዚህም መሠረት፣ የሸሪዓ ሕግን በሃገር ደረጃ እውቅና የሰጡና ተፈጻሚ የሚያደርጉ ሃገሮች የሸሪዓ ሕግጋትን የማጠናቀር ሥራ ሰርተዋል። የ21ኛው ክፍለ ዘመን ሙስሊሞችን ሥልጣኔ፣ አኗኗር እና እሳቤ ግምት ውስጥ በማስገባት፣ ማሻሻያ የሚያስፈልጋቸው የፊቅሕ ድንጋጌዎችን በማሻሻል፣ እንዲሁም ሸሪዓው በቀጥታ የማይዳስሳቸው፣ ቀድሞ የዳበረ የሕግ ምርምር

[26] Ibid.
[27] Ibid, p. 249

(ኢጅቲሓድ) እና የፊቅሕ አሻራ በሌለባቸው አዳዲስ ጉዳዮች ላይ፣ ወደፊት ቁርአንና ሱናሕን መሠረት ያደረገ ኢጅቲሓድ ተደርጎ እልባት እስከሚሰጣቸው ድረስ፣ በዚህ ረገድ በተጓዳኝ የሚገኙ ምዕራባዊ ሕጎችን በማካተት፣ የሕግ ጥራዞች እንዲዘጋጁ ተደርገው በሥራ ላይ ውለዋል።[28]

የበርካታ ሙስሊም ሃገራትን የፍትሐ-ብሔር ሕጎችን በማርቀቅና በማጠናቀር ለጥንቅር ሥራ ምሁራዊ የሕግ ማርቀቅ ኢጅቲሓድ *(Legislative Ijtihad)* በማከናወን ፈር-ቀዳጅ የሆኑት፣ ግብጻዊው የሕግ ሊቅ እና ሚኒስትር ዐብድ አር-ረዛቅ አስ-ሳንሁሪ ናቸው። ይህ ምሁር፣ የካበተውን የፊቅሕ እወቀት መሠረት በማድረግ፣ የሃገራቸውን የግብጽን ጨምሮ፣ የሶሪያንና የዒራቅን የፍትሐ-ብሔር ሕጎችን፣ አስፈላጊውን ማሻሻያ በማድረግ፣ እንዲሁም እንደ አስፈላጊነቱ ከአውሮፓ የሕግ ሥርዓቶች በተለይም የፈረንሳይን የፍትሐ-ብሔር ሕግ መሠረት ያደረጉ የፍትሐ-ብሔር ሕጎችን አርቅቀዋል፤ በአንድ ጥራዝ አካተው አጠናቅረዋል።[29]

በ20ኛዉ ምዕተ-ዓመት ማብቂያ ላይ፣ የምሁራንን ትኩረት ያገኘውና፣ ከበርካታ የፊቅሕ ርዕሰ-ጉዳዮች መካከል ከዓለም የሙስሊም ማህበረሰቦች ነባራዊ ሁኔታ ላይ ተንተርሶ ቀዳሚ የሕግ ምርምር *(ኢጅቲሓድ)* የተደረገበት፣ አስደናቂ እድገትና ኢስላማዊ የእውቀት ቅርጽ *(Islamization of Knowledge)* በማግኘት ላይ ያለው ኢስላማዊ የኢኮኖሚ ጥናት (*Islamic Economics*) ነው።[30] በዚህ የእውቀትና የሕግ ማዕቀፍ ሥር፣ የኢስላም የንግድ ሕግ እና የፋይናንስና የባንክ ሥርዓት ይገኙበታል። ይህን እድገት ተከትሎ፣ በፍትሐ-ብሔር እና የንግድ ሕጎች አዘገጃጀት ሂደት ወቅት፣ ከምዕራብ የኢኮኖሚና የፋይናንስ ርዕዮት የተወሰዱ ጽንሰ-ሐሳቦችና ሕግጋት እንደገና እያደገ ባለው የኢስላም የኢኮኖሚ ፍልስፍና እና የፋይናንስ አሰራር መርሆዎች አማካይነት ተቃኝተውና ማሻሻያ ተደርጎባቸው፣ በዚህ ረገድ በሙስሊም ሃገራት ተጠናቅረው የነበሩ የሕግ ጥራዞች ላይ አስፈላጊው ማሻሻያ ተደርጓል።[31]

የሃገረ ቱርክን ተሞክሮ ስናይ፣ የሕግ ጥንቅር ሥራ የተጀመረዉ ከሌሎች የሙስሊም ሃገራት ቀደም ብሎ እ.አ.አ በ1876 ሲሆን፣ በዋናነት የሀነፊ *መዝሐብ* በግለሰባዊ ጉዳዮች *(ሙዓመላት)* ላይ ያዳበረውን የሕግ እሳቤ መሠረት በማድረግ፣ *ኦቶማን መጀሌ* የተሰኘ የፍትሐ ብሔር ሕግ አጠናቅረዋል።[32] *መጀሌው* የቤተሰብ ሕግን ሳያካትት የተዘጋጀ

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[28] Ibid. p. 250-251

[29] Ibid. For more detail information about the role of Sanhuri on sharia codification, see: Enid Hill, Al-Sanhuri and Islamic Law: The Place and Significance of Islamic Law in the Life and Work of 'Abd al-Razzaq Ahmad al-Sanhuri, Egyptian Jurist and Scholar, (1895-1971), *Arab Law Quarterly*, Vol. 3, No. 1 (1988).

[30] Ibid. p. 258. See also: Muhammad Najatullah Siddiqi, Islamizing Economics, Toward Islamization of Disciplines, International Islamic Pubishing House and International Institute of Islamic Thought, 1995, pp. 253-254.
<http://www.muslim-library.com/dl/books/English_Toward_Islamization_of_Disciplines.pdf>
Accessed on 31 December 2017.

[31] Ibid. p. 251

[32] Ibid.

በመሆኑ፣ ከሀነፊ በተጨማሪ ሌሎቹን ሦስት የሱኒ *መዝሓቦች* የሕግ ምልከታዎችን ያገናዘበ የቤተሰብ ሕግ ጥንቅር እ.ኤ.አ በ1917 *ሥራ* ላይ ውሏል።[33] በርካታ የመካከለኛው ምስራቅ አረብ ሃገራትና ሌሎች ሙስሊም ሃገሮች የቱርክን *መጀሌ* እና የቤተሰብ ሕጎችን መነሻ ያደረጉ የሕግ ጥራቦችን *ሥራ* ላይ አውለዋል።[34]

የግብጽን *ሒጅቲሓዳዊ* የሕግ አወጣጥ ተሞክሮዎች ስንመለከት፣ በ1929 ዓ.ል በወጣው የግለሰቦችን አቋም የሚወስነው የሰዎች ሕግ *(Law of Persons)* አዋጅ ቁጥር 25፣ አራቱንም የሸሪዓ *መዝሓቦች* መሠረት ያደረገ ብቻ ሳይሆን፣ ወቅታዊውን የሕብረተሰብ አወቃቀር እና አኗኗር በማገናዘብ፣ እንዲሁም ከ*መዝሓብ* ማዕቀፍ ውጪ የዘርፉ የሸሪዓ ሊቃውንት ከሰጧቸዉ የተለያዩ ግላዊ የሕግ ምልከታዎች መካከል ተስማሚውን በመምረጥ *(ተኸይር)* የተጠናቀረ ነዉ።[35] የግብጽን *ሒጅቲሓዳዊ* የሕግ ጥንቅር ተሞክሮ በመከተል፣ ሞሮኮ፣ ቱኒዚያ፣ ዒራቅ እና ፖኪስታን እንደ አስፈላጊነቱ የሕግ ማሻሻያዎችን እና አዳዲስ ድንጋጌዎችን በማከል፣ የግልና የቤተሰብ ሕጎችን አርቅቀዋል፤ አጠናቅረዋል።[36]

ከግልና የቤተሰብ ሕግ ማዕቀፍ ባሻገር፣ ሌሎች ፍትሐ-ብሔራዊና የንግድ ግንኙነቶችን የሚገዛ አንድ ወጥ የሸሪዓ ሕግ ጥራዝ (ኮድ) ለማውጣት እንደ ሶሪያ፣ ዒራቅ እና ዮርዳኖስ ባሉ የሙስሊም ሃገሮች የተደረገው ጥረት በስኬት ተጠናቋል።[37] እነዚህ ሃገሮች፣ በዋናነት የሀነፊን *መዝሓብ* መሠረት ካደረገው የቱርክ *መጀሌ* አቀራረጽ በተለየ፣ የሁሉንም *መዝሓቦች* የፍትሐ-ብሔር እና የንግድ ጉዳዮች ላይ የተንጸባረቁ የፊቅሕ ድምዳሜዎችን መሠረት ያደረገ፣ እንዲሁም ከ*መዝሓብ* እና የቀደምት ሊቃውንት አተየይ ውጪ፣ የሕግ ቁጥጥር በሚያስፈልጋቸው አንዳንድ ጉዳዮች ላይ የሸሪዓ ምንጮችን በቀጥታ በማገናዘብና ዓላማዎቻቸውንና ግባቸውን *(መቃሲድ ኣሹሸሪዓሕ)* የተንተራሰ *ሒጅቲሓድ* በማድረግ፣ የፍትሐ-ብሔር ሕጎችን አጠናቅረዋል። *‹የሒጅቲሓድ በር ተዘግቷል›*፣ ስለሆነም አዲስ የሸሪዓ ምርምር ማድረግ የሚችል የለም በሚል *ሥር* የሰደደውን የአመለካከት ችግር ፊት ለፊት በመጋፈጥ ከተቅሊድ ነጻ የሆነ የሸሪዓ እሳቤ ባህል በማዳበር ላይ ይገኛሉ።[38]

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[33] Ibid.
[34] Ibid., pp. 251-252
[35] Ibid., p. 252
[36] Ibid.
[37] Ibid., pp. 252-253
[38] Ibid., pp. 252-254.
ከሙስሊም ሃገራት መካከል፣ የሁሉንም የሕግ ት/ቤቶች የፍትሐ-ብሔር እይታዎችን ታሳቢ ያደረገ፣ አዳዲስ *ሒጅቲሓዳዊ* ማሻሻያዎችንና ጭማሬዎችን ያካተተ የፍትሐ-ብሔር ኮድ ማውጣት የቻለች ሃገር ዮርዳኖስ ናት። ይህ እ.ኤ.አ በ1976 *ሥራ* ላይ የዋለው ሕግ፣ ለሌሎች የአረብና ሙስሊም ሃገራት ተምሳሌት መሆን የቻለ ሲሆን፣ በተለይ የተባበሩት የአረብ ኢሚሬት እና የሱዳን ፍትሐ-ብሔር ሕጎች ከሞላ ጎደል ከዮርዳኖስ *ሒጅቲሓድ* መር የፍትሐ-ብሔር ሕግ ጋር ተመሳሳይ ናቸው። በተጨማሪም፣ ለሁሉም አረብ ሃገራት አንድ ወጥ የፍትሐ-ብሔር ኮድ ለመቅረጽ ሰፊ እንቅስቃሴዎች እየተደረጉ ነው። (kamali, Sharia Law, supra note 9, p. 253 ይመለከቷል።) ሌላው ሙስሊም ሃገራት በ*ሒጅቲሓዳዊ* የሕግ ቀረጻቸዉ አካል የነበረዉ ተግባር፣

በአጠቃላይ *በመዝሓቦችና* በግለሰብ ምሁራን ደረጃ ሲከናወን የነበረው፣ የቀደምት እና የዘመኑ የሸሪዓዊ የሕግ ምርምር ውጤቶች *(ፊቅሕ)*፣ ወጥ የሆነ የሕግ አተረጓጎምና አፈጻጸም እንዲኖር በሚያስችል መልክ፣ እንዲሁም *የተቅሊድ* እና ከሸሪዓ ኢ-ተለማጭ አተረጓጎም ጋር ተያይዞ ለሚነሱ አከራካሪ ጥያቄዎችና ችግሮች እልባት በሚሰጥ አቀራረብ እየተጠናቀሩ ያሉ የሸሪዓ ሕግ ጥራዞች፣ የዘመኑ የሸሪዓ እድገት አይነተኛ መገለጫዎች ናቸው።

3.2. የፊቅሕ ኢንሳይክሎፔዲያዎች

ከላይ የተመለከቱት የፊቅሕ ጥራዞች፣ ግለሰባዊ ጉዳዮችን በሚገዙ የቤተሰብ፣ የንግድና የፋይናንስ ወዘተ. ሕጎችን ብቻ ያካተቱና፣ በሌሎች *የሙዓመላት* ሕግጋት ላይ ያለውን ሰፊ የፊቅሕ የእውቀትና ምርምር አሻራ ያላካተቱ መሆናቸው፣ እንዲሁም በተካተቱት ሕጎችም ላይም ቢሆን፣ ሕግ የመተርጎም ሥልጣን የተሰጣቸው የዳኝነት አካላትና የሕግ ባለሙያዎች፣ እንዲሁም በሕግ ትምህርት እና ጥናት ዙሪያ የተሰማሩ አጥኚዎች፣ መምህራን እና ተማሪዎች፣ በሕግ አርቃቂዎች ተመርጦ *(ተ□ይር)* በጥንቅሮቹ ውስጥ በተካተተው የፊቅሕ እውቀት ላይ ብቻ እንዲወሰኑ የሚያደርግ ነው።[39] ይህን ሥጋት ታሳቢ በማድረግ፣ የሕግ ባለሙያዎች እና ተመራማሪዎች፣ ከስብስቦቹ ውጪ ላለው እጅግ ሰፊ የፊቅሕ ሥነ-ጽሁፍ አሻራ ትኩረት ሰጥተው የጥናታቸው አካል እንዲያደርጉት፣ እንዲሁም ከሸሪዓ ምንጮች ጋር አዳምረው እንደ ሁኔታው ተስማሚ የሆነ አዳዲስ የሕግ ምልከታዎችን ማፍለቅ ይችሉ ዘንድ፣ በተቻለ መጠን አጠቃላይ የፊቅሕ እውቀት ያካተቱ ኢንሳይክሎፔዲያዎችን ማዘጋጀት አስፈላጊ ሆኖ ተገኝቷል። የእነዚህ ሥራዎች መሳካት፣ የቀደመው *የመዝሓቦች* እና *የፉቅሓእ* የሕግ እይታዎች ከአይን እንዳይርቁ ለማድረግ፣ እና የሕግ አተረጓጎምና ምርምር መንግሥት ባጠናቀራቸው የፊቅሕ ስብስቦች ላይ ብቻ እንዳይገደብ ለማድረግ ነው።[40] ይህን ሥጋት የተገነዘበው

ሉዓላዊ ሐገር ሆነዉ ከመደራጀታቸው በፊት በቅኝ-ገዢዎቻቸው የተጫኑባቸው ምዕራባዊ የሕግ አስተሳሰቦችንና ድንጋጌዎችን መለየት ነበር። በዚህ ሂደት ከሸሪዓ መርሆዎች እና ልዩ ድንጋጌዎች ጋር የሚጣረሱትንና የሸሪዓ ጠቅላላ ዓላማዎችን የማያሳኩትን ነቅሶ በማውጣት የሕግ ማዕቀፋቸው ሸሪዓዊ መሠረት እንዲያገኝ *(Islamization of Law)* ማድረግ ነዉ። በዚህ ረገድ፣ ፓኪስታንና ሱዳን ቅኝ ገዢያቸው ከነበረችው ብሪታኒያ የወረሷቸውን፣ ኢስላማዊ ያልሆኑ ሕጎች እና እሳቤዎች/ባህሎች *(Legal Cultures)* የሚለዩባቸውን አሰራርና ተቋማዊ አደረጃጀት ዘርግተዉ ሰፊ የኢስላማይዜሽን ሥራዎችን አከናውነዋል። የፓኪስታንን ተሞክሮ እንደምሳሌ ብንጠቅስ፣ የጠቅላይ ፍ/ቤት አካል የሆነ የፌዴራል ሸሪዓ ፍ/ቤት በ1980 አቋቁመው፣ በሃገሪቱ ተፈጻሚ እየተደረጉ ያሉና ከሸሪዓ ምንጮች ጋር የሚጣረሱ ሕጎችን የመሻር እና የማሻሻል ሥልጣን ተሰጥቶት የኢስላማይዜሽን ሥራዎችን አከናዉኗል። እዚህ ላይ ሊሰመርበት የሚገባዉ ነጥብ፣ አንድ ሕግ ምንጩ ከምዕራቡ ዓለም ስለሆነ ብቻ ውድቅ አይደረግም፣ ከልዩ የሸሪዓ ድንጋጌዎች እና ዓላማዎች አንጻር ተቀባይነት የሌለዉ ከሆነ ብቻ ውድቅ የሚደረግ መሆኑን መረዳት ያሻል፤ ምክንያቱም የተጻራሪነት ይዘት እስከሌለው እና ጠቃሚ ሆኖ እስከተገኘ ድረገ በሸሪዓዊ ምርምር *(ኢጅቲሓድ)* ሊደነገግ ወይም አፈጻጸሙ እንዲቀጥል ሊደረግ የሚችል መሆኑን መገንዘብ ያስፈልጋል። (kamali, Sharia Law, supra note 9, pp 254-255 ይመለከቷል።)

[39]Kamali, *Sharia Law*, supra note 9, p. 254.

[40] Ibid., pp. 254-255

የኢስላም ጉባኤ ድርጅት *(Organization of Islamic Conference (OIC))*፣[41] ጠቅላይ የሆኑ የፊቅሕ ጥንቅሮች እንዲዘጋጁ ባቀረበዉ ጥሪ መሠረት፣ በሙስሊም ሃገሮች የሚገኙ እንደ ደማስቆ ዩኒቨርሲቲ የመሳሰሉ ከፍተኛ የትምህርትና የምርምር ተቋማት፣ እንዲሁም የምርምር ግብረ-ሐይሎች ተቋቁመው የፊቅሕ ኢንሳይክሎፔዲያዎችን በማዘጋጀት ላይ ይገኛሉ፡፡ የኩዌት መንግሥት የጀመረው ‹የኢስላም ሕግ ኢንሳይክሎፔዲያ *(አል-መውሱዐሕ አል-ፊቅሒያሕ)*› አርባ አምስተኛ ቅጽ ላይ የደረሰ ሲሆን፣ በቅርብ ጊዜ ይጠናቀቃል ተብሎ ይጠበቃል፡፡[42]

ጠቅላይ የፊቅሕ የስብስብ ሥራዎች ከጭፍን ተከታይነት፣ ቡድናዊነትና አድሏዊነት በጸዳ መልክ፣ የሱኒ አራት የሕግ ት/ቤቶችን እና የሺዓ - ጀዕፈሪ፣ ዘይዲ፣ ዒባዲ እና ሂሒሪ የሕግ እሳቤ ክፍሎችን የተለያዩ የሕግ አተረጓጎሞች በሚዛናዊነት የሚያቀርቡ እና ምኑራዊ ደረጃውን ባልጠበቀ የወገንተኝነት መመዘኛ ገሸሽ ሳያደርጉ እየተዘጋጁ ያሉ መሆናቸው፣ የሥራዎቹ መልካምና ጠንካራ ገጽታቸው ነው፡፡[43] ሆኖም፣ የፊቅሕ ኢንሳይክሎፔዲያዎች የቀደመውን የፊቅሕ እውቀት፣ ከተጨባጭ የሕብረተሰብ እውነታዎች አንጻር ቀዳሚ የሸሪዓ ምንጮችን በቀጥታ ያጣቀሱ አዲስ *ኢጅቲሓዳዊ* እይታዎችን ያላካተቱ መሆናቸው እንደተጠበቀ ሆኖ፣ ለዳኞች፣ የሕግ ባለሙያዎች እና ምሁራን የወደፊት ምርምር፣ መንደርደሪያ የእውቀት ዳራ እንዲያቀርቡ ታስበው የተዘጋጁ መሆናቸው ሊታወቅ ይገባል፡፡[44]

ዘርፉ ብዙ የፊቅሕ ሕጎችንና ብይኖችን ለማጠናቀር በተቋም ደረጃ ከሚደረገው ጥረት በተጓዳኝ፣ በግለሰቦች ደረጃም ቢሆን እንደ *ሙሀመድ ረሺድ ሪዷ*፣ *ማህሙድ ሸልቱት*፣ *ዐሊ ጀድ አል-ሀቅ*፣ *ሙሀመድ አጥ-ጠንጧዊ*፣ *ሙሀመድ አቡ ዘሕራሕ*፣ *ዩሱፍ አል-ቀርዷዊ* የመሳሰሉ የ20ኛው ክፍለ-ዘመን እውቅ ሙስሊም የሕግ ሊቃውንት፣ በበርካታ ቅጾች ያጠናቀሯቸው የፈትዋ ስብስቦች፣ ሸሪዓን ለተጫባጭ እውነታዎች ተለማጭ በማድረግ ረገድ ለሚደረጉ የሕግ ምርምሮች፣ ማሻሻያዎችና ለውጦች መነሻ እና ማሳያ በመሆን ለሸሪዓ እድገት እያበረከቱት ያለው ከፍተኛ አስተዋጽኦ ሳይጠቀስ የሚታለፍ አይደለም፡፡[45]

3.3. የሸሪዓ ሕግ የጥናት ማዕከላት

በሸሪዓ እድገት ታሪክ፣ ሸሪዓዊ የሕግ ምርምር *(ኢጅቲሓድ)* በዋናነት ግለሰባዊ ይዞታ ሆኖ በመዝሓብ ሥር ወይም ከዚያ ዉጪ ራሳቸውን በቻሉ ሊቃውንት አማካይነት ሲከናወን ቆይቷል፡፡ *ኢጅቲሓድ* ከተዓማኒነት እና ተጽእኖ ፈጣሪነት አንጻር፣ በሕግ ምሁራን የጋር ምክክር ላይ ተመስርቶ ቢከናወን *(Colletive Ijtihad)* እና በልዩ ልዩ የሸሪዓ ጉዳዮች ላይ ብይን *(ፈትዋ)* ቢሰጥ፣ *ኢጅማዕ* (የምሁራን ወጥ አቋም) በተሰኘው የሸሪዓ ጽንሰ-ሐሳብ

[41] ለተጨማሪ መረጃ የድርጅቱን ድረ-ገጽ <https://www.oic-oci.org/home/?lan=en> ይጎብኙ፡፡
[42] Kamali, *Sharia Law*, supra note 9, p. 255
[43] Ibid.
[44] Ibid.
[45] Ibid., p. 260

ትርጓሜ ሥር ባይወድቅ እንኳ፣ የአስረጂነት ደረጃው ከግላዊ እይታ የበለጠ እንደሚሆን አያከራክርም። የጋራ ኢጅቲሓድ ሐሳብ እውን ሊሆን የሚችለው፣ በአንድ ክፍለ-ግዛት ወይም ሃገር ወይም በዓለም-አቀፍ ደረጃ ግንባር ቀደም የሆኑ የሸሪዓ ሊቆችን የሚያሰባስብ እና የሚያገናኝ ተቋማዊ አደረጃጀት ሲኖር ነው።[46] ይህን በመገንዘብ፣ አንዳንድ ዓለም-አቀፍ ኢስላማዊ ድርጅቶችና ግለሰቦች ተነሳሽነቱን ወስደው፣ የሸሪዓ ሕግ የምርምር ማዕከላት የማቋቋም ዓላማ ያነገቡ የምክክር መድረኮችን እ.ኤ.አ በ1961 በደማስቆ፣ በካይሮ እና በካዛብላንካ፣ እንዲሁም በኂላም በ1976 በሪያድ ከተማ አካሂደዋል።[47] ከምክክር መድረኮቹ በኂላ በተደረገው ያላሰለሰ ጥረትና ርብርብ ለመጀመሪያ ጊዜ ‹ኢስላማዊ የምርምር አካዳሚ *(መጅመዕ ኣል-ቡሑስ ኣል-ኢስላሚ)*› የተሰኘ ማዕከል የአዝሓር ዩኒቨርሲቲ አካል በመሆን ተቋቋመ።[48] ከዚህ ፋና-ወጊ እርምጃ በኂላ፣ የመ·ስሊም ሊግ፣ በ1978 *‹የፊቅሕ አካዳሚ›* የተሰኘ ሌላ ተቋም ከፈተ፤ በመቀጠል 57 አባል-ሃገራት ያሉት ‹ኢስላማዊ ጉባኤ ድርጅት (OIC)›፣ መቀመጫውን ጀዳ ከተማ ያደረገ የፊቅሕ አካዳሚ አስመረቀ። ሁሉንም አባል ሃገሮች የሚወክሉ የሸሪዓ ምሁራን የአካዳሚው አባላት በመሆን፣ በተቋሙ የምርምር እና የፈትዋ ተግባራት ላይ የየሃገራቸውን ነባራዊ እውነታ ታሳቢ እንዲያደርጉና እንደ አስፈላጊነቱ ተለማጭ እና አማራጭ የሕግ ምርምር የሚያደረጉበት ምቹ ተቋማዊ ምሕዳር ተፈጥሮላቸዋል።[49] በተጨማሪም፣ በዓለም ዙሪያ የሚገኙ ኢስላማዊ ዩኒቨርሲቲዎችና የምርምር ተቋማት፣ በልዩ ልዩ የፊቅሕ ዘርፎች ላይ ያተኮረ ጥናትና ምርምር የሚያደርጉ የትምህርት ክፍሎችን እና ማዕከላትን ከፍተው የተማሪዎችንና የአጥኚዎችን ምሁራዊ ጥረት በማቀናጀት ለሸሪዓ እድገት ከፍተኛ አስተዋጽኦ በማድረግ ላይ ይገኛሉ፤ ከእነዚህ የምርምር ማዕከላት መካከል እንደ አብነት አንድ ለመጥቀስ ያህል፣ ጀዳ የሚገኘው ንጉስ አብዱልዐዚዝ ዩኒቨርሲቲ፣ ‹ዓለም-አቀፍ ኢስላማዊ የኢኮኖሚ ምርምር ማዕከል (International Centre for Islamic Economic Research)› ከፍቶ በስራ ላይ ይገኛል።[50]

የወል ኢጅቲሓድ የሚደረግባቸው ተቋማዊ ማዕቀፎችን የመዘርጋት ተነሳሽነት፣ ከላይ እንደተገለጸው፣ የድርጅቶችና ግለሰቦች ጥረት ውጤቶች ሲሆኑ፣ እንደ ፓኪስታን እና ማሌዥያ ባሉ ሃገራት ደግሞ ብሔራዊ የፈትዋ ምክር ቤቶችን የማቋቋሙን ኃላፊነት መንግሥት ራሱ ወስዶ፣ በፓኪስታን ‹የኢስላም ርዕዮት ም/ቤት (*Islamic Ideology Council)*›፣ በማሌዥያ ደግሞ ‹ብሔራዊ የፈትዋ ም/ቤት *(National Fatwa Council)*›፣ የተሰኙ ምክር ቤቶች በሕግ ተቋቁመው፣ በሃገር ደረጃ ለሚነሱ ወቅታዊ የሕግ ጥያቄዎች

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[46] Ibid., p. 254
[47] Ibid.
[48] Ibid.
[49] Ibid., p. 256
[50] Ibid.
ለተጨማሪ መረጃ የድርጅቱን ድረ-ገጽ <http://iei.kau.edu.sa/Default.aspx?Site_ID=121&Lng=EN> accessed on፡ 24 Dec 2020. በተጨማሪም ማዕከሉ ‹የኢስላም ኢኮኖሚ ጥናት መጽሔት (Journal of King Abdulaziz University: Islamic Economics)› የተሰኘ የምርምር መጽሔት እ.ኤ.አ ከ1983 ጀምሮ በማሳተምና ለመስኩ የኢስላማይዜሽን ጥረት ግንባር ቀደም አስተዋጽኦ በማድረግ ላይ ይገኛል። የመጽሔቱ የምርምር ጽሁፎች በ፡ http://iei.kau.edu.sa/Pages-E-JKAU-IEHome.aspx ድረ-ገጽ ለተጠቃሚዎች ክፍት ተደርገዋል።

ሸሪዓዊ ብይን በመስጠት፣ ምሁራን አባላት *(ሙፍቲዎች)* ጥናት የሚያደርጉበትና የጋራ አቋም ላይ የሚደርሱበት፣ ሃገራዊ ፋይዳ ያለዉ የኢጅቲሓድ ተቋማዊ ሥርዓት መዘርጋት ችለዋል።[51] ከመንግሥት ተነሳሽነት ሌላ፣ እንድ ሕንድ ባሉ ሃገሮች ደግሞ በሃገር-በቀል ሕዝበ-ሙስሊም ድርጅቶች ጥረት ኢስላማዊ የፊቅሕ አካዳሚዎች ተቋቁመው ሃገራዊ ተቀባይነት ማግኘት የቻሉ *ፈትዋዎችን* በመስጠት፣ ብሎም በፊቅሓዊ ጉዳዮች ላይ ሐሳቦችን ለማንሸራሸር፣ ለማዳበር እና የጋራ አቅጣጫዎችን ለመትለም የሚያስችሉ ሃገራዊ እና ዓለም-አቀፍ አውደ-ጥናቶችንና የውይይት መድረኮችን በየጊዜው በማዘጋጀት ለዘመኑ የሸሪዓ ሕግ እድገት የበኩላቸውን አስተዋጽኦ በማድረግ ላይ ይገኛሉ።[52]

ከቅርብ ዘመናት ወዲህ ደግሞ፣ ኢስላማዊ የኢኮኖሚና የፋይናንስ ሥርዓት መጠናከርን ተከትሎ፣ በዓለም ዙሪያ በሚገኙ የመንግሥትና የግል የፋይናንስ ተቋማትና ባንኮች፣ የሚያቀርቧቸው ኢስላማዊ የፋይናንስ አገልግሎቶች ከሸሪዓ መርሆዎችና የአስራር ደንቦች ጋር መጣጣማቸውን የሚያረጋግጡ የሸሪዓ አማካሪ ቦርዶችን በማቋቋም ላይ ይገኛሉ። እነዚህ አካላት በመስኩ ጥናት በማድረግ እና ምክረ-ሐሳቦችን በማቅረብ፣ በኢኮኖሚና ፋይናንስ አስተዳደር ረገድ ያለዉን የፊቅሕ ማዕቀፍ የማሳደግ ሚና ያለው *የኢጅቲሓድና የፈትዋ* እንቅስቃሴዎችን በማድረግ ላይ ይገኛሉ።[53]

በአጠቃላይ፣ የእነዚህ አካዳሚዎች ዓላማ፣ በዓለም አቀፍና በሃገር ደረጃ ለሚነሱ አዳዲስ የሸሪዓ ጭብጦች ወይም የለዉጥ እና የማሻሻያ ሐሳቦች ላይ የፊቅሕ ተማሪዎችና ምሁራን የጋራ ምርምር የሚያደርጉበት ምቹ ተቋማዊ አደረጃጀትን መፍጠር፣ እና በየወቅቱ በሚደረጉ መደበኛ ጉባኤዎች ጠቅላላ የሸሪዓ መርሆዎችንና ዓላማዎችን መሠረት ያደረጉ የምርምር ውጤቶች ተደራሽ የሚሆኑበት፣ ብይኖችና እወጃዎች *(ፈታዋ)* ይፋ የሚደረጉበት መድረክ መሆን ነው።

ወደ ኢትዮጵያ ተጨባጭ ስንመጣ፣ የሸሪዓ ሕግ ተፋጻሚ እንዲሆን በተፈቀደባቸው የግልና የቤተሰብ፣ እንዲሁም የወለድ-ነጻ የባንክ ሥራ ላይ፣ ከሃገሪቱ የሙስሊም ማህረሰብ አስተሳሰብ እና አኗኗር አኳያ፣ እንዲሁም ብሔራዊ የፋይንስ ሥርዓቱን ልዩ መገለጫዎች እና ከሥርዓቱ ጋር የተቆራኙ ሥጋቶች አኳያ፣ ሸሪዓዊ ምርምር የሚያደርግና ሃገራዊ ፋይዳ ያለው *ፈትዋ* የሚሰጥ ማዕከላዊ የፊቅሕ ተቋም የለም። በመሆኑም የፌዴራልና የክልል ሸሪዓ ፍ/ቤቶች የቤተሰብ ሕግ አተረጓጎምና አፈጻጸም፣ በዳኞች ግላዊ አረዳድና ልማዳዊ አስራር ላይ የተንተራሰ እና ወጥነት የሌለዉ እንዲሆን ምክንያት ሆኗል።[54] በተጨማሪም፣ ሸሪዓ ከሕብረተሰቡ ተጨባጭ እውነታ ጋር በሚራመድና እና ችግር-ፈቺ በሆነ መልክ እንዲተረጎምና እንዲቀረጽ የማያስችል ሥርዓት እንዲሰፍን ሆኗል። በቅርቡ ከተጀመረው ሸሪዓ-መር የባንክ አገልግሎት ጋር በተያያዘ ደግሞ፣ በሃገር ደረጃ ይቅርና፣ የወለድ-ነጻ ባንክ ሥራ ፈቃድ አግኝተው አገልግሎት

[51] Ibid.
[52] Ibid.
[53] Ibid., pp. 256-257
[54] የሸሪዓ ሕግን አስመልክቶ የተደረገ ዉይይት ቃለ-ጉባኤ፣ ወንበር፡- የዓለማየሁ ኃይሌ መታሰቢያ ድርጅት ቡሌቲን፣ አስራ ስምንተኛ መንፈቅ፣ 2009፣ ገጽ 43 እና 64.

ማቅረብ የጀመሩ ባንኮች፣ እንዲሁም እነዚህን ባንኮች የመቆጣጠር ሥልጣን እና ኃላፊነት የተጣለበት ብሔራዊ ባንክ ጭምር፣ አስካሁን ድረስ የሸሪዓ አማካሪ ኮሚቴዎችን ማዋቀር አልቻሉም።[55] ባጠቃላይ፣ የሸሪዓ የሕግ ሥርዓቱ አካል በሆነው ልክ፣ ከሌሎች ሃገራት በተለየ፣ የኢትዮጵያን ማህበረሰብና የሃገሪቱን እውነታዎች ያገናዘበ፣ ሸሪዓዊ ኢጅቲሓድ የሚደረግበት ተቋማዊ አደረጃጀት የለም። ይሁን እንጂ፣ ቀድመው የተወሰዱ የፖሊሲ እርምጃዎች፣ በተለይ በግል ባንኮች በኩል የዘርፉን የሸሪዓ መርሆዎችና ወጥ ዓለም-አቀፍ አሠራሮችን ለመተግበርና ግንዛቤ ለመፍጠር የሚደረጉ እንቅስቃሴዎች አበረታች መሆናቸውን መነሻ በማድረግ፣ በቅርብ የጊዜ ርቀት ውስጥ የሸሪዓ ቦርዶችን ማቋቋም እንደሚችሉና የሸሪዓ የፋይናንስ ማዕቀፍ በሃገሪቱ አግባብ ውስጥ ተፈጻሚ በሚደረግባቸው ጉዳዮች ላይ የኢጅቲሓድና ፈትዋ እንቅስቃሴዎች ይጀመራሉ የሚል ግምት ሊወሰድ ይችላል።

3.4. ትምህርት እና ምርምር

ጥንታዊው የኢስላም የሥነ-እውቀት አቀራረጽ እና የትምህርት አቀራረብ (የመድረሳ ትምህርት)፣ ከዘመኑ ትውልድ አስፈልጎት እና የከፍተኛ ትምህርት አደረጃጀት ጋር የማይጣጣም እና በውጤቱም አመርቂ ሆኖ ባለመገኘቱ፣ ከመቼውም በበለጠ በ20ኛዉ ምዕተ-ዓመት ማብቂያ አካባቢ፣ በዓለም ዙሪያ የሚገኙ ሙስሊም የሥነ-ትምህርት ፈላስፎችና ልሂቃን ባደረጉት ከፍተኛ ተነሳሽነትና ርብርብ፣ የዓለም የሙስሊም ትምህርት ጉባኤዎችና አውደ-ጥናቶች በተለያዩ የዓለም ከተሞች በተከታታይ ተካሂደዋል፤ በጉባኤዎቹም ጥናታዊ ጽሁፎች ቀርበዉ፣ ሰፊ ዉይይቶችና ክርክሮች ተደርጎባቸዋል፤ ገንቢ ምክረ-ሐሳቦች ከተሳታፊ ምሁራን ተሰንዝረዋል።[56] ጉባኤዎቹ፣ ታሪካዊ ሆኖ የተመዘገበ አስደናቂ ዉጤትና እመርታ አምጥተዋል፤ የዓለም ሙስሊም ሃገሮች በግዛታቸውም ሆነ በዓለም አቀፍ ደረጃ፣ ለኢስላማዊ ትምህርት የሥርዓት ለውጥ እና አዲስ ተቋማዊ የትምህርት አደረጃጀቶችን እውን ለማድረግ ችለዋል።[57] ከተመዘገቡ ውጤቶች መካከል ግንባር ቀደም የሆነው፣ ራሳቸውን የቻሉ፣ ኢስላማዊ የእውቀት ንድፍ እና የትምህርት አቀራረብ ሥርዓት ያላቸው ዓለም-አቀፍ እና ብሔራዊ ኢስላማዊ ዩኒቨርሲቲዎችና የምርምር ተቋማት መመስረታቸው ነው።[58] የሸሪዓ ሕግ፣ ከኢስላም

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[55] ከአቶ መሀመድ ቱኩ ጋር የተደረገ ቃለ-መጠይቅ፣ የኢትዮጵያ ንግድ ባንክ የወለድ ነጻ አገልግሎት አብይ ቅርንጫፍ የሕግ አማካሪ፣ 24/02/2010 ዓ.ም.

[56] Ghulam Nabi Saqeb, Some Reflections on Islamization of Education Since 1977 Makkah Conference: Accomplishments, Failures and Tasks Ahead, Intellectual Discourse, Vol 8, No 1, 45-68 (2000), pp. 45-46 <http://journals.iium.edu.my/intdiscourse/index.php/islam/article/view/481> Accessed on 30 December 2017. ከሥነ-ትምህርት አኳያ፣ የሙስሊም ትምህርት በኢትዮጵያ ያሉትን ገጽታዎች፣ ችግሮች እና የወደፊት አቅጣጫዎች የሚያመላክት ፈር-ቀዳጅ የሆነ ታላቅ ምርምር ሊደረግበት የሚገባ መስክ ነው። የትምህርት አጥኚዎች፣ ተመራማሪዎች እና ተማሪዎች ትኩረት ሊሰጡትና ሥር-ነቀል የምርምር ርብርብ ሊያደረጉበት እንደሚገባ ልገልጽ እወዳለሁ።

[57] Ibid, pp. 53-63

[58] Ibid, p. 56

የእውቀት መስኮች አንዱ እንደመሆኑ፣ የለውጥ ሂደቱ አካል በመሆን፣ በይዘቱ፣ በስፋቱ እና በአቀራረቡ ላይ አስፈላጊ ማሻሻያዎችና ለውጦች ተደርገውበታል።[59]

የሸሪዓ ሕግን በቅድመ-ምረቃ እና ድሕረ-ምረቃ ደረጃ ለሚያጠኑ ተማሪዎች፣ በይዘቱ በጥንታዊ የፊቅሕ ርዕሶች ላይ ብቻ ሳይሆን፣ የሸሪዓ የግዴታ ሕጎችን፣ የሸሪዓ ሕገ-መንግሥታዊ ጥናት *(አል-ፊቅሕ አድ-ዱስቱሪ)*፣ ኢስላማዊ የኢኮኖሚና የፋይናንስ ሥርዓት፣ የሰብዓዊ መብቶች ወዘተ.. ጥናቶችን ያካተተ የሕግ ሥርዓተ-ትምህርት ተቀርጾ ጥናትና ምርምር እየተደረገበት ይገኛል።[60] የትምህርት አቀራረቡን በተመለከተ፣ ሁሉንም የሸሪዓ *መዝሓቦችን* መሠረት ያደረገ ብቻ ሳይሆን፣ ሸሪዓ ከሌሎች እንደ ኮመን እና ሲቪል የሕግ ሥርዓቶችና እሴቶች ጋር በንጽጽር የሚጠናበት፣ ብሎም ከቡድናዊ የ*መዝሓብ* ማዕቀፍ ውጪ በግለሰብ ደረጃ ከፍተኛ አሻራ የነበራቸዉ የሸሪዓ ሊቆችን[61] የሕግ እሳቤዎች ያካተተ ነዉ።[62] በአጠቃላይ የዘመኑ የሸሪዓ ትምህርት ይዘትና አቀራረብ፣ የ21ኛዉ ክፍለ-ዘመን ማህበረሰባዊ ጥያቄዎችን መመለስ በሚችል አኳኋን የተቀረጹ የሕግ ትምህርት አይነቶችን ያቀፈ፣ የሸሪዓ ምንጮችን እና የቀደመውን የፊቅሕ ሥነ-ጹሁፍ መሠረት ያደረገ ሰፊ ሥርዓተ-ትምህርታዊ መዋቅር ያለው ነው። በዶክትሬት ደረጃ የሚደረገው የሸሪዓ ጥናት ደግሞ፣ ምርምር ተኮር *(Research Oriented)* ሲሆን፣ በነባሩ የፊቅሕ እውቀት ላይ አዲስ ምልከታዎችን ለመጨመር እና በተጨባጭ ያጋጠሙ የሕግ አተረጓጎም እና የአፈጻጸም ችግሮችን እልባት በመስጠት ላይ ያነጣጠረ እንዲሆን ተደርጓል።[63]

በውጤቱም፣ የመካከለኛው ምስራቅና በባሕረ-ሰላጤ ሃገሮች የሚገኙ ኢስላማዊ ዩኒቨርሲቲዎች፣ በሸሪዓ ጥናት ላይ የተሟላ የዲግሪ ትምህርት መርሐ-ግብሮችን ቀርጸው በማስተማር እና ምርምር በማድረግ ላይ ይገኛሉ። ሌሎች በእነዚህና በኤስያ ሃገሮች የሚገኙ ግንባር ቀደም ዩኒቨርሲቲዎች የሕግ ሥርዓተ-ትምህርት አካል የተደረጉ፣ ልዩ ልዩ የሸሪዓ ሕግ የትምህርት አይነቶችን ያቀርባሉ። እነዚህ የትምህርት አይነቶች በጥቅሉ ‹የሸሪዓ ሕግ መግቢያ› ከሚል ጀምሮ እንደ ‹*ሑሱል አል-ፊቅሕ* (የፊቅሕ መሠረተ-ሐሳቦች)፣ የቤተሰብ ሕግ፣ የንግድ ሕግ ወዘተ.. ያሉ የመስኩ ልዩ የጥናት ዘርፎችን እንደ አማራጭ የትምህርት አይነት *(Elective Course)* ያቀርባሉ።[64] እንደ ሕንድ ባሉ ሃገሮች ደግሞ፣ በብዙዎቹ የትምህርት ተቋማሞቻቸዉ፣ ኢስላማዊ ሕግን *(Islamic Law)* አይቀሬ የትምህርት አይነት *(Compulsory Subject)* ሆኖ ይሰጣል። በዓለም ዙሪያ የሚገኙ አንዳንድ

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[59] Kamali, Sharia Law, supra note 9, p. 257

[60] Ibid.

[61] ከ*መዝሓቦች* መደራጀትና መመስረት በፊት የነበሩ፣ ከእነሱ በኋላ ለመጣዉ የፊቅሕ እድገት መሠረት የጣሉ፣ ነገር ግን በቀደመው የፊቅሕ ጥናት ውስጥ ሥራዎቻቸው እና እሳቤዎቻቸው ትኩረት ያልተሰጣቸው ግለሰብ ሊቃውንት አበርክቶ፣ በዘመኑ የፊቅሕ ትምህርት የጥናት ትኩረት እንዲያገኝ ሆኗል። ከእነዚህ ግለሰቦች መካከል፣ አቡ ዐምር አል-አውዛዒ፣ ለይስ ኢብን ሰዕድ፣ ኢብን ሹብሩማሕ፣ ሱፍያን አስ-ሰውሪ፣ ኢብን አቢ ለይላ፣ ሀሰን አል-በስሪ እና ሌሎችም ይገኙበታል። (Kamali, Sharia Law, supra note 9, p. 257).

[62] Kamali, Sharia Law, supra note 9, p. 257

[63] Ibid.

[64] Ibid., p. 258

ኢስላማዊ የትምህርት ዓላማና ግብ ወይም ወጥ የኢስላማዊ ዩኒቨርሲቲነት ቅርጽ የሌላቸው የከፍተኛ ትምህርት ተቋማት፣ በሸሪዓ ሕግ ወይም ሸሪዓን ጨምሮ ‹ኢስላማዊ ጥናቶች *(Islamic Studies)*› በሚል ሌሎች ኢስላማዊ ሳይንሶችን ባካተተ ጥናት ላይ የዲግሪ ትምህርት መርሐ-ግብሮችን በማከናወን ላይ ይገኛሉ።[65]

በምዕራቡ ዓለም እየተደረገ ያለዉ የሸሪዓ ሕግ ጥናት ምንነት እና መገለጫዎች ሲታይ፣ በሌሎች የኢስላም ሳይንሶች ላይ እንዳለዉ ዝንባሌ ሁሉ፣ ችግር ፈቺ ከመሆን ይልቅ፣ ከትምህርት ፍጆታነት ያላለፈ ንድፈ-ሐሳባዊነትና ሐሊዎታዊነት የሚንጸባረቅበት፣ እንዲሁም በምዕራባዊ የእሳቤ መነጻሮች አሻግሮ ምስራቃዊ ሥርዓተ-እሴቶችን የሚመለከት (ኦሬንታሊዝም)፣ እና ጥራዝ-ነጠቅ ሂሳዊ አቀራረቦችን የተከተለ ነው።[66] የሸሪዓ ሕግ፣ በአሜሪካ እና አውሮፓ አህጉሮች በሚገኙ የከፍተኛ ትምህርትና የምርምር ተቋማት፣ የመካከለኛዉ ምስራቅና ምስራቃዊ *(Oriental)* ጥናቶች ስር፣ እንደ አማራጭ የትምህርት አይነት በመሆን የሚሰጥ ሲሆን፣ ለዚህም ምክንያቱ በሃገራቱ የሕግ ሥርዓት ውስጥ የሸሪዓ ሕግ ተግባራዊ ሊደረግ የሚችልበት የተፈጻሚነት እውቅና ያልተሰጠው በመሆኑ ነው።[67] ኢትዮጵያን ጨምሮ ከፍተኛ የሙስሊም ቁጥር በሚገኝባቸው የአፍሪካና የሌሎች አህጉሮች ሃገራት ደግሞ፣ ከመንግሥት ሕግ በተጓዳኝ የሃይማኖት ሕግ በግልና በቤተሰብ ጉዳዮች ላይ ተፈጻሚ እንዲሆኑ ሕገ-መንግሥታዊ ፈቃድ ባገኘው መሠረት፣ የሸሪዓ ፍ/ቤቶች በየደረጃው ተቋቁመው ሸሪዓዊ ፍትሕን ለሙስሊም ማህበረሰቦች በማድረስ ላይ ያሉ በመሆኑ፣ በከፍተኛ የትምህርት ተቋሞቻቸው ውስጥ በሚገኙ የሕግ ክፍሎችና ት/ቤቶች ውስጥ፣ የሸሪዓ ሕግ እንደ ግዴታ ወይም አማራጭ ትምህርት በመሆን እየተሰጠ ይገኛል።[68]

የኢትዮጵያን የሕግ ብዝኃነት ገጽታ ስንመለከት፣ የሸሪዓ ሕግ በግል እና በቤተሰብ ጉዳዮች ላይ ተፈጻሚ እንዲሆን በተዘረጋው መሠረት፣ ሸሪዓ ፍ/ቤቶች በፌዴራል እና በክልል አስተዳደሮች ላይ ተቋቁመው በመስራት ላይ ይገኛሉ። ከዚህ እውነታ አኳያ፣ የሸሪዓ የግልና የቤተሰብ ሕጎች ጥናት፣ ከአውሮፓ እና የአሜሪካ ሃገራት በተለየ በሃገራቱ ተፈጻሚ እስከሆነ ድረስ *(Applied Discipline)*፣ ለሸሪዓ ሕግ አፈጻጸም እና ለሙያው መዳበር አስፈላጊ መሆኑ አያከራክርም። ይህ ከሆነ ታዲያ፣ የሸሪዓ ሕግ በአማራጭነት የሚቀርብበት የሕግ ትምህርት አቀራረጽ በተጨበጭ ያለውን አስፈልጎት እና ከሸሪዓ አፈጻጸም ጋር ተያይዘው ለሚነሱ ጥያቄዎች ምላሽ መስጠትና መፍትሔ ማበጀት ይችል ዘንድ፣ የኢስላም ሕግ *(Islamic Law)* ትምህርት ከነባሩ በተሻለ ከፍ ያለ ትኩረት ሊሰጠው ይገባል። የሸሪዓ ሕግ ተግባር ላይ መዋሉን ተከትሎ፣ በአተረጓጎምና አፈጻጸም ረገድ የሚስተዋሉ የሥነ-ሥርዓት ግድፈቶችን፣ ሕገ-መንግሥታዊ ጥበቃ የተሰጣቸው የሴቶችና ሌሎች አግባብነት ያላቸው ሰብዓዊ መብቶች መከበር ጋር የተያያዙ ሥጋቶችና ችግሮች ሊቀረፉ የሚችሉት፣ እንዲሁም የሸሪዓ ዓላማዎችንና ግቦችን *(መቃሲድ)* መሠረት ያደረገ ፍትሕ ለሃገራችን ሙስሊም ማህበረሰብ ማድረስ የሚቻለው፣ ሸሪዓን ከታሪካዊ እድገቱ

[65]Ibid.
[66] Ibid.
[67] Ibid.
[68] Ibid., p. 259

ጀምሮ የሕግ ማዕቀፉ የተገነባባቸውን የሕግ መርሆዎች *(ኡሱል አል-ፊቅሕ)* እና ዝርዝር የግልና የቤተሰብ ሕግጋት *(ፊቅሕ)* ላይ ሁሉም ባለድርሻ አካላት በቂ ግንዛቤ ሲኖራቸው ነው።[69] ይህ እውን ሊሆን የሚችለው ደግሞ የጥናት መስኮቹ በበቂ ደረጃ የከፍተኛ ትምህርት ቅድመ-ምረቃ እና ድህረ-ምረቃ መርሐ-ግብሮች አካል ተደርገው፣ ጠንካራ የእውቀት መሠረት መገንባትና የሰለጠኑ ባለሙያዎችን ማፍራት ሲቻል ነው። በዩኒቨርሲቲ ደረጃ፣ ለቅድመ-ምረቃ የሕግ ትምህርት መማሪያ በመሆን የተዘጋጁት መጻህፍት በጠቅላላው ካለባቸው የጥራት ችግር አኳያ ማሻሻያ እና ለውጥ የሚያስፈልጋቸው መሆኑ እንደተጠበቀ ሆኖ፣ በተለይ የኢስላም ሕግ መማሪያ መጽኃፍ[70] ደግሞ፣ የኡሱል አል-ፊቅሕ መርሆዎችን ለማስተዋወቅ ያህል እንኳ ዳሰሳ የማያደርግ ከመሆኑም በላይ፣ በዝርዝር የሸሪዓ የግልና የቤተሰብ ሕጎች ላይ ሁሉንም የሕግ ት/ቤቶች እይታዎችና የዘመኑን የሸሪዓ እሳቤዎች ያገናዘ ትንታኔ የማያቀርብ በመሆኑ፣ መጠነ-ሰፊ ማሻሻያ እና የአቀራረብ ለውጥ ሊደረግበት ይገባል።

ከላይ እንደተገጸው፣ የሸሪዓ ሕግ፣ በኢስላም የኢኮኖሚ እና የፋይናንስ ሥርዓት ረገድ ከሌሎች የፊቅሕ ርዕሰ-ጉዳዮች በላቀ፣ የምሁራንን ትኩረት ማግኘቱን እና በጥቂት ዐሥርተ-ዓመታት ውስጥ የካበተ የሸሪዓ እዉቀትና ሥነ-ጽሁፍ ያዳበረ በመሆኑ፣ ምናልባትም ከሸሪዓ የቤተሰብ ሕጎች በመቀጠል፣ የአረብና ሙስሊም ሃገሮችን ድንበር ተሻግሮ የበርካታ መንግሥታትን የፖሊሲ ይሁንታ በማግኘት የብሔራዊ ፋይናንስ ሥርዓት አካል ለመሆን ችሏል።[71] በዚህም ምክንያት፣ የዘርፉን የሰዉ ሃብት ፍላጎት ለማሟላት፣ እና ከየሃገሩ የኢኮኖሚና የፋይናንስ ተጨባጭ እውነታዎች በመነሳት ትክክለኛ የሕግ ማዕቀፍ ለመቅረጽ ይቻል ዘንድ፣ በጥናት እና ምርምር ተግባራት መታገዝ ያለበት በመሆኑ፣ የኢስላም የውል፣ የንግድ፣ የፋይናንስና የባንክ ግንኙነቶችን የሚገዛው የሸሪዓ ሕግ ክፍል በተለየ ትኩረት ተሰጥቶት፣ በስሩ ልዩ ልዩ የትምህርት አይነቶች ተቀርጸው፣ በተለያዩ የትምህርት መርሐ-ግብሮች እየተሰጠ ይገኛል።[72] እነዚህ የእውቀት መስኮች የሕግ ገጽታ በሸሪዓ ሕግ ስር እንደሚጠና ሁሉ፣ በሌሎች ተጓዳኝ ኢስላማዊ የኢኮኖሚና የፋይናንስ የትምህርት መስኮች ስር ጥናት የሚደረግባቸው መሆኑ ሊታወቅ ይገባል። ዓለም-አቀፉን አካሄድ በመከተል፣ የኢትዮጵያ መንግሥትም እ.አ.አ በ 2011፣ ብሔራዊ ባንክ ባወጣው መመሪያ መሠረት፣[73] የሃገሪቱን ሙስሊም ማህበረሰብ ለዓመታት የዘለቀ ፍላጎት ከግምት ውስጥ በማስገባት፣[74] በሸሪዓ የፋይናንስ መርሆዎችና የአሰራር ደንቦች የሚመራውን[75] የወለድ ነጻ የባንክ አገልግሎት፣ በንግድ ባንኮች

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[69] የዚህ ጽኑፍ አዘጋጅ ‹የሸሪዓ ሕግ ዓላማዎች *(መቃሲድ አሸ-ሸሪዓሕ)* በሚል ርዕስ ያዘጋጀውን ጽኑፍ ያንብቡ (Bahir Dar University Journal of Law, Vol. 7 No. 2, pp. 261-281

[70] Abdulmalik Abubekr, Islamic Law, Justice and Legal Research Institutite, 2009, <https://chilot.me/wp-content/uploads/2011/06/islamic-law.pdf> Accessed on 30 December 2017.

[71] Kamali, *Sharia Law*, supra note 9, p. 258

[72] Ibid.

[73] Directives to Authorize the Business of Interest Free Banking Directives Number SBB/51/2011. <https://www.nbe.gov.et/pdf/directives/bankingbusiness/sbb-51-11.pdf> Accessed on 30 December 2017

[74] Ibid., Preamble

[75] Ibid., Article 2 (2.2)

አማካይነት መቅረብ የሚችልበትን አማራጭ የባንክ አሰራር ዘርግቷል። ይህ የሚያስመሰግንና የሚደገፍ የፖሊሲ እርምጃ መሆኑ እንደተጠበቀ ሆኖ፣ ዘርፉ ገና በጅማሮ ላይ ያለ ከመሆኑ አንጻር፣ እያጋጠመው ያለውን የሰለጠነ የሰው ኃይል እጥረት ችግር ለመቀነስ፣[76] እንዲሁም ወደፊትም የፍላጎት ማደግንና የዘርፉን መስፋፋት ተከትሎ፣ በባንኮች የሸሪዓ ቦርዶች አወቃቀር፣ በግጭት አፈታት ሒደት እና ሌሎች መደቦች የሚያስፈልገውን ኢስላማዊ የፋይናንስና የባንክ ሕግ ባለሙያዎችን ማፍራት ይቻል ዘንድ፣ ከወዲሁ በዩኒቨርሲቲ የሕግ ቅድመ-ምረቃ ‹የኢስላም ሕግ (Islamic Law)› ጥናት ውስጥ የሚካተትበትን የሕግ ትምህርት ማሻሻያ ማድረግ አስፈላጊ ነው። በተጨማሪም፣ ነባራዊ እውነታውን በመከተል፣ የሸሪዓ የፋይናንስና የባንክ ሕግ፣ ከኢስላም ሕግ ጥናት በተለየ፣ ራሱን ችሎ እንደ አንድ የትምህርት አይነት የሚሰጥበትም አካሄድም ከወዲሁ ሊታቀድበት የሚገባ ነው።[77] በድሕረ-ምረቃ የቢዝነስ ወይም የንግድ ሕግ ጥናት መርሐ-ግብሮች ላይም ቢሆን፣ የትምህርት አይነቱ ተካቶ ጥናት ቢደረግበትና መመረቂያ ጽሁፎች እንዲሠሩበት ቢደረግ፣ መስኩ በዓለም ደረጃ በሸሪዓ ሥነ-ጽሁፍ ያደገውን ያህል፣ ከኢትዮጵያ የፋይናንስ ሥርዓት እድገት ደረጃ እና ሥጋቶች አንጻር፣ ሃገራዊ መልክ የተላበሰ ሸሪዓዊ ሥነ-ጽሁፍ እንዲዳብር በማድረግ ለወደፊት የዘርፉ እድገት መንደርደሪያ የእውቀት መሠረት የሚጥል ነው።

4. ማጠቃለያ

የኢፌዲሪ ሕገ-መንግሥት፣ የሕግ ብዝኃነትን የሚያረጋግጡ አንቀጾችን ሲያካትት፣ በሃገሪቱ የሚገኙ ባህልና ሃይማኖትን የሚከተሉ ልዩ ልዩ ማህበረሰቦችና ዜጎች፣ ኦፊሴላዊ ባልሆኑ የሃይማኖትና የባህል ሕጎች የመዳኘት ፍላጎታቸዉን ለማሟላት

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[76] ከአቶ መሀመድ ቱኩ ጋር የተደረገ ቃለ-መጠይቅ፣ supra note 55።
በተጨማሪም ተጠያቂው እንደገለጸው፣ ባንካቸው የሸሪዓ አማካሪ ቦርድ ለማቋቋም ፈልጎ፣ አባላት ባለሙያዎችን ለመቅጠር በተደጋጋሚ የሥራ ማስታወቂያ ቢያወጣም፣ በጠቅላላ የሸሪዓ ሕግ፣ እና በፋይናንስና የባንክ ዘርፍ ባለሙያዎችን ማግኘት ባለመቻሉ፣ ቦርዱ ሳይቋቋም ቀርቷል። በወለድ ነጻ የመስኮት አገልግሎት ላይ የሚሰሩ የባንኩ ሰራተኞች ከመደበኛዉ የባንክ አሰራር ተነጣጥለው የመጡ በመሆናቸዉ፣ በኢስላማዊ የፋይናንስ መርሆዎች እና ወጥ የባንክ አሰራሮች ላይ በቂ ግንዛቤ ለመፍጠር ተከታታይ ሥልጠናዎችን በመስጠት የማብቃት ሥራዎችን እያከናወኑ እንደሆነ ተጠያቂው አክሎ ገልጿል።

[77] በኢትዮጵያ ዩኒቨርሲቲዎች የሕግ ት/ቤቶች ውስጥ ሦስት የሸሪዓ የሕግ ትምህርት አይነቶችን ማካተት፣ የቅርብ ጊዜ የሕግ ትምህርት ቀረጻ እቅድ መሆን አለበት። እነዚህ የትምህርት አይነቶች፡-

1. *ኡሱል አል-ፊቅሕ* (የሸሪዓ ሕግ መሠረተ-ሐሳቦች - *Islamic Jurisprudence*) ፡- ይህ መስክ ለሁሉም የሸሪዓ ጥናት ዘርፎች ጠቅላላ የንድፈ-ሐሳብ እና የአቀራረብ መሠረት በመሆን ያገለግላል።
2. የሸሪዓ የግልና የቤተሰብ ሕግ *(Islamic Personal and Family Law)*
3. የሸሪዓ የፋይናንስና የባንክ ሕግ *(Islamic Finance and Banking Law)*

እነዚህ የትምህርት አይነቶች የተለዩት ከሃገሪቱ የፍትሕ ሥርዓት እና የፋይናንስ ሥርዓት አስፈልጎት በመነሳት የተለዩ ተግባር-ተኮር የትምህርት መስኮች (Applied Desciplines) በምዕራቡ የዓለም ሃገራት እንደሚደረገው፣ የእውቀት መስኮች ስለሆኑ ብቻ ከተጨባጩ የራቀ ንድፈ-ሐሳባዊ የሸሪዓ ጥናትና ትንተና ለማድረግ *(for acadamic interest or curiosity)* አለመሆኑን መገንዘብ ያስፈልጋል።

ሲሆን፣ በሌላ በኩል ደግሞ መደበኛውን የፍትሕ ሥርዓት ከማገዝ አንጻር በግጭት አፈታት ሥርዓታቸዉ ካላቸዉ ዉጤታማነት ለመጠቀም ይቻል ዘንድ እዉቅናና የተፈጻሚነት ድርሻ ተሰጥቷቸዋል። በተዘረጋዉ ሕገ-መንግሥታዊ እድል እየተጠቀመ ያለ፣ መደበኛ ያልሆነ የዳኝነት አካል ቢኖር፣ የሸሪዓ ፍ/ቤቶች ብቻ ናቸዉ።

የሸሪዓ ፍ/ቤቶች የግልና ቤተሰብ ግጭቶችን ለመፍታት ተፈጻሚ የሚያደርጉት ሕግ ሸሪዓ እስከሆነ ድረስ፣ የሸሪዓ ሕግ ከታሪካዊ እድገቱና ወቅታዊ እድገቶቹ በተጨማሪ አጠቃላይ የሕግ መርሆዎቹ የሚጠናበት የ*ኡሱል አል-ፊቅሕ* እና ዝርዝር ሕጎች የሚጠኑበት የ*ፊቅሕ* የእዉቀት መስኮችን በጥልቀት መረዳት፣ እንዲሁም የሸሪዓ ሕግ በኢትዮጵያ ዙሪያ ተፈጻሚ ከመሆኑ ጋር በተያያዘ፣ ሃገራዊ እና ማህበረሰባዊ እዉነታዎችን ግንዛቤ ዉስጥ በማስገባት አግባብነት ባላቸዉ የሸሪዓ ሕግ ዘርፎች ላይ ጥናት ሊደረግ ይገባል። በውጤቱም፣ የሸሪዓ ፍ/ቤቶች የሕግ አተረጓጎም እና አተገባበር የሸሪዓ ዓላማዎችና ግቦች ማሳካት በሚችልበት ጎዳና ላይ እንዲራመድ ማድረግ ይችላል።

በዚህ ጽሁፍ፣ የ*ኡሱል አል-ፊቅሕ* እና *ፊቅሕ* ጥናቶች ታሪካዊ ዳራ የሆነዉን፣ የሸሪዓ ሕግ አነሳስ፣ የሕግ ት/ቤቶች አመሠራረት፣ *መዝሓቦቹ* ለሸሪዓ የሕግ ፍልስፍና እና ዝርዝር ሕግጋት መዳበር ያላቸዉ ጉልህ አስተዋጽኦዎች አጠቃላይ ዳሰሳ ቀርቧል። በዘመኑ የሸሪዓ እድገት አስተሳሰብ፣ መዝሓቦችን በጭፍን ከመከተል ይልቅ፣ ከሕብረተሰቡ የእድገት ደረጃ እና ተጨባጭ ችግሮች አኳያ፣ ሸሪዓ ተለማጭ መሆን ይችል ዘንድ፣ ከምክንያታዊ አስተሳሰብና ርትዕ ጋር ተስማሚ የሆነዉን የ*መዝሓብ* እና የ*ፉቅሓእ* የሕግ መርሆዎች እና ድንጋጌ ለመምረጥ *(ተኽይር)* አመቺ የሆነ የሸሪዓ ብዝኃነት ማዕቀፍ ተደረጎ መወሰድ እንዳለበት ዘመነኛ የ*ኡሱል* ምሁራን ያስገነዝባሉ። በተጨማሪም፣ *መዝሓቦች* እና የቀደምት የሕግ ሊቃዉንት የያዟቸዉ የሕግ አስተያየቶች፣ ለአጠቃላይ የዓለም ሙስሊምም ሆነ ለኢትዮጵያ ሕዝበ-ሙስሊም ማህበረሰባዊ *ሥልጣኔ* እና አስተሳሰብ ጋር የማይጣጣምና ሸሪዓዊ የፍትሕና የልማት ዓላማዎችን *(መቃሲድ)* የማያሳካ ከሆነ፣ ነባራዊ እውነታውን መሠረት ያደረገ አዲስ የሸሪዓ ምርምር ወይም *ኢጅቲሓድ* በማድረግ፣ በነባሩ የ*ፊቅሕ* ሕግ ላይ አስፈላጊዉን ማሻሻያና ለውጥ ማድረግ የሚገባ መሆኑን በአጽንኦት ያስረዳሉ። የኢትዮጵያ ሸሪዓ ፍ/ቤቶችም ቢሆኑ፣ የግልና የቤተሰብ ሕጎችን ተፈጻሚ በማድረግ ሂደት ላይ የመዝኃቦችን ተጓዳኝና ተነጻጻሪ አቋሞች እንደ አማራጭ የሕግ ብያኔ ምንጮች በማድረግ መጠቀም እንዳለባቸው፣ እንዲሁም እንደ አስፈላጊነቱ *መቃሲድን* እና የአካባቢውን ማህበረሰብ ታሳቢ ያደረጉ አዲስ የ*ፊቅሕ* እይታዎችን ማዳበር እንዳለባቸው ከዘመኑ የሸሪዓ እድገት መረዳት ይቻላል። በሃገሪቱ ያለው የሕግ ትምህርትና ምርምር አካላት፣ ምሁራንና ተማሪዎች በበኩላቸው፣ ሸሪዓ በሃገሪቱ ዜጎች ላይ ተፈጻሚ በሆነበት መጠን፣ ለትክክለኛ ትግበራው እና ውጤታማነቱ አግባብነት ያላቸውና አስፈላጊ የሆኑ የ*ኡሱል አል-ፊቅሕ* እና የ*ፊቅሕ* ሕግ ርዕሶችን ከሸሪዓ ፍ/ቤቶች አሠራርና ከተጠቃሚው ማህበረሰብ ጋር በማዛመድ ጥናት ማድረግና ለውጤቱ ምሁራዊ አስተዋጽኦ ሊያደርግ ይገባል።

The Implications of Constittuional Amendemnt Procedures on the Protection of Human Rights under the Fdre Constitution: An Appraisal

Habtamu Birhanu♣

Abstract

The Constitution of Federal Democratic Republic of Ethiopia establishes a stringent amendment procedure particularly on the provisions that deal with fundamental rights and freedoms. While this is a manifestation of the high value the Constitution confers to human rights, the finding of this Article, however, identifies that this rigorous constitutional amendment impedes the constitutionalization of new set of rights. It also discourages an effort to elevate the level of protection of the already recognized rights. In contrast, there are some constitutional provisions relevant to human rights but amendable through the ordinary amendment procedures. This is basically good as it makes an attempt to strengthen the constitutional provisions of human rights through amendment easier. The problem, however, is that they are susceptible to abuse by political organs having constitutional amendment power. The objective of the Article is, thus, to appraise the implications of constitutional amendment procedures on the protection of human rights under the FDRE Constitution. The Article contends that flexible constitutional amendment procedures against the preventive effects of rigorous amendment rules be adopted. With regard to the negative consequences of the flexible amendment procedures, the Article also suggests for a proper review of constitutional amendment process to ensure that the amendment power is exercised within the limits of the Constitution.

Key-words*:* Constitutional amendment, Human Rights, Review of Constitutional Amendment

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1. Introduction

Constitutions are basically categorized into flexible and rigid based on the process of amendment.[1] A constitution is said to be rigid when it is difficult to amend and is flexible when it is easy to amend. How they are rigid or flexible to amend, however, depends on the degree of difficulty of the amending process and is reflected in various forms. In this respect, there is a great deal of variation among the constitutions of the world.[2] It is true that both flexible and rigid constitutional amendment procedures carry with them both advantages and disadvantages. Flexible constitutional amendment enables the constitution to be responsive to the changes over time and practice. It allows constitutional mistakes to be readily corrected and institutional experimentation to be more readily conducted.[3] The problem of such flexible amendment procedure is that it provides less protection against self-interests of constitutional alterations. A rigid constitutional amendment, on the other hand, establishes a stable legal landscape. By sanctioning constitutional amendment to go through a complex process, it discourages degenerating constitutional amendments. It, however, discourages formal constitutional amendments to make necessary improvements to the constitutional text so that the constitution aligns to the ever increasing changes. The rigidity may also lead to the use of other informal means to make changes to the constitution. An organ engaging in constitutional amendment process may resort to informal constitutional amendment procedures. This, in effect, reduces the value of constitutional words.

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[1]Teddese Melaku, *Introduction to Ethiopian Constitutional law*, Volume I, (Far East Trading, Dec.2012) p.45. See also AREND LIJPHART, *Ppatterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, (2nd ed., Yale University Press, 2012) pp.206-7.

[2]See generally Maddex, Robert L., *Constitutions of the World*, (3rd ed., Washington DC: CQ Press, 2008). See also AREND, *PATTERNS OF DEMOCRACY*, pp.206-7; Rosalind Dixon, Constitutional amendment rules: a comparative perspective in Rosalind Dixon and Tom Ginsburg(ed.), *Comparative Constitutional Law*, (Edward Elgar,2011) p.105

[3]Bjorn Erik Rasch & Roger D. Congleton, *Amendment Procedures and Constitutional Stability*, www.rdc1.org/forthcoming accessed on October 30, 2020, p.542.

The implications of constitutional amendment procedures on the protection of human rights depend on whether a constitution establishes rigid or flexible constitutional amendment procedure on human rights. Therefore, depending on the flexibility or rigidity of amendment procedures, constitutional amendment procedures impact the protection of human rights either positively or negatively. It is true that rigid constitutional amendment procedures avoid regressive constitutional amendment intended to reduce the scope and the content of individual rights. The rigidity of a formal amendment process on human rights reflects a commitment by which constitutional framers want to entrench human rights. It is, however, preventive to make improvement to the protection of human rights through constitutional amendment. It discourages formal constitutional amendment to make necessary improvements on the protection of human rights.

On the other hand, the flexible constitutional amendment procedures make an attempt to improve the protection of human rights easier. They, however, open rooms for the organs participating in the constitutional amendment process to amend the constitution to reinforce their power through the instrumentality of constitutional amendment. To safeguard the constitution against partisan and regressive amendments, some constitutions establish judicial review of constitutional amendment.[4] It follows that while flexible constitutional amendment reduces the preventive effects of rigid constitutional amendment, judicial review of constitutional amendment reduces degenerating effects of flexible constitutional amendment.

The objective of this article is, thus, to appraise the implications of constitutional amendment procedures on the protection of human rights under the FDRE Constitution. The article is structured in three parts. The first part presents brief overview on constitutional amendment procedures under the FDRE Constitution by

[4] For a comparative discussion of the judicial review of constitutional amendments, see Kemal Gozler, *Judicial Review of Constitutional Amendments: A Comparative Study* (Bursa, Ekin Press,2008).

examining the initiation and ratification stages of constitutional amendment procedures. The second part appraises the implications of constitutional amendment procedures on the protection of human rights under the FDRE Constitution whereas the third and final part contains some conclusions drawn from the appraisal.

2. Constitutional Amendment Procedures under the FDRE Constitution

One of the common features of the modern constitutions around the globe is the fact that they establish a mechanism by which they are formally amended.[5] The FDRE Constitution is not an exception. The Constitution has established amendment procedures for formal constitutional changes**.** It has set forth two stages of constitutional amendment processes: stages of initiation and ratification of the proposed constitutional amendment.

2.1. Initiation of Constitutional Amendment

The rules of initiation outline the organs having legitimate power to kick off constitutional amendment proposals.[6] The rules also prescribe a threshold or method required whenever certain kinds of modifications are essential.[7] However, the rules may not always be provided in the constitution. In such cases, initiation of constitutional amendment is presumed to be carried out in accordance with the rules of amendment for 'ordinary legislations'.[8]

[5] ADEM KASSIE ABEBE, 'THE SUBSTANTIVE VALIDITY OF CONSTITUTIONAL AMENDMENTS IN SOUTH AFRICA, THE SOUTH AFRICAN LAW JOURNAL', Vol.131, 2014, p.657.

[6]Zelalem Eshetu Degifie, 'Unconstitutional Constitutional Amendments in Ethiopia:The Practice under Veil And Devoid Of a Watch Dog, HARAMAYALAWREVIEW', Vol.4, No.1, 2015, P.60.

[7]Richard Albert, 'Non-constitutional Amendments, Canadian Journal of Law and Jurisprudence', Vol. XXII, No.1, 2009, P.13.

[8]Carlos Closa, 'Constitutional Rigidity and Procedures for Ratifying Constitutional Reforms in EU Member States,www.acedamia.edu accessed on August 10, 2020, p.298.

The FDRE Constitution on its part, under article 104, envisages the rules governing the initiation of constitutional amendment.[9] Although the very title of this provision says "initiation of constitutional amendment," the careful reading of the same reveals that it is rather about the power to approve the proposed constitutional amendment for the purpose of submitting it for public discussion. Thus, the text of article 104 is artfully drafted in that it does not clearly state who may propose amendments.[10] It is argued that the normal procedure for amending ordinary laws applies.[11] However, this position was not the true intention of the people involved in drafting the constitution. This is because explanatory note on the draft of the Constitution provides that the three organs i.e., the House of Peoples' Representatives (HoPR, herein-after) and the House of Federation (HoF, herein-after) with two third majority votes in their separate sessions and state councils of member states with one third majority votes can initiate an amendment proposal.[12] Though this version has not been reproduced in the final text of the Constitution, it is reinforced in the HoPR and the HoF Joint Organization of Work and Session Rules of Procedure Regulation.[13] Accordingly, a proposal for constitutional amendment in Ethiopia can be introduced by the two Federal Houses and state Councils. It is provided for that a proposal for constitutional amendment initiated by the HoPR is required to be 'notified to the HoF.' Likewise, a proposal for

[9]Art 104 says that "any proposal for constitutional amendment, if supported by two thirds majority vote in the House of Peoples Representatives, or by a two-third in House of federation or when one-third of the State Councils of member States of the Federation, by a majority vote in each council have supported it, shall be submitted for discussion and decision to the general public and to those whom the amendment of the constitution concerns

[10]Alemante Gebreselassie, 'The Case for a New Constitution for Ethiopia, International Journal of Ethiopian Studies', Vol. 9, No. 1 & 2, Special Issue, 2015, p.18.

[11]C. M. FOMBAD, 'Limits On The Power To Amend Constitutions: Recent Trends In Africa And Their Potential Impact On Constitutionalism, Constitutional Amendment And Constitutionalism, University Of Botswana Law Journal', December 2007, P.40.

[12]Explanatory note on the Draft of the Federal Democratic Republic of Ethiopia on art 9(4), p.124 (Amharic Version) available on https://www.abyssinia.com

[13]The House of Peoples' Representatives and the House of Federation Joint Organization of Work and Session Rules of Procedure Regulation, 2008, Regulation No. 2/ 2008, Fed. Neg Gaz, Year 14, No.2. Art 9 of the Regulation provides that the proposal for amending the Constitution can be initiated by a two-third majority vote of House of Peoples Representative, House of Federation or with the support of one third of the regional state councils.

cnstitutional amendment initiated by the HoF 'is required to be notified to the HoPR. Moreover, the Speakers of the State Councils are required to send a proposal initiated by state councils to both the HoPR and the HoF.[14] However, the regulation does not require both the HoPR and the HoF to notify the state councils. Not only this, the regulation is silent on the legal consequences of failing to notify one another. It is not clear whether or not they can bring a proposal for constitutional amendment they initiate directly for ratification without notifying one another. Nevertheless, it can be argued that as the regulation does not ban the submission of constitutional amendment proposal for ratification regardless of a notification, it seems that failing to notify one another does not affect the legality of a proposal for constitutional amendment.

Another point that needs to be seen in relation to constitutional amendment is how the general public can participate in the initiation of constitutional amendment. Popular participation in initiating proposal for constitutional amendment is a manifestation of popular sovereignty. Moreover, it carries with it a greater chance of proposed constitutional amendments receiving the sort of serious and objective consideration they deserve.[15] In this regard, for example, the 2010 Constitution of Kenya under section 257 provides, in detail, the manner in which a proposal for constitutional amendment can be initiated by the people. An amendment to the Constitution of Kenya may be proposed by a popular initiative signed by, at least, one million registered voters. The proposal may be initiated either in the form of a general suggestion or a formulated draft Bill. If it is initiated in the form of a general suggestion, the promoters of that popular initiative are required to formulate it into a draft Bill.

[14] See generally art 9(1) of the regulation.

[15]John Hatchard, 'Undermining the constitution by constitutional means: Some thoughts on the new constitutions of SouthernAfrica, CILSA',Vol.28, No.21,1995, p.25. For more discussion, see J Hatchard, 'Perfecting imperfections: Developing procedures for amending constitutions in commonwealth Africa, The Journal of Modern African Studies', Vol.36, no. 3, 1998, p. 392-4.

In contrast to the Constitution of Kenya, the FDRE Constitution does not anticipate popular involvement. This position is further noticeable by the absence of the manner of popular involvement in initiating proposal for constitutional amendment in the subsequent regulation. Both the Constitution and regulation, while empowering the two federal Houses and state councils to initiate constitutional amendments, exclude popular involvement in initiating proposal for constitutional amendment. That means, had they had a room for popular involvement, they would have clearly included how a proposal for constitutional amendment may be initiated by the public. The Constitution rather makes a nod to the doctrine of popular sovereignty merely by requiring that any such proposal be submitted for "discussion and decision by the general public and the concerned organs of constitutional amendment."[16] It is not clear from the Constitution whether or not the submission for public discussion constitutes a referendum in the strict sense of the term.

Referendum is the way to invite the people and obtain their consent in the process by ensuring their active involvement in the process of constitutional amendment.[17] It also is very important in case when there is disagreement among the organs participating in the constitutional amendment process. Though the Constitution does not indicate the legal effects of submitting amendment proposal for public discussion, it it is argued that, the role of the people is not to give a binding decision and is only limited to 'mere consultation and discussion' on the proposed amendments.[18] As such, they have no power to give 'binding decisions and veto an amendment proposal.'[19] A counter argument, on the other hand, provides that the role of the public seems 'either to approve the proposed amendment whenever it provides for a better protection or reject the proposal when a proposed amendment

[16]Supra note 10, p.18.
[17]Zelalem Eshetu Degifie, 'Appraising Constitutional Amendment Procedures in Ethiopia: Vexing Questions and Qualms, Bahir Dar University Journal of Law', Vol.5, No.2, 2015, p.340.
[18] Ibid
[19] Ibid p.342

adversely affects the minimum constitutional privileges'.[20] This, however, would give rise to a question that what if the general public votes against the proposed amendment. Whose view shall prevail? Would the view of the legislative council or the general public prevail?

It is argued that so long as the Constitution does not prohibit the submission of a constitutional amendment proposal for consideration irrespective of the public rejection, the view of the legislative councils would prevail.[21] This line of argument is not sound for some apparent reasons. Firstly, it is incompatible with sovereignty of the people. As a matter of principle, the sovereignty of the people resides in the general public and legislative council is only the representative of the people who constitute power of the government. The legislative council has no sovereign power of its own. All powers that the legislative council enjoys come from the people who elect the members. As such, the legislative councils enjoy only 'derivate power' they receive from the people. It follows that if we accept the conventional assumption that a constitution is based on the general will of the people, then, any attempt of the constitutional amendment process should be controlled and owned by the people who form state power and legislative council cannot act contrary to the view of public need.[22]

The second reason is derived from the very purpose of public submission. Basically, the purpose of public submission is to enable the general public to have a say on the process of constitutional amendment for they are the ultimate risk takers or beneficiaries of the outcome of the constitutional amendment. Thus, it would be unnecessary to introduce public submission requirement if their say bears no legal effects on the outcome of constitutional amendment. It is even uneconomical to require the view of the general public if their rejection does not

[20]Nigussie Afesha, 'The Practice of Informal Changes to the Ethiopian Constitution in the Course of Application, MIZAN LAW REVIEW', 10, No.2, Dec.2016, p. 382
[21] Ibid, p. 382-3
[22] Ibid

bar the initiated proposal from being submitted for consideration. The conclusion is that, for all theoretical and practical reasons, the view of the general public should prevail in case when there is disagreement between the votes of the public and legislative councils.

Moreover, the FDRE Constitution does not anticipate the organ in charge of bringing the approved amendment proposal for discussion and mechanisms by which the general public is supposed to exercise its sovereignty to decide whether a proposed amendment should go forward or not.[23] Moreover, there is no requirement of publication of the constitutional amendment.[24] For example, the 2010 Constitution of Kenya under art 256(2) provides for the publication of any Bill to amend the Constitution. The same holds true for the Constitution of South Africa.[25] Both the Constitution of Kenya and South Africa require the 'parliament' and the 'person or committee' that introduced the Bill to "publish" in governmental gazette for public comment, respectively. Comparative reading of these two Constitutions reveals that it is the organ that introduces the Bill that is required to submit the proposal to be published in governmental gazette for public comment.[26] The trend of the Constitutions of Kenya and South Africa shows that, in Ethiopia, the proposal for constitutional amendment is required to be published or caused to be published in official Negarit Gazetta by the HoPR, HoF, or state Council as the case may be. Publication ensures accessibility of the constitutional amendment to the public. Despite the fact that FDRE Constitution is amended twice in its history, [27] none of them have been published in official Negarit Gazetta. This is

[23] Supra note 10,p.18

[24] The Federal Negarit gezzeta Establishment Proclamation provides that 'All Laws of the Federal Government shall be published in the 'Federal Negarit Gazeta.' See art 2 of Federal Negarit Gazeta Establishment Proclamation No.3/1995. However, the proclamation does not define what federal laws are and it is also not clear whether the act of constitutional amendment constitutes federal laws in accordance with this proclamation.

[25] See section 76(5(1) the South African Constitution

[26] Art 256(2) of Kenya and section 76(5(1a) the South African Constitution respectively

[27] These are the amendment made to art 98 and 103(5) of the constitution in 1997 and 2005 respectively. The first constitutional amendment made on art 98 of the constitution changes the spirit of concurrency in to revenue sharing that allows the specified taxes to be determined and

incompatible with art 12(1) of the Constitution, which provides that the conduct of affairs of government shall be transparent and must be declared void in accordance to art 9(1) of the Constitution.[28]

2.2. Ratification of Constitutional Amendment

Ratification of constitutional amendment is an act of approving constitutional amendment to have legal effect. It establishes minimum threshold that the amendment needs to secure becoming part of the constitution. Different Constitutions set forth various minimum thresholds for various parts of the Constitution. For example, the Constitution of South Africa explicates three distinct amendment standards for different parts of the Constitution. These are amendment procedures relating to section one and the very amendment section of the Constitution, section two of the Constitution and the remaining part of the Constitution. The amendment to section one and the very amendment section of the Constitution can be made only when the amendment Bill is passed by three-fourth majority votes of the National Assembly and six National Council of provinces in their national council. On the other hand, the amendment to section two of the constitution dealing with Bill of rights are supposed to be amended with two-third majority vote of the members of National Assembly and six National Provincial Councils. The same procedures apply if the amendment relates to a matter that affects the Provincial Council, alter provincial boundaries, powers, functions, and institutions or amend a provision that deals specifically with provincial matters.

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administered by the federal government while the constituent units share the proceeds from it. The second amendment made art 103(5) of the constitution allows the ten years' time table at which National Population Census to be conducted to be prolonged as necessary. See Zelalem Eshetu Degifie, 'UNCONSTITUTIONAL CONSTITUTIONAL AMENDMENTS IN ETHIOPIA: THE PRACTICE UNDER VEIL AND DEVOID OF A WATCH DOG, HARAMAYA LAW REVIEW', VOL. 4, No.1, 2015,pp.65-7

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

But, so long as the amendment does not affect the interest of provinces, it can be amended simply with two-third majority votes of the National Assembly.

The FDRE Constitution under article 105 provides a procedure for ratification of constitutional amendment. It provides two sets of ratification of amendment procedures: ratification of constitutional amendment relating to fundamental rights and freedoms, amendment clauses; and the ratification of constitutional amendment to the remaining parts of the Constitution. Ratification of amendment to human rights and the amending clauses are required to be made with majority votes of all state councils and two-third majority votes of the two federal Houses in their separate sessions.[29] On the other hand, the amendment of the remaining parts of the Constitution require two-third majority votes of the two federal Houses in their joint session and two-third majority votes of the regional state councils.[30] The existence of different amendment procedures to different parts of the constitution indicates that the framers wanted to create hierarchy among constitutional clauses according to their importance.[31] Accordingly, the framers of both the Constitution of Ethiopia and South Africa attach special 'protection for certain provisions through prescribing more stringent procedures for their amendment'.[32]

Another major important point in relation to constitutional amendment in Ethiopia is that the Constitution does not provide any substantive limitations. The amending formula of some constitutions places substantive limitations that prohibit changes on certain provisions of the constitution. They set forth immutable principles, which cannot be touched through the amending power.[33] The FDRE Constitution, however, does not make any of its provisions un-amendable. This gives the impression that all constitutional provisions are amendable through constitutionally explicated procedures. Though there is substantial debate with regard to the

[29] See art 105 (1) the FDRE Constitution
[30] Ibid, art 105(2)
[31] Supra note 8, p.297.
[32] Supra note 17, p.320
[33] Supra note 4, p 55.

significance of substantive limitations both on theoretical and practical reasons,[34] comparative study on the subject indicates that the prevailing trend is moving towards accepting substantive limitations of constitutional amendment. This is true even in states where constitutions lack un-amendable provisions.[35]

The rule of reversal is another important point in relation to constitutional amendment. It is a process by which the organ engaging in the constitutional amendment process changes its previous decision. In such cases, an organ that has already ratified the amendment may want to withdraw its previous ratification or who has rejected it may want to introduce the ratification by withdrawing its earlier rejections. This may give rise to the question of how the votes of withdrawing previous resolutions, be it ratification or rejection, would be counted. This calls for the rule of reversal that determines the effect of rescinding earlier ratification or rejection.[36] The FDRE Constitution is silent on the rule of reversal. It is not clear whether or not the organ involving in constitutional amendment can reconsider its earlier decisions of approving or rejecting the proposed amendment.

In the USA, while dealing with rule of reversal, three alternative approaches are suggested. The first one is taking the initial action of the state legislature, be it 'ratification or rejection', as conclusive and binding.[37] It considers the initial act of ratification and rejection as conclusive and it could not be reconsidered. The second one is taking an original act of ratification as conclusive and that of rejection as not conclusive.[38] Accordingly, once a state has ratified a proposed

[34] See Richard Albert, 'Counter constitutionalism, DALHOUSIE L.J.', Vol.31, No. 1, 2008, P.47-8; See also Gábor Halmai, 'Judicial Review Of Constitutional Amendments And New Constitutions In Comparative Perspective, Wake Forest Law Review', Vol. Xx, 2016, P.104

[35]Yaniv Roznai, 'Unconstitutional Constitutional Amendments: A Study of the Nature and Limits of Constitutional Amendment Powers'(PHD thesis, London School of Economics and Political Science, Department of Law, London, 2014) p.79

[36] Fishel, L. Andreta, 'Reversals in the Federal Constitutional Amendment Process: Efficacy of State Ratifications of the Equal Rights Amendment, Indiana Law Journal', Vol. 49, Issue 1, Article 8, 1973, p.148.

[37] Ibid

[38] Ibid

amendment to the Constitution, that act is irreversible. However, a state may reconsider its rejection of an amendment and change its vote to the affirmative at any time within the ratification period. The third option is considering neither rejection nor ratification as conclusive and binding.[39] As such, a state may reconsider its rejection of an amendment and change its vote to the affirmative or withdraw its previous act of ratification at any time within the ratification period.

3. The Implications of Constitutional Amendment Procedures on the Protection of Human Rights under the FDRE Constitution: An Appraisal

It is noted that the FDRE Constitution establishes the initiation and ratification stages of constitutional amendment for formal constitutional amendments. Whilst the Constitution does not adopt separate procedures for the initiation of constitutional amendments, it however, envisages two separate categories for the ratification of the proposed amendment. The first category regulates the ratification of proposed amendments that deal with the fundamental rights and freedoms and amendment clauses of the Constitution. The second category deals with the ratification of amendment proposals to the remaining parts of the Constitution. The reading between these two ratification procedures indicates that the FDRE Constitution adopts stringent procedures to ratify amendments to human rights provisions.

3.1. Stringent Ratification Procedures

The reason why the FDRE Constitution affords the human rights provisions a stringent amendment procedure is clear from the preamble which recognizes the 'full respect of individual and people's fundamental freedoms and rights as foundation for building a political community founded on the rule of law and

[39] Ibid

capable of ensuring a lasting peace and guaranteeing a democratic order'.[40] It conditions the promise to build a political and economic community on the full respect of individual and people's fundamental rights. This commitment is further reinforced by recognition of a wide range of rights. Out of the 106 articles of the Constitution, about one-third cover matters related to fundamental rights and freedoms. The level of protection of these rights is further elevated through making a reference to international instruments as thresholds for their interpretation.[41] This commitment is finally buttressed by putting exceptionally extra stringent ratification amendment procedures. Reinforcing the fundamental value of fundamental rights and freedoms, the FDRE Constitution adopts rigid amendment procedures to them through requiring the approval of all state councils and the two federal Houses.[42] Amendment to fundamental rights and freedoms is subject to stringent procedures, in contrast to what is applied to other provisions of the Constitution. By making amendment formula of human rights cumbersome, the FDRE Constitution gives special emphasis to human rights. This stringent amendment procedure is intended at avoiding any possible regression.[43] This is why the amendment to human rights is placed at the first rank in terms of hierarchy compared to other provisions of the constitution.[44] This is the expression of the degree to which the fundamental rights and freedoms are fairly entrenched in Ethiopia.[45]

The stringent amendment procedures to the human rights provisions appear to have different implications on the protection of fundamental rights and freedoms. There

[40] See the preamble of the FDRE Constitution, par.2

[41] Adem Kassie Abebe, 'Human Rights under the Ethiopian Constitution: A Descriptive Overview, Mizan Law Review Journal', Vol. 5, No.1, 2011, P. 43. See also Chapter three of the FDRE Constitution.

[42]Art 105(1) the FDRE Constitution
[43] Supra note 41, p. 44
[44] Supra note 17, p.320-21
[45] Tsegaye Regassa, 'Making Legal Sense of Human Rights: The Judicial Role in Protecting Human Rights in Ethiopia, Mizan Law Review', Vol. 3, No.2, Sep.2009, p.323.

can be no gainsaying on the fact that the rigorous amendment standard 'avoids unnecessary degeneration and consolidates the sanctity of human rights'.[46] This again indicates how fundamental rights and freedoms are at the heart of the Ethiopian legal system. This is why the fundamental rights and freedoms part of the Constitution is made difficult to amend.

Despite the fact that this rigidity is good at avoiding deteriorating constitutional amendment, it is so rigorous enough to exclude any attempt at adding new set of rights or "upgrade"[47] the level of protection of the already recognized rights. Any attempt either to introduce new set of rights or to elevate the level of protection of the now recognized rights through constitutional amendment would have to pass through the aforementioned rigorous amendment procedures.[48]

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[46] Endalkachew Bayeh, 'Incorporation of Human Rights into Legal Frameworks of the three Successive Regimes of Ethiopia and their Treatment: A Comparative Analysis. European Journal of Humanities and Social Sciences', Vol.32, No 1, 2014, p.1747.

[47] The FDRE Constitution incorporates of claw-back clause within the most protected rights. The existence of claw back clauses under Constitution is a debatable provision related to human rights under the FDRE Constitution. For example, while some of the limitation on human rights requires compelling circumstance and specific laws necessary to safeguard public security, peace, the prevention of crimes, public morality and the protection of rights and freedoms of others, other simply refers to those limitations determined by law. In the later, the minimum threshold for restraining fundamental rights and freedom is simply law without any substantive requirements as to the kind and quality of the law. The idea here is that any attempt to amend constitutional provisions dealing with the limitation of fundamental rights and freedoms is required to pass through such rigorous amendment procedures. For more discussion the limitation of human rights under the FDRE Constitution, see Adem Kassie Abebe, 'Limiting Limitations of Human Rights under the FDRE and Regional Constitutions in Yonas Birmeta (ed), Some Observation on sub-national constitutions in Ethiopia, Ethiopian Constitutional Law Series', 2011, Vol. 4.

[48] One may argue that it is possible to introduce new set of rights or upgrade the scope and content of the already protected right either by adopting and ratifying international human rights law or interpreting the Constitution in line with international human rights laws as per art 9(4) and 13(2) of the FDRE Constitution respectively. It is true that both adoption and ratification of international human rights law and interpretation of the Constitution in line with international human rights are alternative ways of introducing new set of rights or upgrading the scope and content of the recognized rights. However, these arguments work only for human rights that are already recognized under international human law or developed to international level. This make the state to wait until the particular rights are recognized by international law or developed to international level. Accordingly, they don't work for the rights that are not recognized by international human rights or developed to international level but has national significance and need to be

As is noted above, the amendment to fundamental rights and freedoms can only be made up on unanimous approval of states council and two-third majority votes of the two federal Houses in their separate sessions. This implies that a proposal to amend a provision pertaining to human rights will not be ratified by the mere fact that it is rejected by a single organ only for politically motivated reasons. Furthermore, as the vote of each state council is counted as one, the size of population in regional states is immaterial. The degree of national popular support is not a critical issue on the process of constitutional amendment in Ethiopia.[49] This is apparently against the vote of the majority who would vote for amendment. The consequence is that, this rigidity, while it is intended to preserve the already recognized rights from retrogressive amendments, at the same time, it weakens any improvement to human rights that the Constitution has initially intended to protect. Accordingly, it is preferable to introduce less rigid constitutional amendment rules to reduce the preventive effects of rigid amendment procedures. This requires the amendment of the amendment clause. Regrettably, the amendment is also rigorous to be amended. It requires similar procedure to that of the amendment to human rights.[50] This indicates that to the extent it appears attractive at first sight, it overlooks the fact that rigorous procedures may still suffer from imperfections.[51]

3.2. Ordinary Amendment Procedures

In a stark contrast to the amendment procedures on human rights and amendment clause, the FDRE Constitution establishes less stringent amendment procedures otherwise referred to as "ordinary amendment procedures" to the remaining parts of the Constitution. Under the parts of the Constitution to which flexible

constitutionalized. In such case, constitutional amendment is the only way out either to constitutionalize new set of rights or upgrade the scope and content of the already protected rights.

[49] Supra note 17, p.332

[50] See art 105(2) of the FDRE Constitution

[51]John Hatchard, Muna Ndulo, Peter Slinn, 'Comparative Constitutionalism and Good governance in the Commonwealth: An Eastern and Southern African Perspective, (New York, Cambridge University Press, 2004)p.43.

amendment procedures are established, there are some constitutional provisions relevant to human rights, but amendable through ordinary amendment procedure. Under art 93, the Constitution recognizes the possibility of declaration of state of emergency and subsequent suspension of fundamental freedoms and rights.[52] The FDRE Constitution is, for example, not clear whether the right to life is derogable or not during the declaration of state of emergency. The absence of the right to life in the lists of non-derogable rights under FDRE Constitution is confusing.[53] There are also some latent socio-economic rights, which are not incorporated in the substantive part of the Constitution rather incorporated under the national principles and policy objectives part of the Constitution, to which ordinary constitutional amendment procedures apply.[54] These principles, though they are not directly enforceable, they may affect the interpretation of other rights by being read into those rights.[55] The very provisions that govern both declaration of state of emergency and latent socio-economic rights are found not in the fundamental rights and freedoms chapter to which stringent amendment procedures apply. It follows that the fact they are found outside the human rights Chapter makes them easily amendable. This might be a good move to easily upgrade the scope and the content of these rights. However, in the absence of a proper controlling mechanism, it carries with it an opportunity to amend the Constitution to lower the level of protection of these rights.

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[52] For more discussion see Yehenew Tsagaye, 'State of Emergency and Human Right under the 1995 Ethiopian Constitution, Journal of Ethiopian Law',Vol.21, Issue 1, August 2007, 78-113

[53]See generally Habtamu Birhanu, Derogation of the Right to Life and Its Suspension during State of Emergency: Art 93 of FDRE Constitution. (Lambert Academic Publishing Group, 2018)

[54] The socio-economic rights included under this part are health, welfare and living standards, education, clean water, housing, food and social security. See Amsalu Darge Mayessa, 'Derivation of Rights: Affording Protection to Latent Socio-Economic Rights in the FDRE Constitution, Oromia Law Journal', Vol. 2, No.2, 2013.

[55]Rakeb Messele, 'the Enforcement of Human Rights in Ethiopia: Research Subcontracted by Action Professionals Association for the People (APAP)', (UN published 2002), p. 29.

3.3. Review of Constitutional Amendment

It is not debatable that review of constitutional amendment reduces negative effects of flexible constitutional amendment while flexible constitutional amendment reduces the preventive effects of rigid constitutional amendment. It plays definitive roles in ensuring that constitutional amendment power is exercised within constitutional limits. For example, the Constitution of South Africa grants the Constitutional Court the exclusive jurisdiction to decide on the constitutionality of any constitutional amendment.[56] The Court is the highest court with the power of constitutional review. Although the Constitution does not provide for any substantive standards against which the court can review the constitutionality of constitutional amendment, nonetheless, it is not obvious that the court can determine whether or not the procedural limitations are complied with.

The FDRE Constitution is silent regarding review of the constitutionality of constitutional amendment. The pattern of the Constitution of South Africa suggests that HoF is an appropriate organ to review the constitutionality of constitutional amendment. This is because like the Constitutional Court of South Africa, HoF is the organ with constitutional review power. Although there is no consensus as to the power relation that exists between HoF and regular courts with regard to constitutional review, there is little disagreement on the fact that HoF has robust constitutional review power. In this respect, the Constitution empowers HoF, among others, to interpret the Constitution and decide all constitutional disputes.[57] The power to interpret the Constitution and decide all constitutional disputes can be extended to include issues involving the constitutionality of constitutional amendment. As such, it, as a 'guardian of the Constitution,' must make sure that the supremacy of the constitution has been maintained in all aspects, be it

[56] Section 174(4d) of the Constitution South Africa
[57]See art 83(1) and 84(2) of the FDRE Constitution

constitutional amendments or ordinary laws.[58] This supposition is, however, no longer valid on the fact that, though it has constitutional review power, it is one of the veto players of constitutional amendments.[59] It follows that any act of ruling on the constitutionality of constitutional amendment makes it a judge on its own case. This makes it practically impotent to effectively exercise its function of reviewing constitutional amendments.[60]

Moreover, regular courts are excluded from exercising constitutional review. The Constitution under article 62(1), 83(1) and 84(2) gives the power to interpret the Constitution, the power to decide all constitutional disputes and unconstitutionality of federal and state laws to the House of Federation. Although the power relation between the HoF and regular courts remains unsettled issue in Ethiopian constitutional discourse, it is clear that regular courts cannot review the constitutionality of federal and state laws. The doctrine of counter majoritarian democracy and judicial activism have played significant roles in influencing the framers of the Constitution to eliminate courts from exercising constitutional review power in general.[61] Therefore, it is difficult to think that courts, which are not trusted even for ordinary legislations, would rule on the constitutionality of constitutional amendments.[62] This indicates that the Ethiopian system lacks appropriate institutional frameworks to rule on the constitutionality of constitutional amendments.

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[58] Supra note 6, p.76

[59]See Habtamu Birhanu, Accesses to House of Federation and Its Procedural Requirements: Seeking for Constitutional Remedies in Ethiopia, International Journal of Legal Developments and Allied Issues, Volume 5, Issue 5, September 2019, p.77.

[60] Supra note 6, p.76

[61] SeeYonatan Tesfaye Fessha, 'Judicial Review and Democracy: A Normative Discourse on the (Novel) Ethiopian Approach to Constitutional Review, African Journal of International and Comparative Law', Vol.14, No.1, 2006. See also Assefa Fiseha, 'CONSTITUTIONAL ADJUDICATION IN ETHIOPIA: EXPLORING THE EXPERIENCE OF THE HOUSE OF FEDERATION (HOF), MIZAN LAW REVIEW', Vol. 1 No.1, June 2007.

[62] Supra note 6, p.76

4. Conclusion

It is indicated that the implications of constitutional amendment procedures on the protection of human rights stems from the fact whether a constitution adopts a flexible or rigid amendment procedure on human rights provisions. The FDRE Constitution adopts a rigorous amendment procedure to constitutional provision of human rights. It is noted that the rigorous amendment procedure, while it is strong enough to discourage retrogressive amendment, however, impedes an attempt to amend constitutional provision of human rights. On the other hand, the Constitution adopts less rigid amendment procedures to the remaining parts of the Constitution, which are relevant to human rights. The fact that the Constitution establishes flexible amendment procedures appears to be good to strengthen the constitutional provisions. However, it is proved that such flexible amendment rules are vulnerable to unnecessary constitutional alterations. Moreover, it is identified that review of the constitutionality of constitutional amendment is missing under the FDRE Constitution. The overall discussion identifies that the FDRE Constitution suffers from imperfection in keeping the right balance between inherent demands to improve the protection of human rights while keeping its stability against retrogressive amendment.

In consequence, the paper suggests a flexible constitutional amendment against the preventive consequences of rigid amendment procedures. Moreover, to reduce any negative effects of flexible amendment procedures, the paper recommends judicial review of the constitutional amendment process. For the latter to happen, institutional reforms should be made. Depending on the policy choices, the reform may involve either establishing new constitutional court or giving constitutional review power to regular courts. This recommendation is relatively preferable as it makes the constitutional amendment procedure less rigid. It does not require the amendment of amendment clause, which is rigorous to amend.

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Commentary on the COVID-19-Induced State of Emergency

Tadesse Melaku♣

1. Introduction

Emergency decrees have gained popularity in recent years, especially after the 9/11 terrorist attacks in the US. For instance, from 1985 to 2014, with in a period of 19 years, not less than 137 countries issued emergency decrees, at least once.[1] However, the popularity of Emergency decree is seen as a challenge to constitutionalism and human rights. States of emergency bestow wide power on governments and law enforcement agencies leading to the use of excessive force, extended pretrial detention and the derogation of rights and freedom. In times of state of emergency, parliaments delegate power to the executive so that the latter can respond swiftly to an emergency situation. Such measures expand, though temporarily, the power of the executive vis-à-vis of the legislature, the judiciary and the citizen and, in federations, they also expand the power of the central government vis-à-vis the governments of the units which would be unconstitutional in normal times. However, emergencies are extraordinary times that call for extraordinary actions. Fundamental rights and freedoms which limit government are also subjected to restrictions.

State of emergency becomes a necessary price to pay for "the survival of a state and its citizenry and to bring the situation back to normal temporarily changing the structure of state functions in favor of efficiency and effectiveness".[2] To illustrate this, for instance the emergence of COVID-19 on a global scale has led to the

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[1] Bjørnskov and Voigt 2018a as cited in Stefan Voigt. 2018. Contracting for Catastrophe: Legitimizing Emergency Constitutions by drawing on Social Contract Theory. Retrieved from https://www.researchgate.net/publication/329659754_Contracting_for_Catastrophe_Legitimizing_Emergency_Constitutions_by_drawing_on_Social_Contract_Theory

[2] Zwitter A (2012) The Rule of Law in Times of Crisis: A Legal Theory on the State of Emergency in the Liberal Democracy. ARSP: Archives for Philosophy of Law and Social Philosophy, Vol. 98, No. 1, pp. 95-111. Franz Steiner Verlag

restrictions of human rights in many countries, but the restrictions were very significant measures to save life. Virtually, states have adopted some form of public emergency in response to the pandemic. In this regard Ethiopia is no exception. The country enacted a state of emergency legislation which delegated the cabinet to issue executive regulation. This commentary reflects on the implications of the declaration on basic human rights.

2. Coronavirus Pandemic and the declaration of state of emergency: Normative frameworks vis-à-vis the protection of fundamental rights

According to the legal framework, in Art 93(1) (a), the Ethiopian Constitution provides four grounds for declaring a state of emergency – (1) a foreign invasion, (2) a breakdown of law and order which endangers the constitutional order and is beyond the capacity of the regular law enforcement agencies, (3) the occurrence of a natural disaster or (4) an epidemic. By virtue of the Constitution, the executive assumes "all necessary power"[3] to handle the impending crisis triggering the emergency. Thus, the Constitution gives an expanded mandate to the executive in times of crisis. Under Art 93(1) (b), it authorizes the federating units to issue public emergencies in the event of an occurrence of "a natural disaster or an epidemic" within their territories. The constitution contains a well-fitted stipulation for a declaration of a public health emergency.

Soon after the advent of the corona virus in Ethiopia, parliament passed an emergency proclamation granting blanket power to the executive.[4] The proclamation approves the initial executive decree, establishing a state of emergency inquiry board fixing the duration of the declaration at five months.[5] The emergency law states, "The detailed conditions concerning the suspension of rights and measures will be decided by the Council of Ministers or a Ministerial

[3] Constitution of Federal Democratic Republic of Ethiopia (1995), Art 93(4)(a).
[4] A Proclamation to Approve the State of Emergency Proclamation No. 3/2020 Enacted to Counter and Control the Spread of COVID-19 and Mitigate Its Impact.
[5] Ibid, Art 8.

Committee to be established for the purpose that is notified to the public".[6]The granting of sweeping powers is justified on the ground that enables "the government to adapt and develop context-specific measures in response to the pandemic".[7] However, this is problematic in the absence of an effective and independent oversight. In line with the constitution, the emergency legislation authorized the executive to prescribe "details of the derogation of rights and the measures to [it will take] counter and mitigate the humanitarian, social, economic and political damage that could be caused by the pandemic."[8]

There are only two legal limits on the power of the executive branch. The first one says the purpose of the emergency law, as implied by its title, is 'to counter and control the spread of covid-19 and mitigate its impact'. That means the goal of the emergency measure is limited to overcoming and curbing the effect of the outbreak. The second one is just a reaffirmation of the non-derogable provisions of the constitution– the nomenclature and character of the state ('Federal Democratic and Republic of Ethiopia'),[9] the prohibition against inhuman treatment[10], equality and non-discrimination[11] and self-determination.[12] This statement does not add much since the constitution itself has made those provisions non-derogable and any law or action in conflict with it will not create legal effects.[13]The violation of the emergency proclamation entails both in and out-of-court consequences. Individuals accused of breaking the law are punishable "with simple imprisonment of up to 3 years or a fine of no less than one thousand Birr and not exceeding two hundred

[6] Ibid, Art 5.
[7]Yoseph Badwaza. 2020. Sweeping powers and a transition on ice: Pandemic politics in Ethiopia. Retrieved from https://africanarguments.org/2020/04/16/sweeping-powers-transition-on-ice-covid-19-pandemic-politics-ethiopia/
[8] Proclamation 3/2020, n. 4, Art 4(1).
[9] Constitution of Ethiopia, n. 3, Art 1.
[10] Ibid, Art 18.
[11] ibid, Art 25.
[12] Ibid, Art 39(1) (2).
[13] Constitution of Ethiopia, Art 9(1).

thousand Birr". Besides, law enforcement agencies are authorized to use "proportionate force to enforce"[14] the law.

Moreover, derogation from fundamental rights and freedoms is permitted "to the extent necessary to avert the conditions that required the declaration"[15] of emergency. Based on the power delegated to it, the cabinet passed a regulation with far reaching restrictions raising eyebrows. Some of such rules include the prohibition on termination of lease contracts relating to residential and commercial property or raising rent price without the consent of the lessee[16]and termination of employment contracts (contrary to the standards to be set by the Ministry of Labor and Social Affairs). However, what will happen if someone raises house rent to offset the loss of income from other sources or if someone is obliged to lay off workers because of loss induced by the pandemic? The Regulation also permits the dispossession of unused private property for use in COVID-19-control efforts.[17] The imposition of such obligations on private persons raises an issue of proportionality. This implies that the restrictions appear more excessive. Moreover, The Regulation does not also provide objective standards to determine whether a piece of information is likely to disturb public order or cause psychological stress.

Another overly vague stipulation is the requirement for the media to report without exaggeration and causing "panic and terror among the public.".[18] Such vague wording brings susceptibility to abuse of power. Furthermore, courts and other law enforcement bodies are exonerated from observing the procedural laws of the country particularly in regard to cases involving cases "arising in relation to the state of emergency proclamation, hording and other unfair trade practices, illicit tracking in arms and contraband goods".[19] It is also unacceptable that the executive

[14] Proclamation 3/2020, n. 4, Art 5(3).
[15] Constitution of Ethiopia, Art 93(4)(b).
[16]*State of Emergency Proclamation No. 3/2020 Implementation Regulation No.466/2020,* Art 3(18).
[17] Ibid, Art 3(15).
[18] Ibid, Art 3(10).
[19] Ibid, Art 6(1)(2).

organ passes drastic measures without specific legislative delegation to do so. Contrary to this act of the executive organ, the Parliament has not provided a framework, no matter how broad it might be, to curb the exercise of such sweeping powers. What is more, the court trial has, at least impliedly, been suspended. Commenting on the suspension of court proceedings, Jaraczewski said, "While one can expect limits in the ability to administer justice and see non-essential court cases delayed due to shutdowns, elements of the right to a fair trial, such as the right to challenge an arrest before an independent court, must be preserved."[20] For instance, in connection to a high profile criminal case involving the assassination of the chief of staff of the Ethiopian Defense Forces and his retired colleague in Addis Ababa a year ago, the court decided to resume the trial that had been halted due to the corona virus. The trial restarted, according to media reports, after relatives of the victims called for justice on the first year commemoration of the killings. Other prohibitions introduced by the regulation include a ban on public gatherings, handshaking, prison visit (except for lawyers or those bringing food to inmates); places of recreation, press statements about COVID-19 (except for authorized medical and federal officials and legal opinion on the emergency laws and professional opinion of medical personnel).[21]

Concerning the results of its implementation, news outlet reports revealed that more than a thousand people have already been jailed or fined for breaching the emergency regulation. A journalist who reported at the beginning of COVID-19 outbreak in the country that the government had set up two hundred thousand graves was sentenced to five years in prison for allegedly spreading misinformation

[20] *Jakub Jaraczewski.* Emergency measures and the rule of law in the age of covid-19 https://democracy-reporting.org/dri_publications/emergency-measures-and-the-rule-of-law-in-the-age-of-covid-19/

[21] Ibid, Art 3(17).

and deliberately attempting to cause public panic.[22] A landlord who raised monthly house rent from ETB 500 to 1000 was fined ETB 10, 000.

However, the restrictions mentioned here are by no means exhaustive and subjectivities has always been one of the major concerns. While the issuance of the emergency is a necessary price to pay to protect the public from the pandemic, some of the provisions considered raise basic constitutional and human rights issues.

Conclusion

Whilst the resort of governments to the declaration of public emergencies in times of crises is justified, precaution has to be taken in order to ensure that such power is not abused. A cursory look at the Regulation issued by the Council of Ministers in relation to the recent corona virus outbreak in Ethiopia contains extremely vague provisions that are susceptible to abuse. The legislature is also to blame for the problem as it granted blanket authority to the executive rather than defining the power delegated to the latter.

[22] Committee to Protect Journalists (CPJ), Ethiopian journalist Yayesew Shimelis detained following COVID-19 report. Retrieved from Ethiopian journalist Yayesew Shimelis detained following COVID-19 report - Committee to Protect Journalists (cpj.org)

የኢትዮጲያ አገረ-መንግስት ዝግጁነት፤በኮቪደ-19 (ኮሮና ቫይረስ) ወረርሽኝ ዕይታ (ደምሳሳ የህገ-ስረዓት ቅኝት እና የመፍትሄ-ሃሳብ ጥቁምታ)

ዶ/ር ዳንኤል በሀይሉ*

'ኮቪድ 19 ጠንካራ የጤና ስርዓት የብሄራዊ ደህንነት ጉዳይ መሆኑን አስተምሮናል'- ጠ/ሚኒስተር ዶ/ር ዐቢይ አህመድ አሊ

1. መግቢያ

በ2012 ዓ.ም የተከሰተው እጅግ ግዙፍ ዓለም-አቀፍዊ ክስተት የኮቪደ-19 ወረርሽኝ ነው። በቻይና ተቀስቅሶ በጥቂት ወራት ውስጥ ዓለምን ያጥለቀለቀ ብሎም ያሰቀቀ ወረርሽኝ ነው።[1] ከአንድ ከ/ዘመን በፊት እንዲሁ የስፓኒሽ ፍሉ (የህዳር በሽታ) ዓለምን ያጎሳቆለ ብሎም በ10 ሚሊዮኖች የሚቆጠሩ ሰዎችን ህይወት የነጠቀ ነበር።[2] የኮቪደ-19 ጉዳት ህይወትን በመንጠቅ ደረጃ በሚሊዮኖች የሚቆጠር ነው፤ በሽታው ግን አላባራም።[3] ስለሆነም፤ የኮቪደ-19 ድምር ጉዳት የሚታወቀው በሽታውን ሙሉ ለሙሉ መቆጣጥር ሲቻል ነው። የሆነው ሆኖ፤ በኢኮኖሚ ጉዳት ደረጃ ግን ዓለም አቀፍ እንደሆነ እያተየ ነው። አያሌ ሰራተኞችን ከስራ ወጭ አርጓል፤ ኩባንያዎችንም አክስሯል፣ የብዙ አገራትን እድገት አዘጋጋሚ እንዲሆን ወይም በተገመተው ልክ እንዳይሆን አድርጓል።[4]

በሽታው በምዕራባዊያን ላይ የጎላ ጉዳት እያደረሰ ሲሆን በአፍሪካም የማይናቅ ጉዳት አስከትሏል።ሆኖም የኢኮኖሚ ጉዳቱ በአፍሪካ እጅግ የጎላ እንደሚሆን እየተገመተ ብሎም እየታየ ነው። ዛሬ ላይ በተለያዩ አገራት፤ ለመከላከል በተወሰደው እርምጃ እንኳን የእለት-

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[1] FMoH, (2020). National *Comprehensive COVID-19 Management Hand Book*. 1st edition. Ethiopia

[2] የህዳር በሽታ በሚል መጠርያ በኢትዮጲያ የሚታወቅ ሲሆን፤ በወቅቱ በአገሪቱ ላይ ከባድ ጉዳት አድርሶ ነበር። ይህ በሽታ በዓለም ዙሪያ የስፔን ጉንፋን (Spanish flu) ተብሎ ይታወቃል፤ ብሎም 500 ሚለዮን አከባቢ የሚገምት ህዝብ አጥቅቀቷል፤ በኣለም ዙሪያ ከ20 ሚሊዮን እስከ 50 ሚሊዮን የሚገመት ህዝብ ገድሏል, accessed on july 28, 2020 at https://www.history.com/topics/world-war-i/1918-flu-pandemic

[3] https://www.worldometers.info/coronavirus/፡ ኮቪድ መጀመሪ የተከሰተው በአገር ቻይና እንደነበር የሚታወስ ነው። On 31 December 2019, WHO was informed of cases of pneumonia of unknown cause in Wuhan City, China? A novel coronavirus was identified as the cause by Chinese authorities on 7 January 2020 and was temporarily named "2019-nCoV" and for daily progress: https://covid19.who.int/?gclid=CjwKCAjwmf_4BRABEiwAGhDfSVYmAjWCCJU3bwE8DmQxorktUUfvbbZLo508CuANbd1q_DVS9JIX4xoCjE0QAvD_BwE

[4] ወረርሽኑ አያሌ ሰርቶ እና ባዝኖ አደርን ከስራ ውጭ ያረገ ነው፤ የግል ስራን ብሎም የመንግስት ስራን ያዳከመ ጭምር ነው፤ በዓለም ደረጃ በደምሳሳው የኢኮኖሚ እንቅስቃሴን አፋሟል። The latest ILO data on the labour market impact of the COVID-19 pandemic reveals the devastating effect on workers in the informal economy and on hundreds of millions of enterprises worldwide; <https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_743036/lang--en/index.htm> accessed on

ነዋሪዎችን ብሎም የደሀ ደሀ[5] የሚባሉትን የህበረተሰብ ክፍልን ኑሮ እያመሰቃቀለ ይገኛል። ቤትህን ዝጋ፤ የህዝብ ክምችት ያለበትን አከባቢ ራቅ (እንደ ገቢያ ያለውን ቦታ ማለት ነው)፣ እጅህን ታጠብ ፤ አካለዊ ፈቀቅታ ጠብቅ የተመጣጠነ ምግብ ተመገብ... ወዘተ፤ እየዬ ሲዳለ የሆነበት አያሌ ዜጋ ነው በአፍሪካ ውስጥ ያለው፤ በተለይ በኢትዮጲያ የእለት ጉርስን አሳዶ እና አድኖ የሚኖር ዜጋ እጅግ ብዙ ነው። ታዲያ ነገሩ በቡሀ ላይ ቆረቆር ነው የሆነው፤ በሽታውን ለመቆጣጠርም ሆነ ለመከላከል አገራዊ ስረዓት እና የደረጅ ብሄራዊ ሀብት ይፈልጋል። በየአገራቱ የስረዓት እና የሀብት ችግር አለ፤ እነኚህ ችግሮች በአፍሪካ አህጉር ደረጃ ጎልተው የሚስተዋሉ ናቸው። በተለይ ኢትዮጲያ በአመዛኙ የሚጎላት እነኚህኑ ችግሮች በአስተማማኝ መንገድ ለመቅርፍ የሚሰራው ስራ አመርቂ አለመሆኑ ብቻ ሳይሆን የመንገዱ ትክክለኛነትም አከራካሪ ነው። በዛ ላይ፤ ኢትዮጲያ ሰላም እየራቃት፣ የግጭት አባዜዋ እየከፋ እና ህዝባዊ ሰልፎች፤ የመሳሪያ ግጭቶች ጭምር እየተደረጉበት ያለበት አገር ከመሆኑ አንጻር፤ ጉዳዩን ከቁጥጥር ውጭ እያረገው ይገኛል።[6] ፈጣን እና ቁርጠኛ አቋም መያዝ ያስፈልጋል፤ መንግስተ ህገ-ስረዓትን (legal order) ለማስፈን ታጥቆ መነሳት አለበት፤ ከቅርብ ግዜ ወዲህ ግን ቁርጠኛ አቋም በመያዝ ወሳኝ እርምጃዎችን እወሰደ ይገኛል። ህዝባዊ ሰልፎችንም ቢሆን ማገድ ተገቢ ነው።[7]

ኮቪድ-19ን መቆጣጠር የሚቻለው እንደ የአለም ጤኛ ድርጅት ከሆነ፤ የህክምና ተቋማትን በማጠናከር፣ የበሽታው ተጠርጣሪዎችን በመለየት፣ በመመርመር እና መከላከያ እርምጃዎችን[8] ሳያሰልሱ መውሰድ ሲቻል ነው። ይህ ጉዳይ ደግሞ ጠንካራ አስፈጻሚ፤ በህግ እና ስረዓት የሚያምን ህዝብ ብሎም የሚተማመን መንግስት እና ህዝብ ይጠይቃል፡ ፡[9] በሽታው ዓለም አቀፋዊ ቢሆንም አከባቢያዊ የሴራ-ትርክቶች በማህበራዊ ሚዲያ እንደሚዘዋወሩ እና ውሸቦንብር እየፈጠሩ እንደሆነ ይታወቃል። ይህ ደግሞ የሚያሳያው

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[5] እንደ የተባበሩት መንግስታት ዳታ ከሆነ 42 ከመቶ ከሰሃራ በታች የሚኖሩ አፍሪካዊያን የደሀ ደሀ ናቸው፤ ማለትም የለት ገቢያቸው ከአንድ ዶላር ያንሳል።

[6] ከአርቲስት ሀጫሉ ሁንዴሳ ግዳያ ጋር ተያይዙ ህዝባዊ ሰልፎች፤ ግርግሮች እንዲሁም ግጭት እና መፈናቀሎች፣ እጅግ የከፋ የንብረት ውድመት ጭምር ተከስtuል፤ ይህ ሁኔታ ለበሽታው ተጋላጭነትን የሚጨምር መሆኑ ግልጽ ነው።

[7] የአስቸኳይ ጊዜ አዋጅ ቁጥር 3/2012 ይመለከቱ፤ አዋጁ እና ተያይዞ የወጣው ደንብ እንዲህ ያለውን ነገር ያግዳል ሆኖም አፈጻጸሙ እጅግ ደካማ ነው።

[8] አዋጅ ቁጥር 3/2012 አንቀፅ 4/1/ መሰረት የሚኒስትሮች ምክር ቤት የወረርሽኙ ሥርጭት እያስከተለ ያለውንና ሊያስከትል የሚችለውን ሰብዓዊ፣ ማኅበራዊ ፣ ኢኮኖሚያዊና ፖለቲካዊ ጉዳቶች ለመቀነስ እና ለመከላከል የመብት እገዳዎችንና፣ እርምጃዎችን ድንግጓል። ለአብነት ያህል፤ ማንኛውም ሰው ለሰላምታና ሌላ ማንኛውም አላማ በእጅ መጨባበጥ ክልክል ነው፤ ማንኛውም ሀገር-አቋራጭ የህዝብ ትራንስፖርት አገልግሎት የሚሰጥ ሰው በማንኛውም ጊዜ ከተሸከርካሪው ወንበር ብዛት 50% በላይ ሰዎችን ጭኖ መንቀሳቀስ የተከለከለ ነው፤በጭፈራ ቤቶችና በመጠጥ ቤቶች ማናቸውንም የመጠጥና መዝናኛ አገልግሎት መስጠት የተከለከለ ነው፤ መንግስት የኮሙኒኬሽን ባለሙያዎችና የግል የሚዲያ ተቋማት ኮቪድ-19ኝና ተያያዥ ጉዳዮችን በተመለከተ የሚያስተላልፏቸው መረጃዎች፣ የዜና ትንተናዎች ወይም ፕሮግራሞች ሳይጋነኑ ወይም ሳይቃለሉ ተገቢው መረጃ ወደ ሕዝቡ የማድረስ እና አላግባብ የሆነ ድንጋጤና ሽብርን የማይፈጥሩ መሆን አለባቸው፤ ወዘተ

[9] የሴራ ትርክቶች፤ በተለይ መንግስት የ2012 ዓ.ም መርጫን ለማስተላለፍ ያመጣው ጉዳይ እንጂ ወረርሽኙ ፤ ጥቁርን በተለይ ኢትዮጲዊን አይዝም የሚል ይገኝበታል።

በህዝብ እና በመንግስት መካከል ጠንካራ የትምምን እና የፍትህ ስረዓት ያለመኖሩን ወይም ትምምን አለመደርጀቱን የሚያሳይ ነው። መንግስት እንዲታመን ከፈለገ ከፍትህ ጋር መሰለፍ አለበት፤ ፍትህ የሚያሰፍን መንግስት እና የመንግስት ተቋም እምነት በቃላሉ ይሸምታል፤ ህዝባዊ ድጋፍም ያገኛል።

2. የኮቪድ-19 ወረርሽን እና የአፍሪካ ዝግጁነት ማነስ

አፍሪካ አንደ አህጉር የሀብት ደሀ አይደለችም፤ የለማ ሀብት ደሀ ግን ነች። አፍሪካ በተለይ በተፈጥሮ ሀብት ደረጃ የታደለች ነበረች።[10] ሆኖም፤ የውስጥና የውጭ ተጽኖዎች ተጻምረው በኢኮኖሚ ደረጃ እንዲሁም መንግስታዊ ስረዓትን በማደርጀት ደረጃ እጅግ ደካማ አድርገዋታል። አፍሪካ ድህነት እና ግጭት ተጻምረው ያቆረቆዟት አህጉርም ነች።[11] በተለይ ጀብደኛ መሪዎቿ፤ ከሚያስፋፉት የሙስና መረብ ጋር ተጻምሮ አንድም አስተማማኝ ደረጃ ላይ የደረሰ እና በተቋማት የደረጀ ሀገር እንዳይኖራት ሆኗል። ሆኖም ሁሉም አገራት ተመሳሳይ ደረጃ ላይ አይደሉም፤ በአንጻራዊ ደቡብ አፍሪካ ጥሩ ይዞታ ላይ ነች፤ እነ ቦቱስዋና፣ ቱኒሲያ፤ግብጽም ከሌሎች የአፍሪካ አገራት ይሻላሉ።

የአፍሪካ መሰረታዊ ችግሮች ሁለት ናቸው። የመጀመሪያው ከታሪካ የተወረሰ በራስ ያለመተማመን (ነጭ አምላኪነት) ሲሆን፤ መልካም ነገር ሁሉ ነጮች ጋር ነው የሚገኘው የሚል የከረመ ግርሻ አለባት። ህክምናውም እንኳ የሚሰምረው ነጭ አገር ተከፍሎ ሲታከሙት ነው የሚል እምነት አለ። የኮቪድ-19 ጉዳይ ግን የጉልበተኞቹን እና ነጭ አምላኪ ባለጸጋዎችን ምርጫ አደገኛ አርጎታል። ሁለተኛው ችግር መንግስታዊ ስልጣንን ለህዝብ ጥቅም ገርቶ እና አስተካክሎ መጠቀም አለመቻል ነው።[12] የሁለቱ ተግዳሮት ድምር ውጤት ድህነት እና ኋላቀርነት ሲሆን፤ ይህ ጉዳይ ደግሞ ለበሽታም፤ ለድህነትንም፣ ለስረዓት አልበኝነትም ተጋላጭነትን ይጨምራል። በተለይ ለኮቪድ-19 ላይነት ወረርሽኝ በከፋ ደረጃ ያጋልጣል። በዚህ ላይ፤ አፍሪካ የደረጀ አህጉራዊ ህብረት የላትም፣ አፍሪካ እርስ በርሷም አትነግድም፣ አትገናኝም፣ ብሎም በሚፈለገው ደረጃ አትረዳዳም።[13] ኢትዮጲያም የዚሁ አህጉር አካል እንደመሆኗ፤ የአፍርካ ድክመቶች በጎላ ሁኔታ ይታዩባታል።

3. የኢትዮጲያ ዝግጁነት፤ በኮቪድ-19 ዐይን ሲገመገም

ኮቪድ-19 ለኢትዮጲያ የተላከላት (የተላከባት) መቅሰፍት ነው። በመከራ የሚገለጽ ባረኮት ቢባል ይቀላል። ኮቪድ-19 ወረርሽኝ የስልጣን፣ የሀብት፣ እና የገዘን ቁመት በማሳጠር፤

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[10] Frederick van der Ploeg፣ AFRICA AND NATURAL RESOURCES: Managing Natural Resources for Sustainable Growth ፣ 2007

[11] Aloui, Zouhaier, The impact of governance on poverty reduction: Are there regional differences in Sub-saharan Africa? 2019.

[12] ዝኒ ከማሁ (ከላይ የተጠቀሰው ዓይነት)

[13] Alhaji Ahmadu Ibrahim, African Union and the Challenges of Underdevelopment in Contemporary Africa፣ 2016

የሁሉም ዜጋ ተስፋ ወይም ሞት አገራችን እንደሆነች አሳይቶናል፤ ገና በሩን እያንኳኳ ሳለ ይህ እውነት ፍንትው ብሎ ታይቷል። ለወትሮው እማ ለማንኛውም ዓይነት ደዌ (ለጉንፋኑም፣ ለትኩሳት፣ ትክትኩም) ዱባይ፤ ታይላንድ፤ ኤሮፓ እና አሜሪካ ነበር ለህክምና የሚሮጠው። በኮቪድ-19 የትም መሄድ የለም፤ ምስኪኑ የአገሬ ማህበረሰብም፤ የአገሩቱን ሀብት (ዘርፎ እና አዘርፎ) ይዞ የሚሯሯጠውም እኩል እዚሁ እጣ ፋንታችን ሆኗል። ተስፋችን አገራችን ላይ፣ ሀኪሞችም እኛው፤ ሆስፒታሉም የኛው፣ ድህነት፣ ሞታችንም እዚሁ ነው። ይህንን አንድ ብሎ ይዞ፤በሚገባ ትንትኖ ለውደፊቱ መዘጋጀት ይጠይቃል። ነገሩ የሰው ወርቅ አያደምቅ ነው፤ አሁን የራስን መዳብ እንዴት ወርቅ ማረግ እንደሚቻል ማሰብ የሚገባን ሰዓት ላይ ነን። ህዝብና መንግስት ተቀናጅቶ የሚሰራበት ወቅት ላይ ነን።

የኮቪድ-19 አስደሳች ውጤት የጋራ እኩልነት ነው፤ በሽታው ሀብታም ደሀ፤ ባለስልጣን ተራ-ተርታ ብሎ አይለይም። ለውትሮው፤ ብዙ ሰዎች ደሀ የሆኑ ያህል የሚሰማቸው፤ ለውጭ ህክምን እየተባለ ልመና ሲወጣ ነው። አብዛኛው መጠነኛ ኑሮ የሚኖረው፤ በተለይ የተማረው ክፍል፤ አሁን እኔስ ብሆን *"የዚህ ክፉ እማ ባለቤት"* ብሎ ማሰቡ አይቀርም ነበር። ያው ሞትን መጠበቅ ነው ምርጫዬ ብሎ ተስፋ መቁረጥም ይኖራል። ቁም ነገሩ ለአብነት ያህል፤ ኩባ በአገር ደረጃ ደሀ ነች፤ ህንድ ደሀ ነች፤ ታይላንድም እንዲሁ ደሀ ነች። የድህነት ልካቸው በእርግጥ ደረጃ አለው፤[14] ግን የህክምና ተቋሞቻቸው አገሬውን ከማከም አልፈው፤ የውጭ ገቢ ያስገባሉ።[15] የትምህረት ስረዓታቸው ዜጋ ተኮር ሆኖ ብሎም የህዝብ ጤናን የመጠበው ጉዳይን አስቀድመው ስለሰሩ ውጤት አግኝተዋል። የህዝብ ጤና በአግባቡ ሲጠበቅ፤ ህዝብ ጉለበት ይሆናል፤ እውቀት ይሆናል፤ ልማት ይሆናል፤ ሰላም ይሆናል።

በኛ አገር የትምህርት ስረዓቱ ከነበረበት እየዘቀጠ (ለአገዛዝ ስረዓት እንዲመች ሲባል) ስለሄደ አገር ተጎድቷል።[16] ብሎም የጤና ተቋማት በአስቸጋሪ ሁኔታ ውስጥ ስራቸውን ለመከወን እንዲታትሩ ተገደዋል። ይሁን እንጂ፤ አሁን ሁሉንም የሚፈትን ጉዳይ መጣ። በተለይ የመንግስት ሆስፒታሎች የደሀ መታከሚያ ብቻ ነበሩ፤[17] ለደሀው/ለአገሬው እንደነገሩ የተገኘው ይደረግ ነበር። በሌላው አገር የህዝብ (እኛ የመንግስት የምንለው) ሆስፒሎች በሪፋራል ደረጃ የሚሰሩ፤ ከዩኒቨርሲቲዎች ጋር የተያያዙ (ወይም

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[14] Wei Han, Health Care System Reforms in Developing Countries, 2012

[15] ዝኒ ከማሁ

[16] Belay Sitotaw Goshu and Melaku Masresha Woldeamanuel፤ Education Quality Challenges in Ethiopian Secondary Schools, 2019.

[17] በኢትዮጲያ አብዛኛው የህክምና አገልግሎት የሚሰጠው በመንግስት የህክምና ጣቢያዎች/ሆስፒታሎች ነው፤ ሆኖም የመንግስት ተቋmaት ጥራት ያለው ግልጋሎት የመስጠት ችግር ይስተዋልባቸዋል፤ የባleሞያነትም ችግር ብሎም እጥረት አለ። Most health facilities are government owned. Progress in health care in Ethiopia suffered during the Derg era, when many of the country's doctors either emigrated or simply failed to return from specialized training abroad. Despite the fall of the Derg regime in 1991, this trend has not been reversed. Medical schools in the country continue to produce general practitioners and a few specialists, but the scale of output does not match the rising demand. Shortages of equipment and drugs are persistent problems in the country. Available on https://www.britannica.com/place/Ethiopia/Health-and-welfare

የዩንቨርስቲዎቹ ንብረት ናቸው) ብሎም ከፍተኛ የህክምና ተዓምር የሚሰረባቸው ናቸው።[18] በነዚህ አገራት፤ በመጀመሪያ ምርመራ እና ለቀላል ህክምና የግል ሀኪም ጋራ ይኬዳል፤ እዚህ ነገሩ ተጋለቢጦሽ ነው። ያለው የግል፣ በጣም ያለው ወደ ውጭ ሄዶ ይታከማል። ጥያቄው ለምን ደካማ ሆን፣ ለምን የህዝብ ተቋማት ተዳከሙ (ወይም በሚገባ አልተገነቡም)፤ ማን ነው ተጠያቂው? የሚል ሲሆን፤ መውጫ መንገዱስ የት ነው የሚገኘው? የሚል ይሆናል።

ባለግዜዎቹ ያዳከሚቸውን የጤና ተቋማት ወይም ያለደረጃትን አሁን አፍጠው እያዩት ነው። የጤና ሚኒስተሯ ተዓምር እንዲሰሩ እየተጠበቀ ይመስላል፤ እሳቸው የሚቻለውን ሁሉ በሰለጠነ መልኩ እየከወኑ ነው። ግን ምን ሊደረግ ይችላል? ያልተዘራው አይታጨድ፣ ያልታጨደው አይዘምር፣ ያለዘመረው አይሰበሰብ። አሁን የጤና ተቋማትን በቅጡ ማደራጀት ከጉድ እደሚያወጣ ታይቷል። የጤና ሁኔታ እንዲቀየር፤ የትምህርት ስረዓት መጠናከር አለበት።[19] መንግስትም መጠንከር አለበት። መንግሰት ህብረት እና እንድነት ላይ ቆሞ ተጠያቂነትን መደረብ አለበት። ፖለቲካ ለዚህ ካልሆነ አያስፈልግም፤ ፖለቲካ ለመሳሳብ እና ለሙስና ማስፋፊያ መዋሉ በፍጥነት መቆም አለበት።

ሶስተኛ፤ የኮቪደ-19 በረከት ከጎሳ ፖለቲካ አንጻር መታየት አለበት። በዘር፣ በሀይማኖት፣ በጎጥ፣ በክልል፣ በማንነት ስንባላ ነበር፤ እየተባላንም ነው። ብሎም፤ ወደ ከፋ ደረጃ እየተሻገርን ባለንበት ዋዜማ ኮቪደ-19 መከሰቱ ነው። “የኔ፣ የኔ፣” የሚለውን መንፈስ የሚገራ ይመስላል፤ አሁን ቢያንስ ባለበት አቁሞታል፤ ወሰድ መለስ እያረገም ቢሆን።[20] ፈጣሪ እንኳን ሌላ፤ እጅህ ያንተ አይደለም ብሏል፤ ማስተዋል ያስፈልጋል። አብረህ፣ ተባብረህ ከቆምክ ትድናልህ፤ ከተለያየህ እና ከተዳከምክ ትጠፋለህ ነው መልክቱ ። ጆሮ ያለው ቢኖር እርሱ ይስማ እንዳለው መጽሀፉ።

ጠንካራ አገር እና በህብረት የቆመ ህዝብ በጀርመን፣ በቻይና፣ በደቡብ ኮሪያ የኮቪደ-19 ወረርሽኝ በመቆጣጠር ደረጃ የተሻለ ሰርተዋል።[21] በጣሊያን እና ስፔይን የደረሰው ጉዳትም ታይቷል፤ የማይሆን የፖለቲካ ንትርክ ላይ ነበር የከረሙት።[22] በአሜሪካ የግል

[18] በጀርመን የመንግስት ዩነቨርቲዎች የሚያሰተዳደሩአቸው ሆሰፒታሎች በረፈራል ደረጃ የሚሰሩ ሲሆን በዓለም አሉ ከሚባሉት አንደኛ ደረጃ የህክመና ስራ የሚሰራበቸው ናቸው፤ Expenditure on health in Germany amounted to an 11.2 percent of the Gross Domestic Product (GDP) in 2018. This share has been gradually increasing since 2000.

[19] ከ2010 ዓ.ም ጀምሮ የት/ት ስረዓቱ ድክመት ተለይቶ ወቶ ብዙ የማሻሻያ እርምጃዎች በመወሰድ ላይ ይገኛል፤ ለአብነት ያህል የሁለተኛ ደረጃ ት/ት 12ኛ ክፍል እነዲጠናቀቅ፤ የታሪክ ት/ት እነዲሰጥ፤ የመጀመሪያ ኣመት የዩነቨርቲ ቆይታ እንዲጀመር ተደርጓል።

[20] ግን ደግሞ በዚህ የወረርሽኝ ሁኔታ ውስጥ እንኳን እየፈነዳ ጉዳት እና ውድመት እያስከተለ ነው። የአርቲስት ሀጫሉ ሁንዴሳን ሞትን ተከትሎ የተፈጠርውን ሁከት እና የንብረት ውድመት ማጤን ትልቅ ትምህረት ይሰጣል፤ ለሚማር ስረኣት እና ህዝብ እጅግ አስተማሪ ክስተትም ነው።

[21] በነዚህ አገራት ወረርሽኙ ቀደም ብሎ ቢከሰትም ቅሉ ብዙ ውድመነት እና ኪሳራ ሳያደርስ መቆጣጠር ብሎም ፈርጀ ብዙ ጉዳትን መቀነስ ተችሏል።

[22] በጣሊያን እንዲሁም ስፔን የፖለቲካ ንትርክ ባለፉት 10 ዓመታት (ከዛም ባላይ) እየጎላ፤ ዕያወከ ብሎም በህዝብ የተመረጡ መንግስታት ግዜቸውን ሣይጨርስ የሚፈርስበት አጋጣሚ እጅግ

ተቋማትን በማደርጀት (ትርፍ ለማጋበስ) የህዝብ ሆነን ነገር ሁሉ ችላ ማለትም ዋጋ አስከፍሏል።[23] አሁን ችግሩ ወደ አፍሪካ እና ኢትዮጲያ በሙሉ አቅሙ መጂል (እየመጣም ነው) ውጤቱ የሚያሰቅቅ እንደሚሆን የዓለም የጤና ተቋም ተናግሯል። እውነት ነው፤ ዝግጁነታችንን መገምገም ይበቃል። በምዕራብ አገራት የሆነው የሚሆን ከሆን ፤ፈጣሪ ይሁነን የሚያስብል ነው። መልዕክቱ እንጠንቀቅ፣ እናብር፤ እንዘጋጅ ብሎም ካለፈው እንማር ነው። ተስፋችንን ከፈጣሪያችን ቀጥሎ አገራችን ላይ እናድርግ። ጠንካራ አገር የማቆም ጉዳይ ለነገ መባል የለበትም። ጥያቄው እንዴት ጠንካራ አገር ማቆም፤ መስራት ይቻላል ነው?

4. ሕግ ስረዓት፤ ተቋማት እና ኮቪደ-19 በኢትዮጲያ

የአንድ ማህበረሰብ ሁለንትናዊ እድግት እና ሰላም ብሎም ጤንነት የሚወሰነው፤ ጠንካራ መንግስት ሲያቆም (ሲመሰርት) እና ያለውን አቅም አቀናጅቶ መጠቀም ሲችል ነው። መልካም መንግስት የጋራ ጉልበት ነው።[24] ለዚህ መሳካት ደግሞ የመንግስት ቁርጠኝነት ሚና እጅግ ወሳኝ ነው። መንግስት ከማህበረሰቡ በተወጣጡ ግለሰቦች የሚቆም ቢሆንም፤ የማህበረሰቡ የጋራ ጉልበት ባለቤት ስለሚሆን (ሀይል እና ሀብት ላይ ባለቤት ስለሚሆን) በስንኩል (በማያዋጣ) አሰተሳሰብ ተጠልፎ የማህበረሰቡ፤ የራሱ መጠቀሚያ እና የቡድኖች ጥቅም ማጋበሻ ሊሆን ይችላል። መጠቀመያው መሳሪያ ደግሞ የመንግስት ተቋማትን ለግል አውራ ገዥ ወይም ለቡድን ጥቅም መሳሪያነት ሲውሉ እና ማህበረሰቡ ሲገፋ ነው። ህግ እና ስረዓት ለገዥ ጥቅም ሲውል አደገኛ መንግስታት ይኖራሉ። ይህ ሁኔታ ሲፈጠር ልፍስፍስ ተቋማት ስለሚፈጠሩ እንደ ኮቪድ-19 ያለ አደጋ በተከሰት ወቅት፤ የህዝብ አቅም ደክሞ እና ላልቶ ብሎም ለጥቃት ተጋልጦ ይገኛል። ጠንካራ መንግስት ለሁሉም ሁኔታዎች ዝግጁ ነው። በምንም አስደንጋጭ ሁኔታ አይሸበርም፤ ተሸብሮም ህዝብ አያደናግጥም።

የሆነው ሆኖ፤ በቀጥተኛው እና አዋጪው መንገድ ህግ እና ስራዓት የሚቆመው ለማህበረሰቡ ጥቅም እና ስጋቶቹን ለመቅረፍ ብሎም ተስፋዎቹን ለማለምለም ነው። ህግ ሲሰራ ከማህበረሰቡ ከደረጀ ትውፊት፣ ስጋቶች እና ተስፋዎች ተነስቶ መሆን አለበት። ህግ የገዥዎች ጥቅም ማስፈጸሚያ መሳሪያ ሲሆን ፍትህን ስለሚያጠፋ፤ ማህበረሰቡ የጋራ አቅሙን አውጥቶ እና አሰተባብሮ አገር ማሳደግ አይችልም። ሰብሳቢ እና አደራጅ የለውም፤ አይኖረውም። ህጉ ከማህበረሰቡ ፍላጎት እና ስጋት መመንጨት አለበት።[25] ህግ

ብዙ ነበር/ነው፤ በዚህ ምክንያት የአውሮፓ ህብረት የኢኮኖሚ ቀውስን እንዲታደግ ተደጋጋሚ ጥሪ ይቀርብለት ነበር፤ ተግባሪያው የኦስትሪቲ ድጋፍ ሲያደረግም ይስተዋላል።

[23] የአሜሪካ የመንግስት ፍልስፍና የግል ዘርፉን የሚያበረታታ ብሎም መንግስትን የሚያደክም ነው፤ መንግስት በጣም የተገደበ ሚና እንዲኖረው ይፈለጋል፤ ጉልበተኛ መንግስትን አይቀበሉም።

[24] Alina Mungiu-Pippidi፣ the Quest for Good Governance: Learning from Virtuous Circles. Journal of Democracy፣ 2016.

[25] ህግ ከማህበረሰቡ ፍላጎት፣ ስጋት እንዲሁም የወደፊት ተስፋ የሚቀዳ ሲሆን በሶቅራጥስ ቋንቋ እንዲህ ያለ ምንጭ ያለው ህግ ፍትሀዊ ይሆናል፤ ፍትህን የማያሰፍን ህግ ለቡድን ጥቅም ወይም ለአንባገነን ስልጣን መሰረት የሚሆን ነው፤ ኢ-ፍትሀዊም ይሆናል።

በተዉሶ ሲሆንም መሰረት ሊይዝ እንዲሁም ገቢራዊ ሊሆን ይችግረዋል።[26] ለመሆኑ ህግ ማለት ምን ማለት ነዉ፤ማህበረሰቡን ታሳቢ ያደረገ ህግስ እንዴት ማንበር ይቻላል? በተለይ በአደጋ ግዜ የህግ ሚናው ምን መሆን አለበት? ህግን ማስከበር እና ማክበር ላይ በምን ያህል ቁርጠኝነት መንቀሳቀስ አለብን፤ እንደምንስ ህጋዊነትን ባህል ማረግ ይቻላል? ህግ እና ስረዓትን የሚያከብር ማህበረሰብ እና መንስግሰት ጠንካራ አገር እንደሚመሰርት የብዙ ጠንካራ አገራ ልምድ ታሪካዊ ህያው ምስክር ነው።[27] ህግን ለስልጣን መጠበቂያ እና ለመዝረፊያ መሳሪያነት ያዋሉ አገራት፤ ልፍስፍስ ከመሆን ተራምደው አያቁም፤ አፍሪካን ብሎም ኢትዮጲያን አንደማሳያ መውሰድ ይቻላል።

ኢትዮጲያ በአገዛዝ ስረዓት ስትታመስ ለዘመናት ኖራለች። የአገዛዝ ስረዓቱ የጅምላ ሀጥያት በኢትዮጲያ ጠናካራ ተቋማት እና የህግ የበላይነት እንዳይኖር ማረጋቸው ነው።[28] ይህ ማለት ግን አንዳች መልካም ነገር ለአገሪቱ አላበረከቱም ማለትም አይደለም። ከዳግማዊ አጼ ሚኒልክ ብንጀምር ይህችን አገር አሁን በምናውቃት ቅረጽ እና መልክ ከህብረ-ቤሄራዊ ህዘቧ ጋር ሰተውን አልፈዋል፤ በተወሰነ ደረጃም የጋራ ስነ-ልቦናም አጎናጸፈውናል (ኢትዮጲያዊነት)፤ ዛሬ በከፊል ቢካድም። ከቀኝ ገገርዎች እና ተያያዥ መከራ አድነውናል፤ ጠብቀውናል። በቀኝ ብንገዛ ኖረ ዛሬ የምንመካበት እንዲሁም የምንጣለበት ማንነት ቀለሙ በተዘባረቀ ነበር፤ ሲብስም ሊደፈጠጥ እና ሊጠፋ ይችል ነበር። ሌሎች የአፍሪካ አገራት ላይ የሆነውን ማስተዋል ያስፈልጋል። የጥፋትም ችግር የለም፤ብዙ ሀጥያት መቁጠር እንችላለን፤ ።

አጼ ኃ/ስላሴ ኢትዮጲያን በአህያ ከመጓጓዝ አውጥተው እስክ ቦይንግ፣ በትምህርት ዩንቨርሰቲ ድረስ፤ እንዲሁም አገራቱንም በብዙ ዘርፍ አዘምነዋል። በሳቸውም በትረ-መንግሰት የሀጥያትም ችግር የለም፤ ብዙ ልንቆጥር እንችላለን። ደርግ የኢትዮጲያውያንን እኩልነት በመሬት አዋጅ በኩል አስምሯል፣[29] መሃይምነትን አምርሮ ተዋግቷል (ለዚህም በዩኔስኮ ተሸልሟል) እንዲሁም የአከባቢ ጥበቃ ላይ ሰርቷል።[30] ሀጥያቱም በቁና እሚሰፈር እየተዬለሌ ነው። ህወሀት/ኢህአዴግም ለቤሄር ማንነት ጥያቄ በከፊል መልስ ሰቷል፤ በቋንቋ መማር፣ መዳኘት በተወሰነ መልኩም በራስ መተዳደርን አምጥቷል፤

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[26] አብዛኛው የኢትዮጲያ ህግ በተውስ በአጼ ሀ/ስላሴ ዘመነ መንግስት ከአውሮፕ የተቀዳ ነው፤ ከማህበረሰቡ ጋር መናበብ ይቀረዋል፤ ብሎም አልገጥም እያለ የሚያውክበት አጋጣሚም አለ።

[27] የምዕራብ አውሮፕ እና የሰሜን አሜሪካ ስልጣኔ ምክንያት፤ ለህግ እና ስረኣት ያላቸው ትልቅ ቦታ እና ታዛዥነት ነው፤ በጥንቱ ዘመን እንኳ የሮማ ወታደሮች ታላቅ ኢንፓየር የመሰረቱት ህግ እና ስረዓትን ማቆም በመቻላቸው ነበር።

[28] በአጼ ምንሊክ የተጀመረው የተቋም ግንባት በአጼ ሀ/ስላሴ መሻሻል ቢያሳም ፤ በደረግ እና በኢህአድግ ባላበት ሲረግጥ ብሎም ወደኋላ ሲንሸራትት ዛሬ ላይ ደረሰናል።

[29] መሬትን የመንግሰት እና የህዝብ ስለማረግ የወጣ አዋጅ፤ በአጭሩ የመሬት ላራሹ አዋጅ፤ አዋጅ 31/67.

[30] Negash, Tekeste 1996 “Rethinking education in Ethiopia” The Nordic Africa Institute.

ከፊል የኢኮኖሚ ድልም አስመዝግቧል፤ አምጥቷል። ሀጥያቱም እለቆ መሳፈርት የለውም፤ አሁን የምንኖረው ሀቅ ስለሆን የከፋም ሆኖ ይሰማናል።[31]

ሆኖም በጎውን እያወደስን ጥፋትን እያረምን በመደመር ትረክት ወደፊት ልንሄድ ይገባል፡ ፡ ክብር ለሚገባው ክብር ያስፈልጋል። ዜጎች በግልጽ ሊወያዩ ያስፈልጋል። ፍረሀት እና መሸማቀቅ ሊያበቃ ይገባል። መረጃ ያለው እና በምክንያት የሚወያይ ትውልድ መፍጠር አለብን። ሚዲያው በእውቀት ሊመራ ይገባል፤ ከቡድን እና የመንግስት ልሳንነት ወደ የህዝብ ጆሮ እና አይን እንዲሁም ልሳን መሆን ከፍ ማለት አለባቸው። መረጃ እንደልብ መዘዋወር እና መንሸራሸር አለበት። መረጃ ያለውን ማህበረሰብ በቀላሉ ማወናበድ እና ለጥፋት ማሰለፍ አይቻልም፤ ዞር በል ስለሚል፤ ለወንበዴው ጆሮ ስለማይሰጠው። መንግስት ለመታመን እና ቅቡል ለመሆን አብዝቶ መስራት አለበት። ቅቡልነት ከህዝብ አመኔታ ይጀመራል። በፍትህ እና በህግ የበላይነት ደግሞ መሰረት ይይዛል። የህግ የበላይነት የሌለበት ማህብረሰብ የግለሰቦች መፈንጫ ነው የሚሆነው። ህግ እና ስረዓትን ተከትለው የሚሰሩ ተቋማትን መስራት፤ማቆም ያስፈልጋል። ያሉትንም በዚሁ ልክ መቃኘት ተገቢ ነው፡ መጪውን ግዜ ብሩህ ማረግ ያስፈልጋል። ቢያንስ መጪው ትውልድ እንደሌላው አለም፤ በነጻነት እና በተስፋ የመኖርን እድል ልንነፍገው አይገባም። ነፃነት ግን ጥብቅ ሀላፊነትን ብሎም አዋቂነትን ይደርባል። ነጻነት ያለገደብ ከተሰጠ ስረዓት- አልበኝነት ይዞ ይመጣል።

5. ኮቪድ-19 እና ሀሳብን የመግለጽ ነጻነት፤ የት እና የት?

በኮቪድ-19 ዙሪያ በተለያዩ ማህበራዊ ሚዲያዎች የሴራ ፖለቲካው ጋር ተያይዞ የሚነዙ ውሸቦንብሮች ብዙ ናቸው። ሀሳብን በመግለጽ ሳቢያ ማንም ሰው የፈለገውን የሚያወራበት ሁኔታ ተመቻችቷል። እርግጥ ነው፤ ሀሳብን መግለጽ የሰብዓዊ መብት አካል ነው[32]፤ ሆኖም ግን ሀሳብ ምንድን ነው? በሚለው ጉዳይ ላይ ጠብሰቅ ያለ ውይይት እና መግባባት ያስፈልጋል፤ ህጋዊነትም ይፈልጋል። ሀሳብ፤ ከሴራ ወለድ ውሸቦንብር፣ ከተራ ወሬ ፣ ከጥላቻ ሰበካ፣ ከሀሜት እና ተራ ዘለፋ እንዴት ይለያል? ማንስ ነው የመለየት ሀላፊነት ያለበት? ተናጋሪው ወይስ መናገሪያ መድረኩን የሚዘረጋው አካል? ለምሳሌ፤ ሚዲያ (ማህበራዊ ትስስሩም ይሁን መደበኛው በሳንሱር ህግ መፈተሽ አለበት)፤ መንግስት በአዳራሽ ለካድሬ የሚሰጠው ስልጠና፤ የመፅሃፍ አታሚዎች፤ የፖለቲካ ፓርቲዎች አስተምሮት፣ መንግስታዊ ያልሆኑ ድርጅቶች ስልጠናና እና ትምህርት ወዘተ ብሎም የሚዘረጓቸው መስመሮች ሊመረመሩ ይገባል።

የሀሳብን መግለጽ መብት ልኬት፤ ሰዎች (በግል/በቡድን) የሚያምኑበትን እና ሀቅ መሆኑን ያረጋገጡትን ወይም የቆሙለትን ጽኑ ዓላማ (የፖለቲካም፤ ይሁን ሌላ) ለሚፈልጉት ወይም ይመለከተዋል ብለው ለሚያስቡት የህበረተሰብ ክፍል

[31] Ethiopia's economy experienced strong, broad-based growth averaging 9.8% a year from 2008/09 to 2018/19-https://www.worldbank.org/en/country/ethiopia/overview

[32] የኢፌዴሪ ህገ-መንግስት አንቀጽ 29 ይመልከቱ፤

እንዲደረስላቸው ሲፈልጉ ሊታፈኑ አይገባም ከሚል እሳቤ የመነጨ መብት ነው። ሀሳብን ማፈን አፋኙንም የሚጎዳ ጉዳይ ነው፤ ምክንያቱም ምርጥ የለውጥ ጉልበት ሀሳብ ካላቸው ሰዎች ሊመጣ/ሊወለድ ስለሚችል።[33]

ሆኖም፤ ሃሳብ ሳይኖራቸው፤ እንዲያው መቀባጠር ጉዳቱ ከጥቅሙ ያመዝናል። ጥሬ ሀቅ መሆኑን ሳያረጋገጡ፣ ወይም ማረጋገጥ ያሚችሉበት አቅም ሳይኖራቸው፣ ወይም ሀሰት መሆኑን የሚያውቁትን ንግግር ሲያረጉ ወይም የሴራ ፖለቲካ ሲነዙ ወይም ወጥ የሚታወቅ አቋም ሳይሆነራቸው ወይም ሞያቸው ያልሆነን ጉዳይ ሲዘበዝቡ፤[34] ጥላቻን ሲሰብኩ፣ ህዝብ ሲያወናብዱ፤ ሃሳብን የመግለጽ መብት እስከመን ከላላ ይሰጣቸዋል። በተለይ ደግሞ የትምህርት እና የልምድ አቅማቸው የማይፈቅደው ዓይነት ሀሳብ/ወሬ በሚድያ ሲገልጹ፤ ጥናት ያላረጉበትን፤ በቅጡ ያልተማሩትን ጉዳይ ሲዳክሩበት፤ አጨቃጫቂ እና አነታራኪ ጉዳይ ላይ ድምዳሜ ሲሰጡ፤ ጥላቻን እየሰበኩ እልቂትን ሲጋብዙ፤ ሀላፊነት የሚወስደው አካል ማን ነው? በዚህ ሳቢያ ጉዳት በህዝብ እና ንብርት ላይ ሲከሰትስ ማን ሀለፊነቱ ይውሰድ?

በተለይ የንግግራቸው ይዘት ታሪክ እና ፖለቲካ ቀመስ ሲሆን የሚያስደስተው ክፍል እንዳለ ሁሉ የሚያስከፋው የህብረተሰብ ከፍልም ይሆናል። እንደ ኢትዮጲያ ያለ መልከ ብዙ እና ብዛህነት የሚነጸባረቅበት አገር ላይ ወጥ የታሪክ እና የስነ-ልቦና ንባብ ሊኖር አይችልም። በዚህ ረገድ ለመብቱ ምን ያህል ጥበቃ ሊደረግለት ይገባል? ጉዳዩ የፖለቲካ ጡዘት ውስጥ የሚከት ሲሆን ወይም የፖለቲካ ውግንና ሲኖረው ወይም ለፖለቲካ ቁማር ፍጆታ ሲውል፤ የመብቱ ልኬት ምን ያህል ነው? ይህ ብቻ ሳይሆን የሀሳቡን አግባብነት ሳይመዝን ወደ አደባባይ የሚያቀርበው ሚድያ በምን ደረጃ ሊጠየቅ ይገባል? አሁን ዘመን ካመጣው ሶሻል ሚድያ አኳያስ ጉዳዩ እንዴት ሊቃኝ ይችላል? ቁም ነገሩ የጥላቻ ንግግር አዋጅን ምን ዋጠው?

ዛሬ በአገራችን መደበኛ እና የሶሻል ሚዲያዎች እንድፈለጋችው እየናኙበት ነው። ከቤተሰብ ጀምሮ አገርን የማፍርስ ድንቁርና፤ ሀሳብን በመግለጽ ዙሪ በየቀኑ እየተዘራ ነው። ሁሉም ተንታኝ እና አዋቂ መስሎ ለመታየት በየቡና እና መጠጥ ቤት ከጓደኞቹ ጋር የጠረቀውን ወሬ እና ሀሜት አደባባይ ላይ ይዘረግፈዋል። ወይም በጥላቻ አንጋሾች የተሞላውን ትርክት እንደ ጥሩ ሀቅ ወስዶ እየተገበረው/እያዛመተው ይገኛል[35]። ብሄር እንደ ግለሰብ ስብዕና ወቶለት ይሰደባል፤ ይፈረጃል፣ ጥላች ይነዛበታል። አንድን ግልሰብ እንኳን በቅጡ ለማወቅ እንደሚችግር እየታወቀ *"እነ እንትና እንዲህ ናቸው"* ብሎ በድንቁርና ድፍረት ይለፈፋል። ወጣቶችን ያስታሉ፤ ከፍተኛ ጉዳትም እየደረሰ ነው። በዚህ ምክንያት፤ የወቅቱ ወረርሽን አመቺ ሁኔታ ተፈጥሮለታል። ሀይ ባይ የለም፤

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[33] John S. Miller, On Liberty፣ 1859!

[34] በኮቪድ-19 ዙሪያ እንኳን የባለ ሞያን ምክር ከመስማት እና በማህበራዊ ሚዲያ ያንኑ ከማስተጋባት ይልቅ ፤ የመላምት እና የሴራ ወሬዎች ሚዲያውን አጥለቅልቀውታል።

[35] እርግጥ ነው ከወያኔ ማክተም በኋል ነገሩ ፈር እያዘ እና የመርገብ ምልክት ማሳት ጀመረሯል፡ :

መንግስት ስራውን ዘንግቶታል።[36] ህግ እና ስረዓትን ማስከበር ተቀዳሚ ስራው ነው። የጎዳና ነውጥን ለማስቀረት ምንጩን ማድረቅ ያስፈልጋል፤ ሀሳብ ከሌለህ ዝም በል የሚል ወኔ ያስፈልገዋል። ሃሳብን እንጂ ሃሳበ-ቢስ ነውጠኛን ታገስ ያለው የለም።

መንግስት ማህበራዊ የትስስር ሚዲያዎችን በከፍተኛ ሁኔታ መገደብ ወይም በግዜአዊነት ረዘም ላለ ግዜ መዝጋት አለበት። በተለይ በመንግስት መስራያ ቤት ውስጥ እነዚህ ሚደያዎች ለስራ ጉዳይ ሳይሆን ለቧልት የሚጠቀሙት ሰለሚበዛ ማገድ ያስፈልጋል፤ ይህ በሌሎች አገርም፤ በአውሮፓም ጭምር ይደረጋል።[37] መደበኛ ሚዲያዎች ላይም የሳንሱር አቅሙን በእውቀት እየመራ ስንዴውን ከገለባ የመለየት ስራን መስራት አለበት። ከውጭ ሆነው ጥላቻን እና የዘር ፍጅትን የሚሰብኩ፤ የዓለም አቀፍ ህግ ይህንን ስለማይፈቅድ ከየአገራቱ ጋር ተባብሮ እና ተናቦ በህግ መጠየቅ ይቻላል። ማህበረሰቡም የራሱን ማህበረስብ አቀፍ የመጠፎ ልማድ እና ግበር-ግብ ያልሆኑ ነገሮችን የሚከታተልበት ሰንሰለት መዘርጋት ያስፈላገዋል። ብሎም፤ በትምህርት ቤት እና በመደበኛ ሚዲያ ተጠቅሞ የተዛቡ ትርክቶችን ማረቅ እና አገራዊ ወጥ ንባብ (በጥፋቱም፤ በልማቱም) ላይ መኖር አለበት። ትምህርት ቤቶችን ማጠናከር የግድ ይላል፤ የመሳሳቢያ እና የሙሳና አውድማ መሆናቸው ማብቃት አለበት።

6. መደምደሚያ እና የመውጫ ሀሳብ

ኢትዮጲያ ከፖለቲካ ድንቁርና መፋታት አለባት። ሁሉም የፖለቲካ አዋቂ/አትራፊ ሊሆን አይችልም/አይገባም። ግን ማንም መንገደኛ የፖለቲካ ነጋዴ መሆን ይችላል፤ ቀላልም ነው። በግ እና በሬ ከማሻሻጥ ያለፈ ቅልጥፍና አይጠይቅም። ሆኖም የፖለቲካ ቁማር/ቅጥፈት አገራችንን ላለፉት 50 ኣመታት ዋጋ አስከፍሏል። አያሌ ወጣቶችን በስሜት በመንዳት ከፍተኛ የሰው እና የአገር ሀብት አውድሟል። በጥሩ ጅማሮ ላይ የነበሩ ተቋማት ፈርሰዋል ወይም ተዳክመዋል። የትምህርት ተቋማት የፖለቲካ ነጋዴዎች መራጋጫ ከሆኑ በኋላ ብዙ ተቋማትን ከነበሩበት ደረጃ ወርደዋል ወይም ጠፍተዋል። ከ1983 ዓ.ም በኋላ ደግሞ ደም (ማንነት) እና የፖለቲካ ስልጣን እውቀት ሆነዋል፤ ውጤቱ እየታየ ነው። የኮቪድ-19 ጉዳይ ደግሞ የበለጠ አጋለጠው። ነገሩን የ50 ዓመት የፖለቲካ ተግዳሮት ግምገማ አድርጎ፣ ዘግቶ ወደፊት መራመጃ ፍኖተ-ካርታ ነድፎ መጓዝ ይጠይቃል። የፖለቲካ ድንቁርና ሊገታ ይገባል፤ በተለይ በዘር እና በሀይማኖት። ጠቅላዩ እንዳሉት ይቅርታ ቁልፍ ነው። ስለዚህ፤ ይቅርታን የእውነት እናድርግ የለበጣ ሳይሆን፤ የሀቅ እርቅም እንደርብበት።

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[36] በሀምሌ 15፣ በቪኦኤ አማርኛ ስርጭት፤ መንግስት ቀደም ባሉት ጊዜያት ዲሞክራሲን ለማስለመድ ያሳይ የነበረው ታጋሽነት አሁን ሀገሪቱ ላለችበት ውጥረት ተጨማሪ አሉታዊ አስተዋጽኦ ማበርከቱን ጠቅላይ ዐቃቢ ህግ አዳነች አቤቤ ተናገሩ።ጠቅላይ ዐቃቢ ህግ አዳነች በአሁኑ ሰዓት "ከህግ ማስከበር ውጭ ምንም አማራጭ የለንም!" ብለዋል።

[37] የብዙ አገራት ልምድ እንደሚያሳየው፤ በህንድ፣ ፓኪስታን፣ ግብጽ፣ ቱርክ ወዘተ ችግር በሚያጋጥም ወቅት ኢንተርኔትን በተደጋጋሚ ዘግተዋል ወይም እንዲቀራፈፍ አርገዋል። ለዝርዝር መረጃ የሚከተለውን ማስፈንጠሪያ ይመልከቱ፤
https://www.statista.com/chart/15250/the-number-of-internet-shutdowns-by-country/

መንገስት ከማህበረሰቡ ጉልበት፤ ከሀይማኖት አባቶች አቅም፤ ከእውነት እና ግብረ-ገብ ጋር ታረቆ እና ተስማመቶ ወኘርንበርን ከምንጩ ማድረቅ አለበት፡፡ በተለይ ባለፉት ሶስት አስርተ ዓመታት የተዘራውን የጥላቻ መርዝ ፈዋሽ መድሀኒት ፊልግ ትውልድን ማከም ያስፈልጋል፡፡ ወጣቶችን ወደ ስራ እና ጠበቅ (በውድድር ስረዓት ላይ ያተኮረ) ያለ ትምህርት በታቻለ አቅም ማሰማራት የግድ ይላል፡፡ ወጣቶችን ለጥላቻ ፖለቲካ ማጋለጥ ከዘር ማጥፋት ወንጀል ተለይቶ አይታይም፤ መንግስትም መርግ የለበትም፤ የሚያረጉትንም መታገስ የለበትም፡፡ የህግ አቅምን ወደ 21 ዓመት ማሳደግ ያስፈለጋል፤ እስከ 21 ዓመት የፖለቲካም ሆነ የጋብቻ አቅም ሊነፈጋቸው ይገባል፤ ለራሳቸው ብሩህ የወደፊት ህይወት ሲባል፡፡

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