**Ethiopian law and legal system**

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**Introduction**

Ethiopian country is located in East Africa in the region known as the Horn of Africa. It covers an area about 1.2 million square kilometers (Alemu, 2008). South Sudan borders it to the southwest, Sudan to the west, and Kenya to the south, Eritrea to the north, and Somalia and Djibouti to the east. It is one of the oldest and ancient independent nations in Africa. Conventionally the historical formation of this state goes back at least three thousand years. The formation of contemporary Ethiopia as a state in the late 19th century, however, was by Emperor Menelik II. This paper gives an overview of the Ethiopian legal system with particular focus on the Federal Democratic Republic of Ethiopia (FDRE) Constitution, the proclamations, and other relevant materials (Negussie, 2006). Thus, the paper gives an insight into the main features of the FDRE Constitution, Alternative Dispute Resolution (ADR) mechanisms, the law-making institutions of the FDRE, the court system at the federal and state levels, and the law enforcement agencies. Finally, the sources of laws, its characteristics, and law practice are briefly considered.

**The FDRE constitution and its main features**

The current Ethiopian Constitution came into effect in 1995. It is a document composed of 106 articles contained in ten chapters (Alemu, 2008). As stated in the Preamble, the drafters of the Constitution are the "nations, nationalities and peoples of Ethiopia." with regard to form, the Preamble comes first, followed by general provisions, and then by the basic principles of the Constitution, local government, national policy objectives and principles, human rights, state organs, and amendment rules. Therefore, one main feature of Ethiopian legal system especially, in its substantive laws is the reflection of the continental legal tradition which in turn categories Ethiopia as one of the countries with this legal tradition. Another feature is the influence of common law legal tradition in its procedural laws.

The Ethiopian procedural laws, both civil and criminal procedural laws, are transplanted from the countries with the common law legal tradition. In the same way, the critics about substantive laws are also true in the codes of procedural laws (Negussie, 2006). Therefore, due to the fact that these laws are simply borrowed from the donor countries, there are a couple of provisions which have little significance in solving the political and socio-economic problems of Ethiopia in fact, to tackle this problem, the government has already started the amendment process though not yet finalized. The following are the basic features of the Federal Democratic Republic of Ethiopia Constitution.

The Establishment of Federal System: Federalism is a key feature of the Constitution. The Ethiopian Constitution declares the country to be a federal polity with nine regional states which are based on ethnolinguistic patterns. Federalism came into place as the culmination to the long-standing 'national question and as a reaction to a long history of a centralist tendency that was pursued harshly by the previous governments.

Ethnicity: Ethnicity is paramount in the Ethiopian Constitution. The wording of the Preamble of the Constitution begins with "We, the nationalities, nations, and peoples of Ethiopia." This symbolizes a constitution of the people of Ethiopia not simply taken together as a people but as citizens in their various ethnolinguistic groupings. The ethnolinguistic groupings and the nationality issue have socio-economic and historic-political significance beyond the linguistic and cultural expressions. "We the nations, nationalities and peoples." recognizes Ethiopia as a nation of nations.

Parliamentary Democracy: The Constitution of Ethiopia establishes a parliamentary democracy. There are two houses commonly known as the Federal Houses (Vanderlinden, 2007). They are the House of Peoples' Representatives (HPR). The HPR is constitutionally the top authority of the Federal Ethiopian Government while the State Council is the top organ of state power (Vanderlinden, 2007). At the state level, a one House State Council is provided for in the Constitution. The House of Federation which is made up of representatives of Nations, Nationalities, and people is the other representative assembly with a particular power, including the "power to interpret the Constitution.”

A right to Secession: The right to secession is part of the wider right to self-determination. It is one of the controversial articles of the Ethiopian Constitution as many argue that it endangers the unity of the Ethiopians. This right is the ultimate extension and expression of the right to self-determination, and the Federal Democratic Republic of Ethiopia Constitution provides a detailed set of procedures for the best way in which it may be exercised.

Ownership of Land: In Ethiopia, the land is an item of the FDRE Constitution which is highly debated, not on political but rather on economic grounds (Sedler, 2014). The Constitution states that "the right to ownership of urban and rural land is exclusively vested in the state and the people of Ethiopia. It adds that land is a common property of the Ethiopians and shall not be subject to sale or other means of transfer." The general principle is that land should not be considered simply as a market commodity. According to art 40 of the FDRE Constitution, all rural and urban land is the property of the Ethiopian people and the state.

Language: Article 5 of the Ethiopian constitution provides both for the equality of all Ethiopian languages and for their practical application in government. As at that, all 85 Ethiopian languages enjoy equal state recognition, the working language of the FDRE is the Amharic language. However, states of the federation may determine their own working language by law.

Religion: Religion has played a crucial part in the history of Ethiopian constitution over the centuries. From paganism to archaic Judaism, from Catholicism to Protestantism, and from Christian Orthodoxy to Islam, they have all left their imprint at one time or other in the history of Ethiopian constitution. There has been no period in the history of Ethiopian monarchy when there has not been a state religion. The FDRE 1995 Constitution avoids such practice. According to Article 11, religion and state are separate. There is no state religion and the religion shall not interfere in state matters and state shall not completely interfere in religious matters.

Fundamental Rights and Freedoms: A great thrust of the FDRE Constitution is in the field of fundamental rights and freedoms. Approximately one-third of the provisions of the FDRE Constitution deal with fundamental rights and freedoms. These fundamental rights are divided into democratic rights and human rights (Alemu, 2008). Generally, the FDRE Constitution includes first, second, and third generation rights. However, the compartmentalization of rights as democratic rights on the one hand and human rights on the other is not watertight. The Ethiopian Constitution is in compliance with international human right instruments such as UNDHR.

Constitutional Interpretation: The ultimate interpreter of the Ethiopian Constitution is not the highest court of law, but the House of Federation (Sedler, 2014). The Constitution establishes a body of mostly legal experts of high standing known as the Council of Constitutional Inquiry, headed by the Chief Justice of the Federal Supreme Court, to closely look at constitutional issues and submit its findings to the HF. The House of Federation, therefore, has the authoritative and competent legal advice of the Council of Constitutional Inquiry before it arrives at its decision on constitutional matters.

Constitutional Amendment: Amending constitution involves a long procedure. It is a rigid one. The formal initiation of a constitutional amendment can come from either federal or regional legislative organs (Negussie, 2006). A third of State Councils constitutionally must have supported a draft by majority vote where an initiative comes from the regions. Otherwise, either of the FH can initiate a constitutional amendment by a two-thirds majority vote.

State of Emergency: The Constitution outlines specific procedures and institutions on temporary terms when situations arise that result in a state of emergency (Mattei, 2005). Under such circumstances, the Council of Ministers has the power to issue a decree proclaiming a state of emergency and take the measures necessary to protect the sovereignty and peace of the country and to maintain law, order, and public security. To this end, the Council of Ministers may suspend the political and democratic rights provided for in the Constitution.

Inter-governmental Relations: The federal constitution regulates the relationship between the states and the federal government. The FDRE Constitution lists the state/region powers, concurrent powers, the federal powers, and leaves residual powers to the states. The principle of 'mutual respect' between state and federal governments and 'mutual non-interference' in one another's affair is highly recognized in the Constitution.

**Law making institutions**

The highest legislative law making institution is the House of Peoples' Representatives. Its members are elected by a plurality of the votes cast every five years in general elections. Members of the House of Peoples' Representatives are popularly elected for a five-year term in a "first-past-the-post" electoral system. The House of Peoples' Representatives has 550 members, and at least 20 seats are kept aside for minority nationalities and groups to ensure their representation. Members of the House of Peoples' Representatives are representatives of the nations, nationalities, and peoples of Ethiopia (Alemu, 2008). They are governed by the Constitution by the will of the people of Ethiopia and their conscience. Members of the HPR are granted immunity from arrest and prosecution without the permission of the House of Peoples' Representatives except in the case of flagrante delicto.

The Republic of Ethiopia and Federal Democratic of Ethiopia has basically a parliamentarian form of government, where the coalition of political parties that has the greatest number of seats in the House of Peoples' Representatives forms and leads the executive wing and approve the appointment of members of the executive Council of the Prime Minister and Ministers. It also nominates the candidate for the President, who must then be approved constitutionally by a two-thirds majority of the two Houses of the Parliament. The nominated President has titular power, but should formally sign all laws coming from the House of Peoples' Representatives. The Prime Minister has the ultimate executive powers.

According to Article 55, the most key function of House of Peoples' Representatives is to enact laws on issues assigned to the federal jurisdiction and ratify national policy standards. The article stipulates out that the House of Peoples' Representatives also exercises other important functions including the investigation of the conduct of the executive members, the appointment of federal judges, establishing the institution of the Ombudsman and the Human Right Commission, and the ratification of international agreements. The HF is the upper house in the federal government (Mattei, 2005). It functions as the representative institution for the regional units, but in the Federal Democratic Republic of Ethiopia it is composed of representatives "of representatives of nations, nationalities, and Peoples."

Each nation, nationality, and people should be represented by at least one representative in the House of Federation. Moreover, each nation and nationality can be represented by one extra representative for every one million of its population. The State Councils elect members of the HF in each regional state. The House of Federation is given the ultimate power of the interpretation of the Federal Democratic Republic of Ethiopia Constitution. The House of Federation is also empowered to decide on matters related to the rights of states to self-determination including finding solutions to disputes between states, secession, and determine the allocation of state and joint federal revenues and the federal subsidies to the states.

**The Federal Executive**

The power of Ethiopian government is granted to the party that wins the majority of the seats in the House of Peoples' Representatives, and the highest executive powers of the federal government are vested in the Council of Ministers and Prime Minister, who are accountable to the House of Peoples' Representatives (Negussie, 2006). The PM is elected from among the elected members of the House of Peoples' Representatives and is not subject to any limit on terms that may be served. Concerning the Ethiopian law, the powers and functions of the Prime Minister are to follow up and ensure the implementation of directives, laws, policies, and other decisions adopted by the House of Peoples' Representatives. The Council of Ministers is constitutionally vested with the highest executive authority. It comprises the Prime Minister, the Deputy Prime Minister, Ministers and other members as may be determined by law. Concerning the Ethiopian legal system, the Powers, and functions the Council of Ministers is to ensure the implementation of laws adopted by the House of Peoples' Representatives.

**Federal Courts**

The Federal Democratic Republic of Ethiopia Constitution recognizes the establishment of an independent judiciary that has a dual judicial system: the state courts and the federal courts with their independent administrations and structures (Mattei, 2005). Judicial powers, both at state and federal level, are vested in the courts. The FDRE Constitution stipulates that the supreme federal judicial power lies with the Federal Supreme Court and gives the House of Peoples' Representatives power to decide by a two-third majority vote to establish subordinate federal courts, in some parts of the country or nationwide. There is a Federal Supreme Court that sits in the capital city with national jurisdiction (Singer, 2010). Federal courts at any administrative level may hold circuit hearings anywhere within the State or in any area designated for its jurisdiction. Federal High Courts have been set up in five States. Each court has a criminal, civil, and labor division with a presiding judge and two other judges in each division. Adjudication by customary and religious courts is recognized. A three-tier Federal Islamic court whose power is established by the consent of the parties is also recognized.

The Federal Supreme Court incorporates a cassation division which has the competence to review and overturn decisions issued by state supreme courts and lower federal courts containing fundamental errors of law. Furthermore, judicial decisions of the Cassation Division of the Federal Supreme Court on the interpretation of legislation are binding in Federal and State courts.

The Federal Courts Proclamation allocates subject-matter jurisdiction to federal courts based on three principles: places, laws, and parties (Mattei, 2005). It outlines that federal courts shall have power over cases arising under the international treaties, Constitution, federal laws and over parties specified in federal laws. Article 3 of the Federal Courts Proclamation stipulates that federal courts have judicial power in places specified in the Constitution. Article 5 stipulates that federal courts shall have civil jurisdiction over: cases regarding the liability of officials of the federal government in connection with their official duties; cases to which a foreign national is a party; and cases to which a federal government organ is a party (Mattei, 2005). It also has power over suits between persons permanently residing in different regions; suits relating to business organizations registered under the jurisdiction of federal government organs, suits involving matters of nationality, and suits regarding negotiable instruments. Lastly, it has power over suits regarding insurance policy and application for habeas corpus, and suits relating to patent, literary and artistic ownership rights.

Article 4 of the same Proclamation gives federal courts criminal jurisdiction over offenses against foreign states; offenses against the national state; offenses against the law of nations; and offenses regarding counterfeit currency (Sedler, 2014). It also has criminal jurisdiction over offenses against the fiscal and economic interests of the federal government; offenses regarding forgery of instruments of the federal government; offenses against the safety of aviation; and offenses of which foreigners are victims or defendants. Lastly, the court has criminal jurisdiction over offenses regarding illicit trafficking of dangerous drugs, offenses falling under the jurisdiction of the tribunals of different regions and offenses committed by employees of the federal government in connection with their official duties.

**State Courts**

The Federal Democratic Republic of Ethiopia Constitution provided for a three tier of state and federal judicial system (Negussie, 2006). The state courts in addition to original power also assume delegate jurisdiction over federal matters, for example, high courts, the state supreme court, and first Instance courts. State supreme courts are located in the capital cities of the respective states and have final judicial authority over issues of State law and jurisdiction. State first instance courts sit at the lowest administrative levels of states while State high courts sit in the regions of states.

The state systems of judicial accountability and administration mirror the federal process. The state governments have also established commissions of judicial administration with an aim safeguarding the independence of state courts (Sedler, 2014). With respect to appointment, Vice-President and the President of the state Supreme Court are recommended by the Ethiopian President of the states and appointed by the State Council. All other State judges are appointed by the State Council depending on the recommendations made by the State Judicial Administration Commission.

**Municipal Court**

The Addis Ababa City Charter establishes two levels of City Courts carrying out municipal jurisdiction: Appellate Courts and First Instance. Although a cassation bench is incorporated within the Appellate Court, there is no Supreme Court in the municipal system (Macfarlane, 2006). Cassation review of the Appellate Court rulings can be referred to the Federal Supreme Court, which also decides jurisdictional conflicts between the federal and city courts. The Addis Ababa City Courts have petty and civil offense jurisdiction.

**Social Courts**

The Addis Ababa City Charter created Social Courts at Kebele level to hear property and monetary claims up to 5,000 birrs. Social Court decisions can be constitutionally appealed to the First Instance City Courts. If there is a significant error of law in the decisions and rulings of the First Instance City Courts in Ethiopia on appeal from Social Courts, it can be a basis for cassation to be handled by the Appellate Court of the city. Some of the Ethiopian States have also established Social Courts that handle small claims and minor disputes.

**Religious Courts**

The Ethiopian Constitution outlines the framework for the independent validity of non-state laws such as religious and customary laws in some fields of social activity. Article 34 of the Constitution provides that: This Constitution shall not overture the adjudication of conflicts relating to family and personal laws in agreement with customary and religious laws, with the consent of the parties to the dispute (Macfarlane, 2006). Constitution also stipulates that the House of Representative and state councils can establish or give official recognition to customary and religious and courts. Customary courts and religious courts that had state recognition and functioned before the adoption of the Constitution of Ethiopia shall be organized on the basis of recognition given to them by this Constitution. Formal legal pluralism under the new constitutional order is confined to matters of family law.

To date, Sharia Courts that apply Islamic law are the only religious courts in Ethiopia that have been officially established both at the state and federal levels. Sharia Courts apply only Islamic law and have their own appellate system (Sedler, 2014). However, they are required to follow the procedural rules of ordinary courts and receive their budget allocations from the state. Parties must willingly submit to the jurisdiction of these tribunals, or the dispute should be constitutionally redirected to the regular courts. All the federal Sharia courts are entirely accountable to the Federal Judicial Administration Commission of Ethiopia. All of the State Councils have given official recognition to Sharia Courts within their respective jurisdictions.

Alternative dispute resolution ways are used in Ethiopia to settle conflict through processes other than formal litigation that takes place in the court of law (Macfarlane, 2006). These mechanisms could be either traditional or customary or found in formal institutions and laws. The mechanisms are included in the Ethiopian Civil Code of 1960 which deals with alternative dispute resolution mechanisms such as arbitration, conciliation, and compromise, the labor law, the Ombudsman, and the Ethiopian Human Rights Commission.

The law enforcement agencies at the federal level, include the Federal Police Commission, Ministry of Justice, and the Federal Prison Commission (Macfarlane, 2006). The Federal Ministry of Justice has the ultimate authority for prosecution of cases falling under the jurisdiction of federal courts. Federal Police Commission Proclamation establishes the Federal Police Commission which is accountable to the Ministry of Federal Affairs. The Federal Prisons Commission was established as an institution accountable to the Ministry of Federal Affairs. The objectives of the Commission are to hold prisoners in custody and provide them with reformative and rehabilitative service to enable them to make the attitudinal and behavioral change necessary to become law-abiding, peaceful and productive citizens.

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