ADDIS ABABA UNIVERSITY

INSTITUTE OF HUMAN RIGHTS

The ROLE OF FDRE MINISTRY OF JUSTICE IN THE PROTECTION AND PROMOTION OF HUMAN RIGHTS:

THE CASE OF LEGISLATIVE DRAFTING AND HUMAN RIGHTS EDUCATION

BY
ABIYOU GIRMA

ADVISOR
ELISE G. NALBANDIAN (LL.B)(LL.M)

A THESIS SUBMITTED IN PARTIAL FULFILMENT FOR THE REQUIREMENT OF MASTER OF ARTS IN HUMAN RIGHTS (M.A.)

January 23, 2012

DECLARATION

I, Abiyou Girma, declare that the work presented in this dissertation is original. It has never been presented to any other university or institution. Where other people's works have been used, references have been provided, and in some cases, quotations made. In this regard, I declare this work as originally mine. It is hereby presented in partial fulfillment of the requirements for the award of the MA Degree in Human Rights.

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Abiyou Girma

January 23, 2012

ACKNOWLEDGMENT

First and for most, I am grateful to My God, the unfailing FATHER, for making the journey of life and this masters program possible. I learned that HE makes a way even when there seems to be no way. I recognize his goodness and I am always in endless owe.

I would like to express my sincere gratitude and thanks to my advisor Ms. Elise G. Nalbandian for her tedious effort, unreserved encouragement, professional and technical guidance she offered me during my tenure in the study of this research paper. I really thank Elise from the bottom of my heart and I wish you success in your walk of life.

I would also like to express my gratitude to my parents and all family members who never ceased to give their encouragement, love and support in every way. I am grateful to you all and promise not to fail you.

Last but not certainly least; my thanks go to my colleagues in the Ministry of Justice and those individuals who directly or indirectly supported my endeavors.

Abiyou Girma

January 23, 2012

Addis Ababa, Ethiopia

ACRONYMS

APAP	Action Professionals' Association for the People
BPR	Business Process Re-engineering
BSC	Business Score Card
CAB	Citizens' Advice Bureau
CAT	Convention Against Torture
CSO	Civil Society Organizations
COM	Council of Ministers
CEDAW	Convention on Elimination of Discrimination Against Women
ECHR	European Convention on Human Rights
EEO	Equal Employment Opportunities
ESCR	Economic, Social, and Cultural Rights
ESR	Economic and Social Rights
EWLA	Ethiopian Women Lawyers Association
FDRE	Federal Democratic Republic of Ethiopia
FBC	Fana Broadcasting Corporate
FGM	Female Genital Mutilation
HRSU	Human Rights Support Unit
HRE	Human Rights Education
HPR	House of Peoples Representatives'
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on Elimination of Racial Discrimination

ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMW	International Convention on Migrant Workers
JLSRI	Justice and Legal System Research Institute
MOA	Ministry of Agriculture
MOFA	Ministry of Foreign Affairs
MOH	Ministry of Health
MOJ	Ministry of Justice
NA	National Assembly
NCOP	National Council of Provinces
NGO	Non Governmental Organization
PLEI	Public Legal Education and Information
PM	Prime Minister
SMS	Short Message Service
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNHCHR	United Nations High Commissioner for Human Rights
USA	United States of America

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CHAPTER ONE

INTRODUCTION

1.1. Background

The promotion, protection and enforcement of human rights should practically be realized when all government agencies function in line with the universal principles of human rights. The Ministry of Justice in this respect is the most important government agency to which the promotion, protection and enforcement of human right is entrusted because of the nature of its powers and functions.

The Ministry of Justice of the Federal Democratic Republic of Ethiopia is one of the oldest Executive organs in Ethiopia. It was established one hundred years ago during the reign of Emperor Menelik II in 1908.[1] During this time, the Ministry accomplished many activities, which were directly related with Justice. And very many laws were enacted to determine its powers and duties since its inception. Currently the Ministry's powers and functions are principally stipulated under Article 16 of Proclamation no. 691/2010 and several other proclamations.

The vision of FDRE MOJ is to see a prosperous and developed state of Ethiopia where human and democratic rights are respected, rule of law is guaranteed and justice is served. In achieving this vision the Ministry has several mandates that are an essential component of the full and effective realization of human rights. The duty of the government to promote, protect and enforce the human rights of individuals against public and private invasions is also possible through the proper and effective discharge of the function of the Ministry.

To act as a chief advisor to the federal government on matters of law,[2] to conduct study on causes of crime, to devise ways and means of crime prevention, to coordinate relevant government organs and communities in relation to crime prevention;[3] to conduct or order criminal investigation, to direct and supervise criminal investigation, to decide on discontinuance of an investigation or the carrying out of additional investigation up on the existence of good cause;[4] to institute and withdraw criminal charges, to litigate on criminal cases representing the federal government, to follow up execution of decision of courts;[5] to undertake legal reform studies and carry out the codification and consolidation of federal laws, to collect and consolidate regional states laws and to draft laws where requested by federal organs and regional states;[6] to conduct an overall

[1] Ministry of Justice of the Federal Democratic Republic of Ethiopia, Profile of the Justice/Legal Institutions of the Federal Democratic Republic of Ethiopia, Berhanena Selam Printing Enterprise, 2005 pp. 35
[2] Proclamation no. 691/2010 Art. 16 (1)
[3] Ibid Art. 16 (4)
[4] Ibid Art. 16 (5)
[5] Ibid Art. 16 (6)
[6] Ibid Art. 16 (2) and (3)

follow up and to involve on civil suits of federal government offices and public enterprises;[7] to follow up, as necessary, the handling of civil suits and claims to which the federal government offices and public enterprises are parties, to ensure that competent legal professionals are assigned in federal government offices and public enterprises;[8] to assist in the amiable resolution of disputes arising between federal government offices and public enterprises;[9] to represent citizens in particular women and children who are unable to institute and pursue their civil suit before the federal courts;[10] to license and supervise advocates practicing before federal courts;[11] to ensure that whist bowlers and witnesses of criminal offences are accorded protection in accordance with the law;[12] to coordinate activities involving international judicial assistance with regard to criminal cases;[13] to create legal awareness with a view to raising public consciousness in relation to protection of human rights;[14] to grant marriage of minors, to oppose a marriage on the basis of age, relationship between consanguinity and affinity as well as bigamy;[15] to take all the necessary measures to protect civilians from terrorist attacks and implementation of The Protocol to the OAU Convention on the Prevention and Combating of Terrorism;[16] to take all the necessary measures for the proper implementation and respect of the African Charter on Democracy, Election and Good Governance;[17] to involve in special activities of remand and impounding relating to crimes committed through mass media[18] and to involve in preparation, submission and reporting of human rights reports on the core human rights treaties[19] are the common obligations and responsibilities of the MOJ. And most of these obligations and responsibilities of the Ministry are directly or indirectly related to issue of human rights. From this, it appears that the duties and functions of the Ministry are closely related to the promotion, protection and enforcement of human rights.

The Ministry should perform its tasks in accordance with the Ethiopian, Regional and International laws, so that trust and public confidence can easily be attained between the Ministry and the community. There are three directorates and one coordinating office in the Ministry having direct and indirect relationships with the promotion, protection and enforcement of human rights. These are i) Investigation and Prosecution Directorate ii) Legal Research, Drafting and Education Directorate iii) Advocates Licensing and Administration Directorate; and iv) Women and Children Coordinating Office. The Ministry has arranged its office with public prosecutors to accomplish its functions. Hence, it is the responsibility of public prosecutors to enhance the promotion, protection and enforcement of human rights in the country at the federal level.

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[7] Ibid Art. 16 (8)
[8] Ibid Art. 16 (9)
[9] Ibid Art. 16 (10)
[10] Ibid Art. 16 (11)
[11] Ibid Art. 16 (12)
[12] Ibid Art. 16 (13)
[13] Ibid Art. 16 (14)
[14] Ibid Art. 16 (15)
[15] Art. 18 (a), (b), (c) and (d), 31 (1), 32, 33 (1) of the Revised Family Code of Ethiopia
[16] Art. 3 of Proclamation no. 614/2008
[17] Art. 3 of Proclamation no. 613/2008
[18] Art. 42 and 43 of Proclamation 590/2008
[19] This mandate is not clearly assigned by law to the MOJ but presumed by government as a task of the MOJ.

The focus of this research is on the legislative drafting and legal/human rights education tasks of the Legal Research, Drafting and Education Directorate and the Directorate is situated at the head office of the Ministry. Its responsibilities includes to conduct a problem solving legal researches including human rights issues, to draft new laws as well as draft amendment of old laws including laws that would expand the horizon for liberty and respect of human rights and to create legal awareness through education with a view to raising public consciousness in relation to protection of human rights.

Hence, human rights are a great concern for the FDRE MOJ. The violation of human rights during implementation of all these human rights responsibilities by the Ministry has a negative impact on the community, the government and the international community at large. For this reason, this research attempts to evaluate why and how the Ministry violate human rights of citizens and what measures shall be taken to protect them during implementation of its responsibilities in relation to legislative drafting and human rights education.

1.2. Statement of the Problem

The proclamation to determine the powers and duties of the executive organ of the government is ever changing; from time to time transferring powers and duties from one executive branch to the other, adding and deducting powers and duties to and from executive organs. Proclamation no. 41/1993, 4/1995, 471/2005 and 691/2010 are some of the very recent proclamations enacted by the House of Peoples Representatives' (HPR) to determine the powers and duties of executive organs. And the FDRE MOJ as one of the executive organs of the government has its powers and duties from the above ever changing proclamations. However, its powers and duties are not as such ever changed as compared to other organs of the executive. You don't also see a fundamental change in the powers and duties of the Ministry except some modifications on its powers and duties. And the Ministry has been discharging its powers and duties from its inception up to now.

There are legal and practical problems as regards the day to day activities of the Ministry especially on its role of legislative drafting and legal/human rights education in the protection and promotion of human rights of citizens.

The legal problems are related with the legislative drafting mandate of the Ministry. The first legal problem is Article 16 (3) of Proclamation no. 691/2010 has clearly diluted the power of the MOJ and denied vetting role of the Ministry saying it will only assist other Ministries in drafting legislation only where requested to do so. As a result of these the MOJ does not have the political strength to impose its technical views on other Ministries in ensuring constitutionality, human rights friendliness and smartness of laws that are drafted by other Ministries. The Ministry has weak power to check and oversee laws that are drafted by others unless requested to comment and assist. And this will by large restrict the Ministry to play a meaningful role in the protection of human rights in relation with legislative drafting. The second legal problem is related with

domestication of international and regional human rights treaties in Ethiopia. That is there is no law that specifically empowers government institutions to take all the necessary measures in domesticating core international and regional human rights treaties. And some peoples think that the FDRE MOJ is responsible in domesticating these human rights instruments since it is a government institution with a mandate of legislative drafting and striving for the promotion, protection and enforcement of human rights despite the fact that it is not legally mandated to do so.

The practical problems are related both with legislative drafting and legal/human rights education mandates of the Ministry and are many in number. As regards legislative drafting the problems include absence of binding working manual, disrespect of the right to public participation and information of citizens. The problems surrounding legal/human rights education also include absence of binding working manual, unsuccessful delivery of human rights education due to absence of linkage with the public, absence of need and impact assessment researches, inadequate and appropriate adoption of strategies and methodologies of education, failure to cooperate with other institutions; and other constraints. These practical problems one way or another curtail the human rights of citizens in relation to legislative drafting and legal/human rights education mandate of the Ministry.

So, the research mainly addresses the problems relating to legislative drafting and legal/human rights education mandates of the MOJ by comparing or adopting the solutions from the experience of MOJ of other countries. The paper does not really explore the technical aspects of legislative drafting and human rights education but explain its human rights aspects, problems surrounding, and recommends possible solutions.

1.3. Objectives of the Research

a. General Objectives

The general objective of the research is to describe and analyze the roles of FDRE MOJ in terms of legislative drafting and legal/human rights education in light of protection and promotion of human rights.

b. Specific Objectives

The specific objectives are to:

1. Identify and explain the human rights aspects of legislative drafting and legal/human rights education.
2. Explore the strengths and flaws of the legal, structural and operational frameworks dealing with legislative drafting and legal/human rights education by the Ministry.

1.4. Significance of the Research

Since the Ministry is the biggest executive organ with the mandate and vision of human rights promotion, protection and enforcement, it will be significant to identify and analyze specifics of legislative drafting and

human rights education mandates of the Ministry for its better effectiveness, respect of citizen's rights and the government as well. Public prosecutors and other practitioners working on the Legal Research, Drafting and Dissemination Directorate of the Ministry may also build up their awareness of human rights responsibilities of the Ministry. In addition to these the research will also serve as a springboard for other researchers who would like to study on the same issue in a wider scale. And finally, it will serve as a source material for everyone who would like to understand the legislative drafting and human rights education mandates of the Ministry from human rights protection and promotion perspectives.

1.5. Research Methodology

Empirical research that is the production of knowledge based on experience or observation is widely employed. The research topic is focused on exploring the legislative drafting and human rights education roles of the Ministry, an area in which the researcher has adequate knowledge and experience to carry out and also develop recommendations that can possibly solve the problems. In addition to this, analysis of relevant data, laws, treaties, resolutions and other documents is used. Comparative analysis is also employed where it is necessary.

1.6. Organization of the Research

The thesis is organized into five chapters. Accordingly, the first chapter deals with the introduction and proposal of the study. Chapter two details the concept of legislative drafting together with its human rights implications in light of the MOJ. The third chapter on the other hand details about the concept of human rights education in general and performance of the MOJ in relation to human rights education in particular. The fourth chapter details all about synthesis of contemporary problems in relation to legislative drafting and human rights education mandate of the MOJ together with solutions derived from other countries. And the fifth chapter provides the findings and conclusions reached by the research, as well as recommendations for further actions that arise from the research.

1.7. Scope and Limitations of the Research

The research is limited in identifying and analyzing the roles of the Ministry to protect and promote human rights with special emphasis to legislative drafting and legal/human rights education. The research will be focused on the legal and structural frameworks of the Ministry that are related with legislative drafting and legal/human rights education. And mandates of the Ministry that do not have relationship with legislative drafting and legal/human rights education will not be covered under this research even though related with human rights issues.

Absence of sufficient reference materials, accurate and credible data and challenges in contacting some government organs and officials of the MOJ, HPR, COM, PM office, JLSRI, MOFA and other government offices were the challenges in doing this research.

1.8. Methods of Data Collection

This study has employed various techniques to obtain data useful to the study. In doing so, it mainly included analyzing documents, conducting observations and interviews with potential informants.

Regarding literature written on the topic under study, it was difficult for the researcher to find literature directly related to the topic. Therefore, it was necessary to break the topic into concepts that mainly address issues of legislative drafting, human rights education, the right to public participation, the right to information, the MOJ and others. Making this classification helped the researcher to identify books and research abstracts done on the topic as well. Moreover, the researcher collected information related to matters on human rights and legislative drafting as well as education from written documents such as books, MOJ reports, MOJ Business Process Reengineering documents and manuals, circulars, research abstracts and journals. The information generated from these sources includes the way in which prosecutors and professionals in the Ministry conduct legislative drafting and human rights education; and how they should maintain or protect human rights.

An in depth interview with public prosecutors, journalist, and others working in the area of legislative drafting and human rights education is also conducted to gather information. And additionally as the researcher has had more than 4 years of professional experience in many areas of the Ministry including team member of the BPR document of Legal Research, Drafting and Education, this helped the researcher greatly to identify the variables that precipitate the problems and also obtain relevant information on the topic.

CHAPTER TWO

LAWMAKING, HUMAN RIGHTS AND THE MOJ

2.1. Lawmaking

2.1.1. The Concept of Lawmaking

The two words "lawmaking" and "legislative drafting" are interchangeably used to express the undertaking before a law is promulgated by a concerned organ. According to Black's Law Dictionary lawmaking is the process of making or enacting a positive law in written form, according to some formal procedure, by a branch of government constituted to perform this process.[20] In attempting to define legislative drafting, it is perhaps more helpful at the outset to say what it is not. Legislative drafting does not consist of simply putting legislative proposals into a legislative format or "legal language". The development and preparation of legislative instruments is much more than that.[21] Legislative drafting is just one form of legal writing, which is considered as one of the most important part of legal writing, because of the number of people it affects as in drawing up of contracts or wills. Thus it needs independent discussion, because it also is one of the most highly regulated forms of writing. It is said that legislative drafting is one of the most rigorous forms of writing next to logic.[22] It can also be considered as the process of examining existing laws, and advocating and implementing changes in a legal system, usually with the aim of enhancing justice or efficiency. The words "lawmaking" and "legislative drafting" represent the process of preparing a law. The word "legal reform" has also represents the same process but presupposes existence of other law on the same issue and implies that there is some kind of change. Having seen the definition of these words, we can interchangeably use these words depending on the context.

The other thing that should be raised in relation to the concept of lawmaking/legislation drafting is the issue of whether it is an art or a science. Legislative drafting is the art of converting legislative proposals into the form of a legally sound and effective law. Although it is important that legislation be drafted in a clear and unambiguous manner, legislative drafting is not just a literary exercise.[23] It is an art, not a science. A well drafted law results, not from slavishly following numerous arbitrary rules, but rather from thorough knowledge of the subject, careful attention to detail, and adherence to such common-sense principles as simplicity, clarity and good organization.[24]

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[20] Bryan A. Garner, Black's Law Dictionary 7th Ed. West Publishing Co., 1999, p. 910

[21] Law Drafting Division Department of Justice of Hong Kong, Legislative Drafting in Hong Kong, 2001 p. 3 www.**legislation**.gov.hk/eng/pdf/ldhkv2.pdf Accessed on November 12, 2011

[22] Fanaye Gebrehiwot and Sileshi Zeyohannes sponsored by the Justice and Legal System Research Institute, Legislative Drafting Teaching Material, 2009, p. 36

[23] Supra note 21

[24] Massachusetts Counsel to the Senate State House, Massachusetts Senate Legislative Drafting and Legal Manual 3rd Ed. 2003, p. 3

2.1.2. The Justification for Lawmaking

Having seen the meaning and artistic nature of lawmaking one may ask the justification for having the lawmaking. The issue of justification of lawmaking always leads us to know the justification of having laws. And the justification for having laws will give us a clear picture as to the justification for lawmaking. Therefore, we should first answer these two questions. Why do we need law? Is it not possible to live without law?

To answer these questions it is critical to clearly understand the state of nature and the social contract theory from the philosophical point of view. Thomas Hobbes beautifully describes what life seems in the state of nature. In the state of nature primitive man lived always in the state of war, there was no security of life or property, there is always war in such society and continual fear and danger of violent death, there is no place for industry, no arts, no letters and the life of man was solitary, poor, nasty, brutish and short.[25] To this war of every man to every man, this also is consequent; that nothing can be unjust. The notions of rights and wrong, justice and injustice have there no place. Where there is no common power, there is no law: where no law, no injustice. Forces, and fraud, are in war the two cardinal virtues…[26] There is no government and no law to govern the interaction of the society and everyone has a right on everything without the consent of others.

As a result of this it was obvious that there was war and conflict. Just because of existence of these problems it was necessary to come out of the state of nature. Primitive man soon discovered that the only way to escape from this life of uncertainty was to appoint someone to rule over them.[27] And this was conducted through the social contract theory.

The social contract theory (ማሕበራዊ ውል) is formulated by Thomas Hobbes, and elaborated by John Locke and Jean Jacques Rousseau. And according to social contract theory to come out of the state of nature social contract has been agreed on. Social contract theory (or contractarianism) is a concept used in philosophy, political science and sociology to denote an implicit agreement within a state regarding the rights and responsibilities of the state and its citizens, or more generally a similar concord between a group and its members, or between individuals. All members within a society are assumed to agree to the terms of the social contract by their choice to stay within the society without violating the contract; such violation would signify a problematic attempt to return to the state of nature.[28] As stated by Friedmann[29] the principle of social contract theory is found in Plato's Republic:

[25] Menom Krishna. Outline of jurisprudence.3rd Ed. New Delhi Asia publishing House 1961, P.15
[26] Michael Lessnoff. Social Contract Theory p. 55
[27] Supra note 25
[28] www.lsulawlist.com/lsulawoutlines/index.php? Accessed on 02/06/2011
[29] Friedmann W. Legal Theory .5th ed New Delhi, universal law publishing co. pvt. lted 1967 pp.117-127

> *"Therefore when men act unjustly towards one another, and thus experience both the suffering, those amongst, them who are unable to compass the one and escape the other, come to this opinion: that it is more profitable that they should mutually agree neither to inflict injustice nor to suffer it. Hence men began to established laws and covenants with one another, and they called what the law prescribed lawful and just."*

Other prominent figures about social contract theory Locke and Rousseau have their own different view on the concepts of state of nature and the social contract from that of Thomas Hobbes.

One way or another the social contract is a law between those groups, individuals and citizens; and we need this law to regulate the overall interaction of peoples. Where there is any violation of this contract or law, the state is responsible in punishing violators based on the contract (law). If there is no law and state, the state of nature will come back again and only those having the physical and intellectual fitness will survive over the weakest. And just because human beings are selfish by their nature, not operating based on morality and not living for their conscience the need to have law is so essential. Meaning, if human beings are operating based on morality, fairness and their conscience, usefulness of law would be minimal and there would be no need of police, office of prosecution and courts. Therefore, we can say that life in civilized society is impossible without the existence of law. Otherwise as Hobbes said it would be nasty, brutish and short.

Having said law is essential to regulate the day to day interaction of societies and life is impossible without the existence of law, it is highly significant to have a well organized and intellectual based lawmaking so as to have a fair and just law that equally govern everyone. In addition to this, as our world is dynamic in terms of the nature and coverage of several types of rights, technological shifts[30] and promulgation of international as well as regional treaties, it is essential to draft new laws to follow-up social and universal changes.

2.1.3. Lawmaking Skills

Drafting is one of the most intellectually demanding of all lawyering skills. It requires knowledge of the law, the ability to deal with abstract concepts, investigative instincts, an extraordinary degree of prescience, organizational skills[31] as well as linguistic skills. Legislative drafting is a highly technical skill whose finer details may not be widely known or appreciated. Yet good policy may become bad law as a result of the poor arrangement of words in a legislative sentence, so that legislative drafting plays a central role.[32]

Legislation is the framework within which any society functions. Accordingly when a new or amending law is proposed, the proposals must first be examined and analyzed against that existing framework to see how they can be implemented. It is the task of the legislative drafter to carry out that examination and analysis and

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[30] Uganda Law Reform Commission, A Study Report on the Codification of the Law of Contract, 2004 p. 13

[31] Kelly Kunsch. DRAFTING LEGAL DOCUMENTS: A RESOURCE GUIDE, Seattle University Law Library Updated for Bridge the Gap. 2003 p. 1

[32] Commonwealth Law Bulletin, Special Issue on Legislative Drafting Vol. 36, No. 1 2010 p. 1

come up with the appropriate legislative concepts to give effect to the proposals. Only after this has been done can the drafter consider how best to express those concepts.[33] Legislative drafting requires a special kind of knowledge and skills. And drafters should have a special training on the substantive skills of legislative drafting so as to draft quality legislation.

Poorly drafted laws are a burden upon the entire state Judges struggle to interpret and apply them, attorneys find it difficult to base any sure advice upon them, and the citizen with an earnest desire to conform to the law is confused. Often, lack of artful draftsmanship results in the failure of the law to achieve its desired result. At times, totally unforeseen results will follow on other occasions; defects lead directly to litigation. Failure to comply with certain constitutional requisites may produce total invalidity.[34] And poorly drafted laws may serve as a tool to violate human rights of citizens rather than its value. Therefore, it is very essential for legislative drafters to know each and every aspect of legislative drafting skills and technicalities.

2.1.4. The Lawmaking Process

In any modern legal system the power of enacting laws is one of the most important powers of any government. Understanding the legal framework that governs the procedure through which this power can be exercised is helpful to understand how a certain legal system functions.[35] As legislative drafting is an undertaking before the promulgation of legislation, it has its own process to reach the stage of formal legislation. The process of lawmaking as well as the organs mandated to involve in the lawmaking process differs from country to country depending on the national laws that govern the lawmaking process. However, in almost all countries all over the world initiation, deliberation and ratification are the most commonly used processes of lawmaking.

Whatever the process of lawmaking is in every country the success of the lawmaking process is verified and evaluated on the basis of the indicators or parameters like the level of participation (i.e. the number and quality of people directly involved with participative tools as well as the number of people that followed the process through different means), interest in the process (compromising interest in the process from different academic and political institutions), respect of time schedule, positive impact on the national as well as regional legislative system and the like.[36]

[33] Supra note 23

[34] Albert R Menard, Legislative Bill Drafting, Jr, 26 Rocky Mt L Rev., 1954, p. 368

[35] Supra note 22, p. 28

[36] Manuele Braghero, Public participation in lawmaking, Tuscany Region, Regional Government, via Cavour, 18 – 50129 Florence. 2006, p. 6-7 www.regione.toscana.it/partecipazione accessed on November 2, 2011

2.1.5. Human Rights Lawmaking

All laws whatever their content and nature is should be prepared in the same manner and process. However, in respect to human rights laws the process of making them requires special attention and care. Of course, all the laws that are ratified by the legislative body have a direct or indirect contact with human rights. But, laws that are enacted in the name of human rights should be drafted and ratified in a manner that didn't narrow the horizon of human rights. Countries like United Kingdom and Australia have specific laws or acts on human rights and enacted their human rights acts (laws) in a manner that is similar with regional human rights instruments for better effectiveness of regional human rights instruments. For instance, the rights that are enshrined under the UK human rights act are all taken from the European Convention on Human Rights.[37] Countries like Ethiopian do not have specific laws in the name of human rights law. But, have their human rights provision in different laws like The Constitution, Criminal Code, Criminal Procedure Code and other laws. All the laws in general and specifically laws that are highly concerned with human rights should be drafted and enacted with a maximum care attention.

2.2. Lawmaking and Human Rights Issues

2.2.1.The Relationship Between Law, Lawmaking and Human rights

The most fundamental question regarding human rights is a philosophical question about their source or justification: Where do human rights come from? A secondary question is who has the legitimate authority to enforce them? A third question is what will be the fate of human rights in the absence of law?

The history of the evolution of 'human rights' is associated with what may be called the natural law tradition (ሕገ ልቦና). The history of natural law is a tale of the search of mankind for absolute justice and its failure. Prior to the term 'human rights', such rights were typically called the 'rights of man or natural rights'.[38] The content of natural law is absolute justice and fairness, natural law is considered as eternal, universal, constant, immutable and discoverable by the rational faculty of man.[39] Natural law being universal, it has the merit of prevailing everywhere: being eternal has its validity at all times; being constant, it is the same at all places and under all circumstances; and being immutable it cannot be changed by any power on earth.[40] Nature is the author of this law and, such; it is based on rights reason.[41]

[37] The MOJ of Great Britain, A Guide to the Human Rights Act A booklet for People with Learning Disabilities-Crown. 2008, p. 4
[38] Rosenbaum, Alan. The philosophy of human rights: international perspective. U.S.A: Green wood Press. 1980. P. 9
[39] Dibekulu, Z 1986, Characteristics of Government (ዲበኩሉ ዘውዴ የመንግሥት ገጻተ /1986/ ገጽ 134
[40] Johari, J.C Contemporary political theory. 3rd Ed. India: Sterling Publishers Pvt.Ltd.1987. P. 200
[41] Ibid

Natural law, both physical and moral, was held to be "so unalterable that God Himself (could) not change it", yet, by virtue of the axioms, it could be known through the facility of human reasons.[42] Natural rights theory holds that rights being rationally deducible from man's nature have their universal application irrespective of the difference of place, time and environment. Nature is the author of certain rights that have universal, rational, eternal and immutable character. Human rights belong to man by nature.[43]

To be justified in a way that ensures that human rights are powerful and compelling, they need strong grounds. Human rights may be recognized by laws or treaties, but they do not get their justification from the laws or treaties.[44] As philosopher James Nickel says, human rights are the conclusions of arguments.[45] The concept of 'rights' originated in the context of contracts between people in which the rights of each party are specified.[46] Coming back to the issue of state of nature there was no contract and understanding between people; and in the case of social contract there is an agreement between the people to mutually understand each other, surrender rights for mutual benefit.

Social contract theory conceives of organized societies as arising out of agreements between people who decide to cooperate in order to promote their mutual survival and flourishing. In this view, government gets its authority from the fact that people within a society agree to live under the authority of the government and by the rules which are established by that government.[47] In Thomas Hobbes' version of the social contract, people agreed to live under the authority of a monarch who is responsible for establishing and enforcing the laws. In this view, the rights of people are those that are established by the contract, or those that are established by the legitimate authority that is created by the contract.[48] If rights are created by a social contract and applicable on those peoples who are party to that contract, what about those who are not party that contract? What about human rights which are vested to all human beings? These questions are critical questions that would clearly indicate the relationship between law and human rights.

Acknowledgment of human rights through laws will facilitate and create a conducive environment for proper implementation of human rights to all human beings without any kind of distinction. But, failure to acknowledge human rights through laws does not affect the validity of human rights and human rights can survive without existence of law just because of the reason that they are not gifted to human beings through laws. Once the social contract is created, the rights which are specified would only apply to those people who are party to the contract, and thus would not be universal. And it is contrary to the widely accepted concept of human rights that is universal application of human rights without any kind of distinction to all human

[42] Supra note 38, p.12
[43] Supra note 40, p. 231
[44] Paul V. Moriarty, *Philosophy and Human Rights* P. 1
[45] Nickel, James W. *Making Sense of Human Rights* "A Starting Point for Justifying Human Rights.", 2nd edition. Blackwell Publishing., 2007 See especially chapter 4
[46] Supra note 44
[47] Ibid
[48] Ibid

creatures even without considering whether a single individual is a party to the social contract or not. In the absence of law acknowledging human rights, human beings can logically and naturally not legally claim their human rights.

2.2.2. Human Rights Implications in Lawmaking

As legislations are made to govern the day to day activities of societies, it will directly or indirectly promote or influence human rights of citizens. Legislation is enacted for a variety of people and for a variety of reasons. It is a serious business. The happiness of a people depends on it. The progress of a people may be hindered by it. Those who are responsible for drafting legislation should bear this in mind.[49] There are also other issues to be considered in the lawmaking process by legislative drafters. Institutions that are mandated to draft legislations are supposed to stand for the respect of human rights of societies in the process of drafting legislations. Every society has two basic human rights that are to be respected in the lawmaking process. These are the right to public participation and the right to information.

2.2.2.1. The Right to Public Participation

a. The Concept of the Right to Public Participation

The "right to public participation" means that people have the right to be involved in decision-making processes.[50] Public participation can also be described as the chance of all those concerned and/or interested to present and/or stand up for their interests or concerns in the development of plans, programmes, policies, or legal instruments.[51] This powerful concept provides authority for people to take the initiative in decision-making and not simply be passive individuals reacting and objecting to decisions that have already been made.[52] "The right to public participation creates opportunities for individuals and groups to participate in the formulation of management [and implementation] strategies."[53] A traditional way people engage in public participation is by casting a vote in a fair, transparent election that is equally accessible to all.[54] Voting in this manner is a form of indirect participation where the local elect representatives to protect their interests.[55]

[49] VCRAC CRABBE, Legislative Drafting, Cavendish Publishing Limited 1994, p. 17
[50] Jennifer Mohamed-Katerere, Participatory Nat. Resources Mgmt. in the Communal Lands of Zimbabwe: What Role for Customary Law?, 5 AFR. STUD. Q. 3, (2001), http://www.africa.ufl.edu/asq/v5/v5i3a7.htm (last visited Sept. 6, 2011).
[51] A standard of Public Participation Recommendations for Good Practice (2008) adopted by the Austrian Council of Ministers p. 17 available on www.partizipation.at/standards_oeb.html (accessed on November 2, 2011)
[52] Supra note 50
[53] Ibid
[54] See art. 25(a)-(b) of the United Nations International Covenant on Civil and Political Rights and see also art. 21of the United Nations Universal Declaration of Human Rights
[55] See art. 13 (1)-(2) of African Charter on Human and Peoples' Rights

Direct participation occurs when the local serve as elected representatives in a government body[56] or become involved in community-level advocacy and civic education.[57]

In democratic societies, legislation has the power to effect great transformations if is responsive to the needs of its poorest and most vulnerable sections. Too often, however, the lawmaking process is dominated by ministers pursuing their own agenda and technocratic civil servants and lawyers, all of whom combine to make the legislative process inaccessible to the general public.[58] Deficiencies in the legislative process can negatively affect the quality of legislation – an empirical study of some developing - world countries suggest that their failure to enact legislation capable of transforming the social and economic order can be attributed in part to the disproportionate influence of the elite during creation of bill.[59] A transparent, fair, accountable and participatory legislative process is needed to enact laws that will bring about real change.[60] Otherwise, if the lawmaking process is not transparent and participatory to the public, it would be an imposition on the public and would at some point be difficult in its implementation. Lon Fuller also considers transparency as a prerequisite to valid lawmaking.

b. Benefits and Challenges of Participatory Lawmaking

Public or citizen participation is successful when people are empowered to mobilize to take control of activities affecting their lives.[61] Even individuals from the same community are not homogenous.[62] Therefore, the richness of diversity among actors at every level makes each contribution significant and unique.[63] When an organization and its members effectively organize, express opinions, challenge assumptions, and contribute skills, insight, and wisdom to the decision-making processes, the organization and community guarantee their concerns and ideas are taken into account.[64]

The concept of democracy addresses an important aspect of public participation. Democracy means "rule by the people."[65] Participation achieves its highest aims, and is most effective, when people control decisions that affect them and hold people in authority accountable for their actions.[66] Participation must be accessible to

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[56] See art. 25 (c) of the ICCPR, art. 21(1)-(2) of the Universal Declaration of Human Rights and art.(1)-(2) of the African Charter on Human and Peoples Rights

[57] Global Rights: Partners for Justice, My Right to Demand Change - A Practical Guide to Public Participation, Community Empowerment and Advocacy Concerning Natural Resources Exploitation and Human Rights Violations, Washington DC, 2011, p. 1

[58] Oxford Pro Bono Pubico, A Comparative Survey of Procedures for Public Participation in the Lawmaking Process-Report for the National Campaign for Peoples' Right to Information, University of Oxford, 2011 p. 1

[59] Ann Seidman, Robert Seidman, ' Beyond Contested Elections: The Process of Bill Creation and the Fulfillment of Democracy's Promises to the Third World' 34 Harvard Journal on Legislation, 1997

[60] Supra note 57

[61] Supra note 52

[62] Ibid

[63] Supra note 60

[64] Ibid

[65] Susan Marks and Andrew Clapham, International Human Rights Lexicon, 2005, p. 62

[66] Ibid p 62-4

everyone in society in ways that are non-discriminatory, equal, and equitable for the local to benefit from and exercise its social, cultural, economic, civil, and political rights.[67] National governments and the international community are responsible for creating institutional, political, social, and economic conditions that encourage and facilitate public participation.[68]

Democracy is founded on principles of participatory governance. This means that as citizens we not only have the right, but indeed are obliged, to participate in the structures and processes of government. It is no good to merely vote at election time and trust that our elected representatives will act in our best interests.[69] We need to keep them informed of the difficulties we encounter, and share our insights into how these can best be addressed. We particularly cannot sit back and complain that government is not responding to our needs if we are not telling them what those needs are, and how we think these should be addressed.[70]

All laws and implementing regulations should be drafted in a participatory manner. Sometimes there may be conditions which would require certain limitations in the process. However minimum standards should be respected – the public must be informed and have access to the draft, minimum time for consultation should be provided before the draft is sent for adoption in the parliament, and interested parties should be able to take part in the drafting process.[71]

The laws that are enacted affect people. Passing a law is a demanding process. It requires investment from both the government and the interested parties involved, in terms of time, financial resources and energies. Governments may decide not to ask the public for opinion on the draft. In such cases, they may not be able to implement the law properly, people may not be willing to comply with law which they do not understand and have not been consulted about.[72] The government will need to amend the law more often to adjust to the needs or circumstances which were not foreseen, and thus spend additional resources and time. This will decrease trust in its work. Open processes bring government bodies and the interested parties together, resources needed for the process are shared, the proposed laws have increased legitimacy and ownership, and responsibility for the implementation is shared. Ultimately, participatory processes can ensure that the laws meet the real needs of the people and contribute towards further development of the society.[73]

Participation in decision-making processes means a possibility for the citizens, Civil Society Organizations (CSOs) and other interested parties to influence the development of policies and laws which affect them. There are several benefits of participatory processes. Specifically, participation can help towards:

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[67] Ibid
[68] See para.11of African Charter for Popular Participation in Development and Transformation
[69] www.npc.org.za/resources/.../Public%20participation%20in%20law Accessed on 11/01/2011
[70] www.npc.org.za/resources/.../Public%20participation%20in%20law Accessed on 11/01/2011
[71] Katerina Hadzi-Miceva-Evans, Comparative Overview of European Standards and Practices in Regulating Public Participation, Organization for Security and Co-operation in Europe (OSCE) and European Center for Not-for-Profit Law (ECNL), 2010, p. 28
[72] Ibid p. 29
[73] Ibid

- Creating fair policies/laws reflective of real needs enriched with additional experience and expertise;
- Facilitating cross-sector dialogue and reaching consensus;
- Adopting more forward and outward looking solutions;
- Ensuring legitimacy of proposed regulation and compliance;
- Decreases costs, as parties can contribute with own resources;
- Increasing partnership, ownership and responsibility in implementation;
- Strengthening democracy - preventing conflict among different groups and between the public and the government and increasing confidence in public institutions.[74]

Factors like lack of education, inadequate access to information and the cost and the infrastructure constraints of public bodies can impede the effective participation of the public in the legislative process. On the other hand extensively rigorous participatory requirements can cause extensive delays and sometimes paralyze the legislative process altogether.[75] High-quality public participation requires commitment, time, resources, and energy.[76] And this will possibly affect the practicability of public participation in the lawmaking process challenging specially for developing countries, since it requires huge financial background.

An old Chinese proverb has also beautifully describes the significance participation for better understanding of ideas. It reads as:

> *"Tell me and I will forget, show me and I will remember, involve me and I will understand."*[77]

Involvement in the process of doing something helps individuals to easily understand and perform things. And significance of involvement of the public in the process of drafting legislations is unquestionable and helps the public by large to understand content and purpose of draft laws.

c. Different Levels of Participation

Participation can be viewed as a continuum of interaction between government and the public which ranges from informing and listening at one end, to implementing jointly agreed solutions at the other; and in between there is dialogue, debate and analysis.[78] All stages of the process (preparation, drafting, adoption, implementation, evaluation) should be subject to public participation to ensure better laws.[79]

[74] Ibid p. 1-2
[75] Supra note 58, p. 3
[76] Supra note 51, p. 20
[77] Emina Nuredinoska, Increasing public participation in law-drafting process, Macedonian Center for International Cooperation p. 3
[78] Supra note 71, p. 6
[79] Ibid p. 1-2

Since there are different stages in of law-making processes the intensity and form of participation will vary depending on the stage of the process. International documents and country specific regulation recognize the following levels of participation: (a) access to information, (b) consultation and (c) active engagement through dialogue and partnership. The following is a summary of how these levels are described in different documents.[80]

a) Access to information is the first, basic and important right which is underlying the whole process of participation. Whilst it means that the government informs the public about its plans and the types of documents it wants to adopt at the beginning of the process, it also highlights the right of the public to have access to all information (e.g., drafts, comments and reasoning) throughout the process. The access to information is right regulated in specific laws.[81] While at this level there is no need for intensive interaction between the government and the public, the government should not apply measures which would prevent the public from receiving the information crucial for the process.[82]

b) Consultation is a form of participation where the government invites the public to provide its opinion, comments, views and feed-back on a specific document. Whilst the issues on which the public is consulted are defined by the government, this process should also allow for the public to express opinion on other issues contained in the draft. Consultation can be organized with a broader group of participants from the public.[83] It is a reactive way of participation – the public becomes involved because the government requests this. However, this is not to say that the public cannot request to be consulted. Indeed, it should act and remind the governmental bodies about the need to be asked to comment on laws which will affect them.[84]

c) Active involvement (partnership) in lawmaking means collaboration and jointly undertaken responsibilities at all stages of the decision-making process (agenda setting, issue identification, drafting, decision and implementation). It is the highest form of participation; it may be described as a situation where the representatives of the public share a seat at the table with the government representatives.[85] The initiative can come from both the sides. Whilst there should be an agreement about the common goals of the process, those involved from the public should be able to retain their independence, and to advocate and campaign for the solutions which they want to see adopted.[86]

Everybody should be informed and have the possibility to be consulted in the process of law drafting. Additional efforts should be made to include those who will be most affected by the laws. It is also important

[80] See for example: CoE, Code on Participation 2009; OECD, Citizens as Partners, 2001; also Austria, Croatia, Estonia, Romania.
[81] Supra note 78
[82] Ibid p. 7
[83] Ibid
[84] Ibid
[85] Ibid
[86] Ibid

to recognize these different stages and levels of participation when aiming to regulate participation or to design models. The nature of the different levels and the relationship which arises from them desires consideration of compatible models specific to that level and relationships so to ensure effective participation.[87]

d. Legal Basis of the Right to Public Participation

One of the first challenges policy makers need to confront in developing the mechanism for citizen participation in legislative processes is to make sure they understand where exactly the right to citizen participation/consultation fits into their respective legal systems: is it a constitutional right per se, or a right derived from some other rights that enjoy direct constitutional protection? Is it a declaratory right which cannot be enforced, or a right whose breach is effectively sanctioned?[88] Different counties took different positions on these issues.

However, the right to public participation in the lawmaking process specifically and in government decisions generally should be provided by law. The legal framework for the right to public participation should always provide the level of participation, scope and coverage of the right, obligations on states, liabilities of states' officials where they fail to comply with the law and related issues. The right to public participation is guaranteed under international, regional and national laws.

The right to public participation is a civil and political right.[89] Civil and political rights – along with economic and social rights (ESRs) and economic, social, and cultural rights (ESCRs) – are fundamental human rights protected and enforced "by international, regional and national laws and treaties."[90] International human rights treaties have at least a single provision to guarantee the right to public participation in states decisions. The following instruments are basic human rights instruments that created the global human rights framework within which nations now govern. Many of the rights granted in these instruments have been incorporated into the regional and national laws.

Even though the Universal Declaration of Human Rights (UDHR) is not a treaty and signed by states, there is some sort of consensus by states that the rights enshrined under the declaration are basic human rights. It has also some sort of binding nature since it is international customary law. The right to public participation is guaranteed under article 21 of the UDHR.

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[87] Ibid

[88] Dr. Dragan Golubović, CITIZEN PARTICIPATION IN LEGISLATIVE PROCESSES: A SHORT EXCURSION THROUGH EUROPEAN BEST PRACTICES, The European Center for Non-Profit Law, 2008, p. 5

[89] See Amnesty Int'l, Human Rights Basics, http://www.amnestyusa.org/research/human-rights-basics (Accessed on September 20, 2011)

[90] Ibid

The UDHR grants the right to direct and indirect participation in government and equal access to public service.[91] "The will of the people" provides the basis for governmental authority and should be demonstrated through "periodic and genuine elections" in which all citizens have equal and equitable opportunities to participate.[92]

The International Covenant on Civil and Political Rights (ICCPR) guarantees the right to public participation but considers the public participation right only as right for citizens.[93]

The same is true for the United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR) and it grants a participatory right for individuals to "freely determine their political status and freely pursue their economic, social and cultural [ESC] development."[94] It also promotes creation of an educational system that "strengthen[s] the respect for human rights and fundamental freedoms" and "enable[s] all persons to participate effectively in a free society."[95]

Similarly regional instruments such as the African Charter on Human and Peoples' Rights[96], the American Convention on Human Rights[97] and the Inter-American Democratic Charter[98] as well as non binding declarations such as the Harare Commonwealth Declaration[99] acknowledge the right to public participation as a human right.

To look into the legal framework of public participation in the national (Ethiopian) context, Ethiopia do not have detailed and sufficient laws on the right to public participation that can properly regulate the rights of citizens in terms of participation. However, article 8 (3) of the FDRE Constitution acknowledge the right to public participation saying nations, nationalities and peoples' have the right to *'direct democratic participation'*. Article 89 (6) of the constitution has also guaranteed this right saying *'Government shall at all times promote the participation of the People in the formulation of national development policies and programmes…'*. Sub article 7 of the same provision has also obliges the government to ensure participation of women saying *'Government shall ensure the participation of women in equality with men in all economic and social development endeavors.'* Apart from these we can refer to article 12 (1) of the constitution i.e. this provision deals about transparency of the government in the conduct of affairs. Except these very general provisions in the FDRE Constitution, Ethiopia does not have any other law that deals about the right to public

[91] See art. 21(1)-(2) of the Universal Declaration of Human Rights
[92] See art. 21(3) of the Universal Declaration of Human Rights
[93] See U.N. Human Rights General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service, available at http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument Accessed on September 19, 2011.
[94] See art. 1 (1) of the International Covenant for Economic, Social and Cultural Rights
[95] See art. 13 (1) of the International Covenant for Economic, Social and Cultural Rights
[96] Article 13 (1) of the African ('Banjul') Charter on Human and Peoples' Rights
[97] Article 23 (1) (a) of the American Convention on Human Rights, 'Pact of San Jose Costa Rica'
[98] Article 2 of the Inter-American Democratic Charter
[99] Article 4 of the Harare Commonwealth Declaration

participation. And there is detailed law in Ethiopia as to the level of participation, scope and coverage of the right, obligations on states, and liability of officials where they fail to comply with the law and related issues. The same is true for the right to public participation in the lawmaking process. Except that of extending these general provisions to public participation in lawmaking through interpretation, there are no detailed laws in Ethiopia that clearly oblige the executive with the lawmaking mandates to invite the public to participate in the lawmaking process.

2.2.2.2. The Right to Information

a. The Concept of the Right to Information

The "right to information" is also a fundamental human right.[100] It is the right to seek, receive, and impart information and ideas through any form of media a person chooses – such as oral, print, or art form – without limitations or restrictions.[101] The right to information also means the right to free expression and the right to hold one's own opinions.[102] The "right to information" is often referred to as "freedom of information" or "the right to know."[103]

Freedom of information legislation comprises laws that guarantee access to data held by the state. They establish a "right-to-know" legal process by which requests may be made for government-held information, to be received freely or at minimal cost, barring standard exceptions.[104] Also variously referred to as open records or (especially in the United States) sunshine laws, governments are also typically bound by a duty to publish and promote openness. In many countries there are constitutional guarantees for the right of access to information, but usually these are unused if specific support legislation does not exist. Over 85 countries around the world have implemented some form of such legislation.[105]

Most freedom of information laws excludes the private sector from their jurisdiction. Information held by the private sector cannot be accessed as a legal right to a large extent. This limitation entails serious implications because the private sector is performing many functions which were previously the domain of the public sector. As a result, information that was previously public is now within the private sector, and the private contractors cannot be forced to disclose information.[106]

There is nothing sinister in itself about governments holding information. If they did not have that information, they would not be able to deliver the services that the public expect of them. Nor could they realize the rights of the people. So, for an institution to hold information about individuals is part of the

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[100] Mukelani Dimba, The Right to Information in Africa – A Brief Overview, PAMBAZUKA NEWS, 2008 p. 397
[101] Ibid
[102] Ibid
[103] Ibid
[104] http://encyclopedia/Freedom_of_information_legislation (Accessed on November 3, 2011)
[105] Ibid
[106] Mazhar Siraj "Exclusion of Private Sector from Freedom of Information Laws: Implications from a Human Rights Perspective". Journal of Alternative Perspectives on Social Sciences, 2010, p. 211–226. Available at http://www.japss.org/upload/11._Mazhar%5B1%5D.pdf. Accessed on November 1, 2011

normal way that society operates.[107] Yet, it is something that many people worry about. The fear is that "Big Brother" knows too much about their daily lives. This fear is often justified. It is one practical reason why people are entitled to know what information the authorities hold about them. Another reason is that individuals should have the opportunity to know about (and correct) inaccurate information. And even if they have no practical purpose for looking at the information, they still have a basic right to know.[108]

b. Benefits of the Right to Information in Lawmaking

Freedom of information has many benefits. It facilitates public participation in public affairs by providing access to relevant information to the people who are then empowered to make informed choices and better exercise their democratic rights. It enhances the accountability of government, improves decision-making, provides better information to elected representatives, enhances government credibility with its citizens, and provides a powerful aid in the fight against corruption. It is also a key livelihood and development issue, especially in situations of poverty and powerlessness.[109]

The right to information is also essential to accountability and good governance; secrecy is a breeding ground for corruption, abuse of power and mismanagement. No government can now seriously deny that the public has a right to information or that fundamental principles of democracy and accountability demand that public bodies operate in a transparent fashion.[110] The right to information has also a remarkable role in relation to the lawmaking process for the public in paving the way for active participation of the public in the lawmaking process. Prior knowledge of draft laws to the public will better enhance the knowledge and understanding of the public.

c. Legal Basis of the Right to Information

There is an exciting global trend towards recognition of the right to information by States, intergovernmental organizations, civil society and the people. The right to information has been recognized as a fundamental human right, intimately linked to respect for the inherent dignity of all human beings.[111] The right to information is also a crucial underpinning of participatory democracy – information is described as "the oxygen of democracy" – for without information citizens cannot possibly make informed electoral choices or participate in decision-making processes.[112]

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[107] Global Campaign for free Expression, Freedom of information TRAINING MANUAL FOR PUBLIC OFFICIALS, p. 11-12

[108] Ibid

[109] Centre for Policy Alternatives Commonwealth Entire for Policy Alternatives Commonwealth Human Rights Initiative Human Rights Commission of Pakistan, Global Trend on the Right to Information: A Survey of South Asia, 2001 p. 44

[110] Ibid p.5

[111] Ibid

[112] Ibid

The right to information is enshrined in Article 19 of the Universal Declaration of Human Rights and finds international legal protection in Article 19 of the International Covenant on Civil and Political Rights, which states that *'Everyone shall have the right…to seek, receive and impart information and ideas of all kinds, regardless of frontiers'*. The European Convention on Human Rights (ECHR),[113] the African (Banjul) Charter on Human and Peoples' Rights,[114] the American Convention on Human Rights[115] and the Inter-American Declaration of Principles on Freedom of Expression[116] as well as other non binding declarations such as the Harare Commonwealth Declaration has also guaranteed this right in the fashion.

As regards the national legal framework on the right to information article 29 of the FDRE Constitution has acknowledged this right. And the proclamation enacted for Freedom of the Mass Media and Access to Information i.e. proclamation no. 590/2008 has beautifully and in a detailed manner guaranteed this right under part three of the proclamation.

d. The Right to Information in the Lawmaking Process

The legislature as well as the executive is the representatives of the public – the people they elected to prepare and make laws and policies. The public has a right to know what they are doing – if for no other reason than to determine how they will cast their vote next time. There are a variety of tasks that the legislature and executive performs that are extremely important to know about if individual citizens are going to be well-informed. [117] The main business of the legislature is to pass laws, of course and one of the main businesses of executives in many jurisdictions is to prepare draft laws for the legislator. But, it also plays an extremely important role in reviewing government policy and importance, either through debates or, very often, through specialist committees that examine policy issues in great detail.[118]

As we have seen earlier on the different levels of public participation access to or the right to information is the first, basic and important component of the right to public participation. And a government is supposed to inform the public about its plans and the types of documents it wants to adopt at the beginning of the process; it also should highlights the right of the public to have access to all information (e.g., drafts, comments and reasoning) throughout the process. Publication and openness of draft laws prior to consultation by concerned government organs is a vital activity to practically guarantee the rights of citizens in terms of the right to information. And a responsible government should not only expect information requests from citizens about draft laws rather it should in advance publish draft laws and make accessible it to inform citizens.

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[113] Article 10 of European Convention on Human Rights (ECHR)
[114] Article 9 of the African ('Banjul') Charter on Human and Peoples' Rights
[115] Article 13 of the American Convention on Human Rights, 'Pact of San Jose Costa Rica'
[116] The Preamble and substances of the Inter-American Declaration of Principles on Freedom of Expression
[117] Supra note 107, p. 13
[118] Ibid

2.3. Lawmaking, MOJ and Human Rights

Under this section of the paper we will try to envisage the relationship between lawmaking, MOJ and human rights. And we will also try to see legal as well as practical problems in relation to the lawmaking mandate of MOJ.

2.3.1. Lawmaking Mandate of MOJ and its Role as a Lawmaker

In principle the three government organs the legislature, judiciary and executive are mandated to enact, interpret and execute laws respectively. However, there are times where there is overlap between these tasks of the organs. In most legislatures, particularly those with parliamentary systems, the majority of bills are researched, developed and drafted by the executive branch (i.e. the Prime Minister and his or her cabinet initiate legislation). In presidential systems, executive departments too play a prominent role in initiating legislation because of their power and expertise.[119] It is implicit in the concept of democracy that the initiative in lawmaking should rest with the elected Parliament, which is also the case in Ethiopia. At the same time it is widely recognized that this right is shared with the Executive. In most countries of the world the government has the right to initiate bills whether its Ministers are Members of Parliament or not. Actually, the executive branch of the state plays an import role in the initiation of legislation and that role is usually more important in this regard than that of Parliament itself.[120] Making law is often considered to be the major task of a legislature - after all, the term 'legislature' itself suggests a body that makes law. However, in modern parliamentary systems, legislatures have limited responsibility for making laws. Instead, laws are prepared and drafted by the executive and presented to the legislature for approval.[121]

The same is true in the case of Ethiopia and the executive branch of government is mandated to initiate laws.[122] It needs no clarification that each legally constituted unit of the government has specialty in its sphere of powers and duties entrusted to it by its enabling legislation. Therefore, each executive organ of the federal government has the possibility to initiate new legislation so as to vary its powers and duties or may be to accommodate new international and national conditions. It is also very possible for the executive branch of government even to frame the first draft of laws. Then it could request the MOJ to prepare the draft law to send it to the Council of Ministers.

In doing so the MOJ would focus on the drafting style, harmony with other laws, constitutionality of the draft law submitted by other organs and other related issues.[123] However, the unwillingness of government

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[119] Olson, David M, Democratic Legislative Institutions, Armonk, New York and London, M.E. Sharpe, Inc., 1994. P. 24

[120] Federal Democratic Republic of Ethiopia Comprehensive Justice System Reform Program BASELINE STUDY REPORT, Ministry of Capacity Building Justice System Reform Program Office, 2005 p.130

[121] Lawmaking, p. 1 Accessed on November 3, 2011 http:// www.publiclaw.uct.ac.za/usr/public_law/Building/Chapter%206.pdf

[122] Proclamation no. 691/2010 Art.10 (1) (a)

[123] Mr. Abat G/Tsadik, Senior Public Prosecutor and Tentative Head of the Legal Research, Drafting and Dissemination Directorate, FDRE MOJ

institutions to pass through this channel (to use MOJ), by and large is responsible for the precipitation of all the problems and inconveniences around legal drafting in Ethiopia.[124] Of course, the MOJ being an executive organ of the government is mandated to initiate[125] as well as draft[126] laws. But, there are professional who are arguing that the Ministry does not have an absolute legislative drafting mandate that enables it to command other government organs to provide legislative drafting issues to the Ministry. It is because the proclamation that is enacted to determine the powers and duties of executive organ of the government has clearly indicates that the Ministry is indebted to draft laws only where *'so requested'* by federal organs and regional states. It is devoid of legal authority to command the submission of documents so that it may prepare draft laws. It is up to each government organ to initiate and draft legislation in its area and jurisdiction.[127] There is no mandatory legislation that obliges government organs to send their initiation or draft laws to the MOJ. But, if they need any kind of assistance, they have the option to request the Ministry for assistance in relation to legislative drafting. And the Ministry has the obligation to assist government organs upon their request.

The MOJ is said not to have been able to provide the needed expertise, and also not to have the political strength to impose its technical views on other Ministries. There were obviously strong political reasons in past to avoid granting too strong role to the MOJ. It is understandable that some of the reasons leading to diminution of the role of the MOJ were of a political nature. This Ministry had played a negative role during the time of the Dergue regime.[128] The current MOJ has also no legal basis to impose its technical views on other Ministries, since the proclamation still uses the assertion that the Ministry will assist other organs of government only where *'so requested'* be them. One way or another, the MOJ has a mandate to draft legislations.

The other pointed that should be clear as to legislative drafting mandate of the MOJ is the issue of submission of draft laws to the HPR. In this respect, proclamation no. 271/2006 i.e. a proclamation concerning House of Peoples' Representatives Legislative Procedure, Committees Structure and Working Proclamation has clearly indicated under article 4 (2) (d) that the executive bodies of government have the possibility to initiate and submit draft laws to the HPR. However, there is a contention as to who the executive body/bodies is/are?

The wording "executive bodies" is vague. Do bodies or institutions that are subordinate to the Council of Ministers have the possibility to submit a legislative proposal to the House without having it submitted for approval to the Council of Ministers first? Since the highest executive powers on the federal level are vested in the Prime Minister and in the Council of Ministers (article 72 (1) of the Constitution), legislative proposals originating from executive bodies should go to the House through the Council of Ministers in order to

[124] The FDRE MOJ, Comment from the MOJ on "Lawmaking and Legislative Process" p. 1
[125] Supra note 122 Art. 10 (1) (a)
[126] Ibid Article 16 (3)
[127] Supra note 124, p. 2
[128] Ibid p. 2-3

guarantee the coherence of governmental policy.[129] The experience of the MOJ as well as other Ministries has also showed us that all the laws that are drafted by MOJ and other Ministries are passed to the HPR through the COM.[130] Therefore, looking into the experience and taking the assertion of article 77 of the Constitution that the COM as the holder of highest executive power, we can certainly say that the wording 'executive bodies' does not cover ministerial bodies that are subordinate to COM including MOJ.

Coming back to legislative drafting mandate of the MOJ and its role as a lawmaker, like any of the government organs the MOJ also enacts legislations called *'directives'* to govern its internal activities and to put detailed provision on proclamations and regulations based on the mandate given to it by proclamations and regulations.[131] This aspect of making legislation is one of the roles of the Ministry as lawmaker. And the other aspect of the Ministry's role as a lawmaker is where the Council of Ministers enacts laws called 'regulations'. As it is indicated under article 77 (13) of the FDRE Constitution the Council of Ministers has the mandate to enact regulations based on the power given to it by the House of Peoples' Representatives through Proclamations. And the Council has enacted very many regulations until now. In doing so the MOJ as a member of the Council of Ministers has its own say in the process of making and ratifying regulations in the Council of Ministers. Therefore, the MOJ has its own role as a lawmaker in the enactment of directives of the MOJ and in the enactment of the regulations by the Council of Ministers.

2.3.2. The Interaction of MOJ with Other Ministries and COM in Lawmaking

Ideally, bills originating from any Ministry or any public body under their control should be first reviewed in great detail by a set of competent lawyers organized in one department in the MOJ. This is common practice in numerous countries (e.g. France, Germany and the Netherlands). Legal experts in these departments review thoroughly all elements relating to the particular draft (rationale, clarity of the objectives, internal coherence of the draft, legality, constitutionality, efficiency, and process of implementation by the relevant public body).[132] When necessary, these experts enter into an in-depth dialogue with the experts of the sector Ministries involved in the drafting of the bill or regulation. They have the right to even strongly criticize any weaknesses of a legal or structural nature they identify in the draft. They can express their critical views on any point, including the inefficiency of the law or the regulation, if they think the stated objectives will not be achieved by the Ministry because of lack of implementing abilities or inadequate design of the policy.[133] They can suggest a full or partial redrafting of the law or regulation, and their observations and reports are shared with the representatives of the relevant Ministry. The sector Ministries usually take into account these

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[129] Supra note 120, pp. 130-131

[130] Supra note 125

[131] For instance Article 94 of Regulation no. 44/91 (Federal prosecutor Administration Council of Ministers Regulations) has clearly provided power to the MOJ to issue directives for the implementation of the regulation. And the Ministry has issued a directive based on this provision of the directive.

[132] Supra note 129, p. 135

[133] Ibid

constructive remarks. Accordingly, revised drafts are sent to the Council of Ministers for its approval and further transmission to the Parliament. The Parliament retains of course its own right to its own review, assessment, and amendments to the draft bill.[134] However, coming to the Ethiopian experience in this respect there was no law or system that obliges other Ministries to submit their draft law to legal experts in the MOJ. The experience in this respect has also shown us that Ministries were not submitting their draft laws to the MOJ. And submission of draft laws to MOJ by other Ministries for technical assistance of legislative drafting was determined by the willingness of individual Ministries.

The rationale for this system of review is simple: draft bills of Ministries are usually prepared to facilitate implementing a policy or solve specific problems in one particular field. Although the staff members involved in this type of lawmaking are commonly lawyers by profession, they usually focus on the issues that are important for their Ministry and they often miss the overall view to ensure that the draft law they have prepared fits in with the legal system as a whole. To give an example, it rarely happens that the staff working in a technical Ministry thinks in terms of conformity with the Constitution.[135]

In relation to the interaction between the MOJ and COM, we have said earlier that the MOJ has the mandate to draft legislations. However, there is always a question as to what will happen after drafting of legislation is accomplished by the Ministry? The constitution as well as the proclamation enacted for the definition of powers and duties of executive organs of the federal government does not say anything about the next step of the law that is drafted by the MOJ or other Ministries. But, practically after the Ministry accomplish its task of drafting legislations; it will either submit the draft law to the Council of Ministers or return back it to the government organ that has requested assistance from the Ministry. And the other organs of government also will send draft laws to the Council of Ministers.

Why does the MOJ as well as any other government organs submit draft laws to the Council of Ministers? You cannot find any provision indicating that draft bills prepared by Ministries should go to the Council of Ministers first. Actually, it has happened that draft laws originating from the offices of the Executive were submitted directly to the House without first having passed through the Council of Ministers.[136] The powers and functions of the Council of Ministers under article 77 of the FDRE Constitution has also no provision to this effect. Article 5 of proclamation no 691/2010 also refers the powers and duties of the Council of Ministers to be specified under article 77 of the constitution. Even though there is no legal basis that obliges Ministries to submit draft laws to the Council of Ministers, they are not also allowed to submit draft laws to the House of Peoples Representatives by their own through any of the laws. But, the Council of Ministers is clearly mandated and allowed to submit draft laws on any matters to the House of Peoples' Representatives

[134] Ibid p. 136
[135] Ibid
[136] Ibid p. 73

pursuant to article 77 (11) of the Constitution. Therefore, the only fate of the laws that are drafted by the Ministries including the laws that are drafted by MOJ is to be submitted to the Council of Ministers.

But, as per section 9 (2) (e) of the manual[137] of the Council of Ministers each member of the council including the MOJ are obliged to submit new draft laws or amendments to the council. The Decision of the Council of Ministers of October 13, 2003 is extremely important document in this context. This unpublished decision creates a manual that describes the new working procedures for the Council of Ministers. It contains elements relating to the presentation of draft laws to the Council. It has not received full implementation yet.[138]

The Council of Ministers and the Prime Minister are vested the highest executive power in the federal government.[139] It also has the mandate of formulating different policies and strategies[140] in addition to the mandate of submitting draft laws to HPR. The Council of Ministers is purely a political council which is basically the drafting instructor and the policy maker of all legislations. As a result, the COM is the main source of policies and these policies are translated to legislative drafting and laws. Its role is very significant in formulating precise policy and clear message behind legislations, deciding on matters of controversial constitutional and human rights treaty's provisions.[141] Therefore, the Council of Ministers has a lion share in the sphere of legislative drafting. And according to Mr. Abat G/Tsadik and Mr. Liku Worku there are legal professionals with in the Prime Minister's office who are indebted to recheck the draft laws that are submitted by the MOJ and other Ministries. In doing so the professionals will check the constitutionality of the laws, whether the laws violates human rights or not and they will put a reason behind every piece of provision of legislations. Then the draft legislation that is polished from constitutional, political, human rights and other dimensions will be presented to the COM for discussion and finally it will be submitted to the HPR for further discussion and ratification.

Therefore, the relationship between the MOJ and the COM in relation to lawmaking is mainly on the submission of draft laws by the Ministry to the Council. And the Ministry's role then will be minimized after submission of draft laws. The only instance where the Ministry will follow up its draft law will be either through it representation in the council like other Ministries or through explaining draft laws where it is asked by the council.

2.3.3. Duplication of Mandates on Lawmaking

Many people believe that there is a duplication of mandate between the MOJ and the Justice and Legal System Research Institute in relation to legislative drafting. But, is there really duplication of mandates on

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[137] The Manual is prepared to serve as the working procedures of the council of Ministers and it is called The Decision of the Council of Ministers of October 13, 2003.
[138] Supra note 132, p. 119
[139] FDRE Constitution, Articles 72-77
[140] Ibid, Art 77 (6) and (8)
[141] Mr. Liku Worku, Legal Drafts man and Public Prosecutor at the MOJ

legislative drafting between these organs of government? Before investigating this critical question, it is essential to dig out the rationales for the establishment of the Justice and Legal System Research Institute.

The Institute was or has been established pursuant to article 2 (1) of regulation no. 22/1997. There are many estimates as to the rational for establishment of this institution. Firstly, some peoples believed that the weaknesses of the MOJ in the past led to the creation of the Justice and Legal System Research Institute. The reasons leading to a diminution of the role of the MOJ were of a political nature. This Ministry had played a negative role during the period of the Derg regime. Furthermore, the Council of Ministers wanted to create a flexible tool circumventing the constraints of the law on the civil service, to attract senior experts.[142] Secondly, others believe that the institute was established and is existed still now just for the sake of preserving few scholarly individuals within the government scheme in the name of legal research. Dr. Fasil Nahum[143] and Dr. Menberetsehai Tadesse[144] are among the mentioned scholarly individuals. Dr. Fasil Nahum was the director just after the establishment of the institute and in the same manner Dr. Menberetsehai Tadesse is now serving as director of the institute. The third estimate by others is the government has established this institute just to generate different types of aids from the developed world in the name of justice and legal system research.

To return back to the issue of duplication of mandate between the MOJ and the JLSRI, it is obvious that the MOJ has the mandate both to initiate as well as draft laws. And the controversy is on the mandate of the JSLRI to draft legislation. Therefore, we will examine whether the JSLRI has lawmaking mandate or not? Mr. Abat G/Tsadik believes in his part that the JLSRI doesn't have mandate to draft legislations and the establishment regulation of the institute also does not empower it to do so. He also added that the institute had drafted laws since its inception. The competition and conflict between the two institutions has led in some cases to the duplication of tasks, and duplication of draft bills being sent to the Council of Ministers and to the parliament.[145] Mr. Abat agrees on this assertion and mentioned the competition between the Ministry and the institute concerning preparation and submission of different draft laws both on the revised family code and the revised criminal code as an example.

Mandates of government bodies are usually listed clearly on their establishment laws. And government bodies cannot assume tasks as their own activities by their own. Looking into the powers and duties of the institute under article 5 and the whole provisions of Regulation no. 22/1997, you cannot find a single provision that clearly empower the institute to draft laws. The institute's mandate is mainly related with undertaking of studies and research to strengthen and modernize the justice and legal system. However, the institute had used

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[142] Supra note 138, p. 136

[143] Dr. Fasil Nahum is among the scholarly individuals in Ethiopia who has his own finger print in the county's legal system having a dominant role in the drafting of the FDRE Constitution. He was director of JLSRI. And now he is advisor to the Prime Minister.

[144] Dr. Menberetsehai Tadesse was/is also among one of the influential scholarly individuals in Ethiopia some time. He has served as judge and Vice-President of the Federal Supreme Court.

[145] Supra note 127, p. 11

the loophole under article 5 (8) of the regulation that reads as *"the institute shall perform such other activities as may be necessary for the attainment of its objectives"* to draft laws claiming that it had drafted laws to strengthen and modernize the justice and legal system. It has also used studies and researches for the revision of existing laws as a basis for preparation of draft laws.

The fact that the institute was previously accountable to the prime minister[146] at its inception and to the Ministry of Capacity Building[147] later on had paved the way to prepare its own draft laws and compete with the MOJ. And there is no doubt about the duplication of man power, time, material and other government resources. However, the institute is now accountable to the MOJ pursuant to the article 33 (13) of Proclamation no. 691/2011 and legislative drafting is now conducted only by the MOJ. The institute is now forbidden to draft legislations by the MOJ since it is accountable to the MOJ.[148]

Therefore, we can say that there was duplication of mandate in relation to legislative drafting between the MOJ and JLSRI practically and not legally. However, since the promulgation of Proclamation no. 691/2011 and accountability of the institute to the Ministry, all the ways for duplication of mandate are closed. But, somebody can still quest the necessity of the JLSRI, since there is a directorate within the Ministry that is concerned with legislative drafting and legal researches. That is both the Ministry and the institute have the task of conducting legal researches that probably leads them to initiate draft laws.

2.3.4. The Roles of MOJ in the Protection, Promotion and Enforcement of Human Rights vis a vis its Lawmaking Mandate

The MOJ having the mandate of legislative drafting should play its own role in the protection, promotion and enforcement of human rights either through performing detailed tasks or critically scrutinizing specific human rights in the process of legislative drafting. This includes ensuring all other legislation meets human rights standards, inviting citizens to participate in the lawmaking process and informing citizens about the laws that are under drafting through different methods.

2.3.4.1. Ensuring All Other Legislation Meets Human Rights Standards

In other countries organs that are mandated to draft laws are also clearly bolstered by legislation to check that all legislation meet minimum human rights standards. In the State of Queensland, in Australia, for example, the Legislative Standards Act 1992 enshrines fundamental legislative principles that "must be considered when legislation is drafted so that it does not infringe individual liberties". The 1998 Human Rights Act of the United Kingdom has also the same kind of provision.[149] These principles include whether the legislation is

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[146] The institute was accountable to the Prime Minister at its inception based on article 2 (2) of Regulation no. 22/1997

[147] The institute was accountable to the Ministry of Capacity Building later on based on article 33 (4) (c) of Proclamation no. 471/2005

[148] Mr. Liku Worku and Mr. Abat G/Tsadik

[149] OHCHR draft guidelines on a human rights approach to poverty reduction strategies p. 3 http://www.unhchr.ch/pdf/povertyfinal.pdf Accessed on September 3, 2011

consistent with the principles of natural justice and if it has sufficient regard for aboriginal traditions and customs, or provides for protection against self incrimination.[150] There is no such kind of law in Ethiopia that clearly obliges the MOJ and other organs of government to take such kind of step in the legislative drafting process. However, apart from legislation that specifically domesticates international and regional treaties, all laws which the Ministry drafts and the House of Peoples' Representatives passes should be in accordance with international human rights standards. The Ministry is also expected to have a specific and mandatory procedure in the drafting process to check that all legislation conforms to human rights standards.

Mr. Abat G/Tsadik and Mr. Liku Worku in this regard have asserted that there is such kind of working procedure based on the Ministry's business process re-engineering document of legal research, drafting and dissemination. And professionals in the legal drafting team are drafting laws in a manner that are compatible with human rights treaties. Mr. Abat has also added that this does not mean that the Ministry is perfect in checking compatibility of all laws from human rights treaties. Whatever the case may be the Ministry has the real potential to contribute to human rights protection and promotion in ensuring all legislations meet human rights standards in the relation to drafting legislation.

2.3.4.2. Ensuring the Right to Public Participation in the Lawmaking Process of MOJ

Public participation is encouraged at all stages of the legislative process, from the policy papers to draft bills and bills.[151] The MOJ as a government organ that is mandated to initiate and draft legislations is also supposed to facilitate and encourage public participation in every of the laws that it initiates and drafts. The Ministry has had initiated, drafted and corrected very many laws, since its inception until now. Just to take the number of laws that are initiated, drafted and corrected by the Ministry in the budget years of 2003 E.C., the Ministry had initiated, drafted and corrected about 44 different laws and treaties.[152] Mr. Assefa Kessito,[153] Mr. Abat G/Tsadik and Mr. Liku Worku similarly agreed that the Ministry had to the maximum consulted only concerned government stake holders in draft laws before the draft laws are sent to the COM. They also added that all draft laws are not always open to consultation of stakeholders. There were/are draft laws that simply initiated, drafted and corrected by the Ministry and submitted to the COM. All the laws that are initiated, drafted and corrected by the MOJ were/are not open for public participation. The public were/are not invited by the Ministry to provide its opinion, comments, views and feed-back on a specific draft laws. The public also does not also request the Ministry to be consulted on every draft laws that the Ministry drafts for many reasons.

[150] Ibid

[151] Supra note 75, p. 2

[152] The data is taken from the 2002 and 2003 E.C. annual reports of Legal Research, Drafting and Dissemination Directorate.

[153] Mr. Assefa Kesito was Minister of MOJ and he is now servings in the FDRE President Office

Let alone the public participation of the general public, we can simply examine the issue participation in the directives that the Ministry drafts and enacts. This is the only instance in which the Ministry can involve in all processes of legislative drafting. It can exercise full mandate of initiation, drafting and ratification of laws. For instance the Ministry had prepared and ratified directive no. 7/2003 concerning *"Civil Servants and Management Code of Conduct of the FDRE MOJ"* pursuant to article 94 of Regulation No. 44/1991 and the Civil Servants Proclamation No. 515/2007. This directive is enacted by the Ministry to govern public prosecutors and civil servants of the Ministry. However, public prosecutors as well as civil servants in the Ministry were not invited by the Ministry to provide their opinion, comments, views and feed-back on the directive. It was simply initiated, drafted and ratifies by administrative of the Ministry and distributed to the public prosecutors and civil servants for their knowledge. It was a kind of imposition to the staff of the Ministry. They have provided so many comments and opinions on the directive after the ratification and distribution of the directive. However, simply because they were not consulted by the Ministry, their comments and opinions are become meaningless.

The Business Process Re-engineering (BPR) document of MOJ on Legal Research, Drafting and Dissemination has also assumes only consultation with concerned authorities on draft legislations, but not participation of the general public. And the laws that are still drafted by the Ministry were not open for participation of the general public. Therefore, it is possible to say that the Ministry is discharging its lawmaking mandate in a way that violate the right to participation of the public in the lawmaking that is guaranteed under international, regional and national legal instruments.

2.3.4.3. Ensuring the Right to Information in the Lawmaking Process of MOJ

Information is knowledge and knowledge is power, they say. The people, therefore, need information in order to exercise their sovereign power, protect their rights, participate in the governance of their country and other decision making processes.[154] Every government organ, be it the legislature or executive should also be open to the public about what it is doing. And for a government organ that is prepares draft laws to govern the day to day interaction the public, the issue of providing information about the draft laws worth much more than any other information to the public. The MOJ as a government body and as an institute having a lawmaking mandate is supposed to be transparent to the public. It is expected disseminate draft laws to the public through different means including website, newspaper and others methods. This will facilitate a better condition for public participation and ease implementation of laws by the public where laws are ratified. It will also give an opportunity for the public to its own say in the laws.

The MOJ in this respect was and is not transparent and open to the public. It doesn't provide any information to the public about the laws that are drafted by the Ministry. There is also no single draft law that is accessible

[154] Derebew Temesgen, 'Legal Safeguards for Freedom of Information in Ethiopia', Ethiopian Bar Review Volume 4 No. 1, 2010, p.125

to public before it is submitted to the Council of Ministers.[155] The Ministry has drafted very many laws until now. However, it has never informed any of the draft laws to citizens. There is also no law or working procedure that obliges the Ministry to publish and distribute draft laws to the public for the sake of informing citizens. The Business Process Re-engineering document on legal research, drafting and dissemination also does not acknowledge the right to information of citizens.

Therefore, like that of the right to public participation in the lawmaking process, the MOJ does not also consider and respect the right to information of citizens in the lawmaking process. Since the right to information is fundamental human right that is guaranteed under international, regional and national legal instruments, it is a big failure for the Ministry to disregard in its lawmaking process.

2.3.4.4. Domestication of International and Regional Human Rights Treaties

The seven core international human rights treaties and regional human rights treaties create legal obligations for state parties to promote and protect human rights at the national level. When a country accepts one of these treaties through ratification, accession or succession, it assumes a legal obligation to implement the rights set out in that treaty.[156] And when we come to practical implementation of these human rights treaties the issue of nationalizing or customizing these treaties into domestic format is very critical. The international and regional human right convention can merely be enforced, realized and effective where they are ratified or adopted by the state parties and recognized the competence of the respective enforcement organs by the convention. Here the relationship between international law and national law is more than just academic interest and important jurisprudential question in its implementation in domestic court.[157]

The interplay between domestic and international law depicts a relationship of dependence of the latter on the former for its implementation. The domestic legal system must usually provide conducive legislative, judicial and administrative frameworks if treaty based guarantees are to be translated into reality for domestic beneficiaries.[158]

The international human rights law provides the basic international standard whereby the state parties to the instruments that have established the standard should promote and respect as soon as they have ratified and ad opted on their respective national laws. The enforcement of these international standards primarily depends on the national law of the state for the benefits of the nationals of which they developed.[159] As a result, it induces the state to conform their national legal system to the standard it set up. By signing and

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[155] Mr. Assefa Kessito, Mr. Abat G/Tsadik and Mr. Liku Worku

[156] Office of the United Nations High Commissioner for Human Rights, The United Nations Human Rights Treaty System: An introduction to the core Human rights treaties and the treaty bodies Fact Sheet No. 30, p. 15

[157] MULF, The public international law compilation, 2005, p. 26

[158] Takele Soboka Bulto, The Monist-Dualist Divide and the Supremacy Clause: Revisiting the Status of Human Rights Treaties in Ethiopia, Journal of Ethiopian Law, Volume 23 No. 1, 2009, p. 138

[159] Idris Ibrahim, Symposium role of the court sin enforcement of the constitution, Addis Ababa voL I 2000 p 55

ratifying the international human right instrument, states assumes international obligation to comply in good faith with rights and freedoms recognized in the convention they endorse. As a member of a community of a nation, they are also under obligation to live up to the standard provided in a customary international human rights law and to accomplish all other tasks necessary for the realization and exercise of the fundamental human rights and freedom.[160]

The FDRE constitution makes mentions of the negotiation, signing, and ratification as process of treaty making process.[161] This is one important impediment for the court to apply and enforce the human right principles and for the citizen of the state to claim the right protected by the ratified convention. This is because the constitution never provided for the enactment of implementing legislation and promulgation of international human right treaties ratified by Ethiopia. If this provision had provided for these process then all the state organs could have taken into account the principles contained in the convention in order to contribute their roles to the realization and protection of human right in the country. On the other hand article 9(4) of the constitution provides for the ratification requirement for the international human right treaties to be integral part of the law of the land.[162] It is one controversial problem for the non enforcement of human right provision in domestic level.

After the ratification and enactment of implementing legislation the next step to be performed by the state party to the convention is the publication of the treaties. The publication should be made after it is translated in to the working language of the state. The laws that provide for the promulgation of the treaties are most of the time the municipal laws. If we examine the Ethiopian case, after ratification of treaties they will be proclaimed in Federal Negarit Gazette by one page, which only recognizes the ratification of the convention. At last, what is the position of promulgation of the whole content of ratified convention and translation under the FDRE constitution?[163]

Since all international and regional treaties ratified by Ethiopia are an integral part of the law of the land[164] of Ethiopia and all federal laws including treaties are supposed to be published in the Federal Negarit Gazeta,[165] all human rights treaties that are joined by Ethiopia are supposed to be published through Negarit Gazeta in both English and Amharic languages[166] to have an effect of law. However, even though Ethiopia has joined very many human rights treaties none of it is customized and ratified through Negarit Gazeta pursuant to article 2 (4) of proclamation no. 3/1995.

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[160] Ibid
[161] Supra note 140, Art 9(4), 51(8) and 55 (12)
[162] Ibid, Art 9(4)
[163] Berressa Bekele, thesis on the title Human rights enforcement under Ethiopia 2005, p. 15
[164] Supra note 163
[165] Proclamation no. 3/1995 Art 2 (2)
[166] Ibid Art 2 (4)

In Rakeb Melese's research several interviewed judges noted that they don't mention provisions of human rights treaties in their decision simply because the treaties are not converted into the official language of the federal government and proclaimed through Federal Negarit Gazette.[167] This is not actually because of the reason that they don't understand the language in which the condensations are written. But, it is merely because of the reason that Proclamation no. 3/1995 does not allow them to do so. And it is obvious that this has its own effect in the promotion, protection and enforcement of the rights that are guaranteed under the treaties.

Therefore, it is enviable to have a Federal Negarit Gazettes that carries the whole content of the treaties both in Amharic and English languages to widen the horizon of respect and promotion of human rights. But, the crucial questions are "who is responsible for the failure of having Federal Negarit Gazettes until now?" And which government organ should take the responsibility of nationalizing international and regional human rights treaties?

In this regard Mr. Abat G/Tsadik argues in his part that the MOJ will only have the responsibility to take all the necessary measures to nationalize international and regional human rights treaties, if the ratifying proclamation clearly delegates the power to enforce rights and obligations enumerated in specific treaties. Otherwise, there is no possibility to claim that the MOJ doesn't discharge its obligation. And he has also asserted that the proclamation enacted for the definition of powers and duties of executive organs i.e. proclamation no. 691/2010 under its article 15 (4) clearly indicates that "*the Ministry of Foreign Affairs has the duty to enforce the rights and obligations arising from treaties signed by the Ethiopian government except in so far as specific power has legally been delegated to other organs*". Pursuant to this provision the MOFA has the responsibility to check whether other government organs are mandated to enforce rights and obligations arising from specific human rights treaties or not. And where there are no government organs that are mandated to enforce the rights and obligations of treaties, the MOFA is obliged to take all the necessary measures for the enforcement of treaties including the obligation of taking measures for nationalization of human rights treaties.

Mr. Liku Worku on the other side indicated that there is no other better government organ that can take the full responsibility of nationalization of human rights treaties. And the Ethiopian Human Rights Commission may be better than other institutions. But, it is not also best fitted like the MOJ.

The writer of this paper also shared the idea of Mr. Liku Worku. Even though the MOJ is not mandated to enforce the rights and obligations arising from all human rights treaties, the Ministry is supposed to take all the necessary measures for the nationalization of human rights treaties just because of the reason that it is a chief advisor of the federal government, a government organ that is mandated with legislative drafting and as

[167] Rakeb Messele, Enforcement of Human Rights in Ethiopia, Action Professionals' Association for the People (APAP) 2002, p. 39

a government organ having a mandate and vision to protect, promote and enforce human rights. The only ratifying law that clearly empowers the MOJ to enforce the rights and obligations arising from human rights treaty is the ratifying proclamation of the African Charter on Democracy, Election and Good Governance.[168] And there is no other proclamation that obliges the Ministry to enforce the rights and obligations of human rights treaties other than this. And the Ministry doesn't even discharge all the necessary measures for the proper enforcement of rights and obligation including the obligation of nationalizing this charter.

The issue of domestication of human rights treaties is very crucial to make them easily understandable by citizens and applicable at the national level. A mere declaration of acceptance of international and regional human rights treaties through a single page ratifying proclamation doesn't amount to domestication and doesn't also provide conducive environment for proper and effective implementation of human rights treaties. Domestication of treaties also requires a mandate of legislative drafting like the MOJ with its technical requirements. As a result of this and points enumerated above the MOJ is best suited to take the responsibility of domestication of human rights treaties than other government organs.

2.3.5. Problems with Legislative Drafting

There are very many problems as regards the legislative drafting mandate of the MOJ that directly or indirectly contribute to violation of human rights. The problem starts from the very nature of the legislative drafting mandate of the Ministry. That is the legal provision that empowers the Ministry to draft laws does not allow it to mandatorily oversee and check all the laws that are drafted by executive bodies. Other executive bodies may or may not submit their draft laws to the MOJ. There is no law that obliges other executive bodies to submit their draft laws to the MOJ. However, there is a circular letter that is distributed by the Prime Minister Office to other executive bodies that clearly indicate that submission of draft laws to the MOJ is mandatory to check constitutionality, consistency and human rights friendliness of draft laws. This circular letter will to some extent provide a vetting role for the Ministry. However, this circular is not as such binding like laws. Therefore, unless the Ministry's mandate as regards lawmaking is amended in a manner that empowers it to have a vetting role, it is fair to say that it has a weak power on legislative drafting.

The second problem is related with the issue of working procedure or manual. Binding working manual for an institute having a mandate of legislative drafting is very essential to promote uniformity in drafting style, and to make the resulting statutes clear, simple and easy to understand and use.[169] Mr. Abat G/Tsadik and Mr. Liku Worku confirmed that there is a legislative drafting manual in the MOJ. But, it is not ratified by the Ministry as a binding working manual for professionals in the Ministry. One can either follow or leave it behind the manual in drafting laws. This will for sure has negative impact in having constitutional, consistent, clear, simple and easy laws.

[168] Article 3 of Proclamation No. 613/2008 clearly empowers the MOJ to undertake all acts necessary for the implementation of the charter.
[169] Supra note 24, p. 1

The third problem is related with the changing nature of working systems within the Ministry including legislative drafting. The working system within the MOJ varies from one minister to the other.[170] There is no consistent working system in the Ministry that enables it to provide a uniform legislative drafting service disregarding the change of ministers. The system depends upon the serving minister.

The fourth problem is concerning the number and quality of professionals who are working on legislative drafting in the MOJ. As it is indicated earlier on the portion of lawmaking skills we said that legislative drafting is one of the most intellectually demanding of all lawyering skills and it requires legislative drafters who have specific educational background and knowledge in drafting techniques as well as experience. Indeed, the issue of drafting clear, effective laws, in conformity with the Constitution and international treaties, and fitting well into the existing legal and administrative system requires experts with strong legal education and drafting skills.[171] That is why the Ethiopian comprehensive Justice System Reform Program baseline study report had indicated in its recommendation to the MOJ that the Ministry should create a department composed of senior staffs with drafting skills.[172] In the MOJ legislative drafting is conducted by a team of public prosecutors in the Legal Research, Drafting and Dissemination Directorate. And as per information from the Human Resource Directorate of the MOJ there are six public prosecutors in the team who are drafting laws. According to Mr. Liku Worku and Mr. Abat G/Tsadik the number of professionals who are now drafting laws is not enough as compared to the work load and the mandate that is presumed to the Ministry. There is also no single professional among the six who has specialized in legislative drafting and most of the professionals are employed as a drafter just after they have graduated from law schools. Providing a chance to fresh graduates of law is one good thing. But, considering the technicality and the most intellectual demanding nature of legislative drafting, it is also essential to organize the drafting team with professionals having special educational background and strong experience in legislative drafting so as to draft quality legislations.

The current Minister and State Minister for Litigation of the MOJ Mr. Birhan Hailu and Mr. Birhanu Tsegaye respectively agree on the fact that there are very few skilled professionals in legislative drafting not only in the MOJ but also in the country. Both Ministers have also confirmed on the presentation of 5 months report of the MOJ to the HPR that absence of skilled professionals in legislative drafting has its own influence on the quality of draft laws.[173] The belief of administration of the MOJ as well as the Ethiopian government seems that drafting is something which can be done by anyone and the minimal attentions of government to legislative drafting are other problems of the MOJ in legislative drafting.

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[170] Supra note 141
[171] Supra note 142, p. 155
[172] Ibid p. 212
[173] Reporter (News Paper (Amharic)) January 11, 2012

All these problems one way or another have their own contribution for poor performance of the Ministry in drafting legislations and for sure have their own impact for violation of human rights through having unconstitutional, inconsistent and unjust legislations.

2.3.6. Lawmaking Related Mandates of the MOJ

Apart from the lawmaking mandate the MOJ has also other related mandates like codification and consolidation of federal laws as well as collection and consolidation of regional laws.[174] Codification is the process of compiling, arranging, and systematizing the laws of a given jurisdiction, or of a discrete branch of the law, into an ordered code.[175] It is the process of collecting and restating the law of a jurisdiction in certain areas, usually by subject, forming a legal code, i.e. a codex (book) of law.[176] As far as the information gathered from beneficiaries there is no government organ established to undertake the work of codification than the MOJ. And the Ministry had played its own remarkable role in the codification of the Criminal Code and the Family Code; and at the same time the Ministry is still struggling for the codification of the Commercial Code and Criminal Procedure Code. However, the Ministry's work of codification is not satisfactory.[177]

Consolidation on the other hand is the act or process of uniting active laws of the country that are scattered here and there into a single whole for the purpose of easily application of laws and informing citizens about active laws. This will also help to differentiate the repealed laws from the active ones. The MOJ has not yet consolidated laws since its inception except collecting some federal laws.[178] This failure of the Ministry in terms collecting and consolidating federal laws has by large its own negative shadow on the day to day works of public prosecutors, judges and other professional in accessing and applying pertinent laws. It also definitely violates the rights of citizens in accessing knowing laws of the country.

As regards the collection and consolidation of regional laws the MOJ has only collected constitutions of the Tigray, Harari, Amhara, Oromia and Southern Nations Nationalities Peoples' regional states and some other legislation of regional states. The Ministry does not still consolidate regional laws since its inception.[179] It is really striking to hear that the Ministry does not even collect the regional laws properly. Let alone the right of the general public to know the laws of regional states, legal professional including federal prosecutors and judges who are working at the federal level does not have sufficient access to regional laws. This will hinder them to properly discharge their obligation and deliver justice to citizens especially in cross-regional cases. And this will by large affect the protection, respect, promotion and fulfillment of human rights to citizens.

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[174] Article 16 (2) of Proclamation no. 691/2010
[175] Supra note 20, p. 252
[176] http://encyclopedia/Codification_(law) Accessed on November 14, 2011
[177] The FDRE MOJ, The Revised Business Process Re-engineering (BPR) Document of Legal Research, Drafting and Dissemination, 2009, p. 14
[178] Ibid
[179] Ibid p. 16

CHAPTER THREE

HUMAN RIGHTS EDUCATION AND THE MOJ

3.1. Human Rights Education in General

3.1.1. The Concept of Human Rights Education

No single definition for human rights education will serve the many ways in which people young and old come to understand, practice and value their rights and respect the rights of others. However, the World Programme for Human Rights Education defines it as education, training and information aiming at building a universal culture of human rights through the sharing of knowledge, imparting of skills and molding of attitudes directed to:

(a) The strengthening of respect for human rights and fundamental freedoms;

(b) The full development of the human personality and the sense of its dignity;

(c) The promotion of understanding, tolerance, gender equality and friendship among all nations, indigenous peoples and racial, national, ethnic, religious and linguistic groups;

(d) The enabling of all persons to participate effectively in a free and democratic society governed by the rule of law;

(e) The building and maintenance of peace;

(f) The promotion of people-centered sustainable development and social justice.[180]

Human rights education is an international movement to promote awareness about the rights accorded by the Universal Declaration of Human Rights and related human rights conventions, and the procedures that exist for the redress of violations of these rights.[181] A comprehensive education in human rights not only provides knowledge about human rights and the mechanisms that protect them, but also imparts the skills needed to promote, defend and apply human rights in daily life. Human rights education fosters the attitudes and behaviors needed to uphold human rights for all members of society.[182]

Human Rights Education can also be defined as a process whereby people learn about their rights and the rights of others, within a framework of participatory and interactive learning. It is concerned with changing attitudes and behaviour, learning new skills, and promoting the exchange of knowledge and information.[183]

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[180] University of Minnesota Human Rights Resource Center, Introduction to Human Rights and Human Rights Education, 2005, P. 29-30

[181] Amnesty International. Human rights education strategy, 1996 Retrieved September 18, 2011, from http://www.amnesty.org/ailib/aipub/1996

[182] Youth Alliance for Human Rights Pakistan, Know your Rights: A National Human Rights Education Program for Young People, 2010 p. 1

[183] http://web.amnesty.org/pages/hre-intro-eng Accessed on November 12, 2011

Human rights education is simply all learning that develops the knowledge, skills, and values of human rights.[184]

Human rights education targets not only students and teachers, but all professional groups that perform activities relevant to human rights, such as the police, penal system officials, lawyers, armed forces, internationally active diplomats and civil servants, development workers, members of peace keeping forces, members of NGOs, media employees, government officials and members of parliament.[185]

Human rights education targets widely varying audiences: possible victims of human rights violations as well as possible perpetrators. The imperatives of human rights education then change accordingly: stand up for your rights versus do not discriminate! In addition, this double imperative is also directed at each and every one of us, because anyone can become either a victim or a perpetrator.[186]

3.1.2. Human Rights Education as a Right

Is human rights education a right itself? Is it an enforceable right? Can somebody claim remedy from states where states fail to provide human rights education? These questions are critical questions to determine whether human rights education itself is a right or not.

Education is not only a means to promote human rights. It is an end in itself. In positing a human right to education, the framers of the Universal Declaration relied on the notion that education is not value-neutral. Having human rights acknowledged and knowing our human rights are both needed in today's world. The reason is stated in the Preamble of the Universal Declaration of Human Rights: to achieve "a world in which human beings enjoy freedom of speech and belief and freedom from fear and want" people must come to "a common understanding of these rights and freedoms."[187] Human rights, including the right to education and the right of the people to know their rights, are implanted in international standards around the world. Everyone's right to education and the goal of education in furthering respect for all human rights - these ideas are all found in numerous international instruments.[188] Therefore, you have a human right to know your rights. The Preamble to the Universal Declaration of Human Rights (UDHR) exhorts “every individual and every organ of society” to “strive by teaching and education to promote respect for these rights and freedoms.” Article 30 of the UDHR declares that one goal of education should be “the strengthening of respect for human rights and fundamental freedoms.” According to the International Covenant on Civil and

[184] NANCY FLOWERS, The Human Right s Education Handbook: Effective Practices for Learning, Action, and Change, Human Rights Resource Center, University of Minnesota Seattle, Washington: Real Comet Press, 2000, p. 7

[185] K.-Peter Fritzsche, What Human Rights Education is all about: International Perspectives in Human Rights Education. Bertelsmann Foundation Publishers 2004 p.163

[186] Ibid

[187] Richard Pierre Claude, METHODOLOGIES FOR HUMAN RIGHTS EDUCATION, University of Maryland, Retrived on 24/11/2011 from http://www.pdhre.org/materials/methodologies.html

[188] Ibid

Political Rights (ICCPR), a government “may not stand in the way of people’s learning about [their rights].”[189]

If we have said that human rights education is a human right itself, the question of enforceability of this right automatically comes into our mind. If it is a human right of citizens to have human rights education, states on the other hand has the obligation to deliver human rights education. As governments are the principal duty bearers of human rights obligations these obligations are related are generally of three kinds: to respect, to protect and to fulfill human rights.[190] And the obligation to provide human rights education is categorized under the obligation to fulfill. Such kind of obligation requires huge budget of governments to make accessible the full enjoyment of social, economic and cultural rights. And where there is scarcity of resources and budget on the side of governments, governments should allocate their budget progressively to realize full enjoyment of human rights. In this respect the article 41 (4) of the FDRE Constitution and article 2 (1) of International Covenant on Economic, Social Cultural Rights (ICESCR) that Ethiopia is a party oblige the Ethiopian government to progressively allocate its resource and budget for health, education and other related rights. Generally the obligation to fulfill is all about to capacitate citizens to enjoy their different rights of economic, social and cultural nature.[191] Therefore, where there exists a failure to provide human rights education to citizens from the side of governments, individuals can sue governments and seek remedy. However rights litigation between individuals and government in Ethiopia is not as such successful and promising.

3.1.3. Significance of Human Rights Education

Human Rights education to the public has much significance to the protection of human rights. It starts from avoiding ignorance about human rights. Ignorance is a constant threat to human rights – it breeds discrimination, intolerance and prejudice. If we are serious about human rights we must address ignorance in all its forms. The best way to do this is through education. Education is the natural enemy of ignorance. It promotes understanding, compassion and tolerance. It changes attitudes. And it is the basis upon which a genuine and lasting respect for human rights is founded. Education protects human rights much more effectively than any punitive or legal regime.[192]

Human rights are highly inspirational and also highly practical, embodying the hopes and ideals of most human beings and also empowering people to achieve them. Human rights education shares those inspirational and practical aspects. It sets standards but also produces change. Effective human rights education can —

[189] Supra note 184
[190] Office of the United Nations High Commissioner for Human Rights, Frequently Asked Questions on Human Rights -Based Approach to Development Cooperation, New York and Geneva, 2006 p. 2
[191] Ibid
[192] Justice Anant Mane, The importance of human rights education, p. 1

- Produce changes in values and attitude
- Produce changes in behavior
- Produce empowerment for social justice
- Develop attitudes of solidarity across issues, communities, and nations
- Develop knowledge and analytical skills
- Encourage participatory education.[193]

Apart from these human rights education has significances of developing understanding of human rights, contributing to the long term prevention of violation human rights, promotion of sustainable development and equality; and enhances public participation in decision making.[194] A comprehensive education in human rights not only provides knowledge about human rights and the mechanisms that protect them, but also imparts the skills needed to promote, defend and apply human rights in daily life. Human rights education fosters the attitudes and behaviours needed to uphold human rights for all members of society.[195]

Human rights education is the communication of knowledge and values. Human rights education informs us about the rights that each and every one of us has, how they came about and who to turn to if we believe that one or more of our human or basic rights have been violated. Human rights knowledge is a descriptive and critical kind of knowledge. It questions the institutions, organizations, documents and actors, but also the cause of the difference between the standard and reality and the root cause of human rights violations.[196]

3.1.4. Legal Frameworks for Human Rights Education

Several human rights treaties contain specific provisions relative to human rights education; in addition, some treaty bodies have elaborated reporting guidelines, general comments or recommendations concerning human rights education, training and information.[197]

Article 55 of the United Nations Charter, paragraph four and five of preamble, article 2 (1) and 13 (1) of the International Covenant on Economic, Social and Cultural Rights; paragraph four and five of preamble, article 2 (1) and (2) of the International Covenant on Civil and Political Rights; article 2 (1) and 7 of the International Convention on the Elimination of All Forms of Racial Discrimination; article 2 and 10 (1) and (2) of Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; article 2 and 10 of the Convention on the Elimination of All Forms of Discrimination against Women; article 4, 17, 19 and 29 of the Convention on the Rights of the Child; article 5 of the Convention against Discrimination in Education; paragraph two and ten of preamble and article 25 of the African (Banjul) Charter on Human and

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[193] Supra note 189, p. 15

[194] An idea taken from class discussion of the sub-module of Human Rights Education at Addis Ababa University Institute of Human Rights on 28 February 2011

[195] Office of the United Nations High Commissioner for Human Rights and UNESCO, Plan of Action World Programme for Human Rights Education, New York and Geneva, 2006, p. 1

[196] Supra note 183, p. 164

[197] Human Rights Education and Human Rights Treaties, P. 6

Peoples' Rights; paragraph three of preamble and article 12, 15 (2) (d), 24 (e), 30 (1) (b) of the African Charter on the Rights and Welfare of the Child; the last part of preamble, article 26 of the Universal Declaration of Human Rights (UDHR); Plan of Action for the World Programme for Human Rights Education; United Nations Decade for Human Rights Education; United Nations Declaration on Human Rights Education and Training; Vienna Declaration and Programme of Action; principle 7 and 10 of the Declaration on the Rights of the Child and many other binding and non binding international and regional human rights instruments have obliged and encourages state parties to those treaties to promote human rights through the provision of human rights education to the public.

All treaty bodies have declared that if persons are to seek protection of their own rights, they must become aware of what constitutes these rights.[198] The Committee on Economic, Social and Cultural Rights, Human Rights Committee, Committee on the Elimination of Discrimination against Women and other committees are now building a trend of requesting states to report their measures take in respect to human rights education.

As regards the legal framework of human rights education in Ethiopia article 13 (2), 27, 41 (4) and 90 (2) of the FDRE Constitution, article 15 (4), 16 (15) and 32 (10) of Proclamation no. 691/210; and article 6 (3) of Proclamation no. 610/2000 as well as the Education and Training Policy of Ethiopia directly and indirectly oblige different government organs to provide human rights education to the public. The Ethiopian government is also duty bound to promote human rights through delivering human rights education pursuant to different human rights treaties that the Ethiopian government is party.

3.1.5. Pedagogy and Methodologies of Human Rights Education

Since 1995, further elaborations by the UN and other agencies have clarified that HRE has components of knowledge, skills, and attitudes, which should be consistent with recognized human rights principles and which should empower individuals and groups to address oppression and injustice.[199]

Human rights education can be delivered to the public through different ways including using radio, television, newspapers, websites, teaching the society in public gatherings, including human rights education in educational curriculum and so on. And depending on the nature of these different ways, we can use different methodologies to properly and effectively deliver the education.

The pedagogy of human rights education, like other socio-cultural constructions, has a history of successes and failures, of accomplishments, tensions, contradictions and conflicts. It has been built on the basis of

[198] Ibid, p. 21
[199] Amnesty International. What is human rights education? Retrieved on November 17, 2011, from www.amnesty.org

important theoretical frameworks and years of discussions, workshops and seminars with activists, teachers and grassroots' educators.[200]

Human rights education has both normative and legal dimensions. The legal dimension incorporates sharing content about international human rights standards as embodied in the UDHR and other treaties and covenants to which countries subscribe. These standards encompass civil and political rights, as well as social, economic, and cultural. In recent years, environmental and collective rights have been added to this evolving framework. This law-oriented approach recognizes the importance of monitoring and accountability in ensuring that governments uphold the letter and spirit of human rights obligations.[201] At the same time, HRE is a normative and cultural enterprise. The process of human rights education is intended to be one that provides skills, knowledge, and motivation to individuals to transform their own lives and realities so that they are more consistent with human rights norms and values. For this reason, interactive, learner-centered methods of are widely promoted.[202]

The following kinds of pedagogy are representative of those promoted by human rights education advocates. These methods are applicable to all types of human rights education but are most comprehensively implemented in adult, popular education learning models.

- Experiential and activity-centered: involving the solicitation of learners' prior knowledge and offering activities that draw out learners' experiences and knowledge;
- Problem-posing: challenging the learners' prior knowledge;
- Participative: encouraging collective efforts in clarifying concepts, analyzing themes and doing the activities;
- Dialectical: requiring learners to compare their knowledge with those from other sources;
- Analytical: asking learners to think about why things are and how they came to be;
- Healing: promoting human rights in intra-personal and inter-personal relations;
- Strategic thinking-oriented: directing learners to set their own goals and to think of strategic ways of achieving them; and
- Goal and action-oriented: allowing learners to plan and organize actions in relation to their goals.[203]

The substantive articles of international human rights instruments do not mention anything about methodologies to be used in human rights education field. But, subsequent international instruments in particular the 1993 World Plan Of Action On Education For Human Rights And Democracy affirmed that human rights education must be 'participatory, creative, innovative and empowering at all levels of society.'

[200] Abraham Magendzo, Pedagogy of human rights education: a Latin American perspective. Intercultural Education Vol 16, No. 2, Carfax Publishing Company, 2005, p. 138

[201] Felisa Tibbitts, Human Rights Education, p. 3

[202] Ibid

[203] Asia-Pacific Regional Resource Center for Human Rights Education, What is human rights education. Bangkok, Thailand: 2003, p 22

Experts in human rights education field reiterate it in various forums that participatory, interactive methodology is the most relevant and appropriate way to develop skills and attitudes as well as knowledge, in both children and adults.[204] Lecturing rather emphasizes rote learning and memorization, which retard the development of important critical thinking and problem solving skills citizens need if they are to participate actively in their societies.[205] In one workshop it was noted that 'appropriate and effective strategies for human rights education should emphasize popular and participatory education, that human rights education must be rooted in the lives of learners especially those most marginalized and vulnerable. The educational process should be inclusive, action oriented and empowers people and civil society to improve their quality of life and build a culture of peace based on democracy, development mutual understanding and respect.'[206]

3.1.6. The Content of Human Rights

Since everyone has the right to know his/her rights, it is logical to conclude that the content of a particular human rights education has to include all human rights provisions incorporated in the various human rights instruments. The Vienna Declaration and Program of Action enumerate as subjects of human rights education 'human rights, humanitarian law, democracy and the rule of law…'[207]

Should the content of human rights education limit itself then to topics related only to international bill of rights? Many writers list a number of subjects to be covered in human rights education. Some include dignity, liberty, equal opportunities, equality of sex and the human rights of women, life in a free society, democracy, the rights of the child, elimination of racial, ethnic and religious discrimination, the right of disabled persons, sense of moral and social responsibility, self determination, decolonization, race and humanitarian law,[208] and even data analysis.[209] Teaching about different civilizations, cultures and languages are also recommended to be subjects of human rights education.[210]

In addition to appropriate knowledge and understanding, human rights education operating within a context of the affirmation of the value of human life and dignity, should involve also developing the capacity to care and be compassionate; to commit to the struggle for human rights and to understanding the role non-violent civil

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[204] Amnesty International-International Secretariat, Amnesty International, Towards a Human Rights Culture in Africa: A manual for teaching human rights', 1999, p.19

[205] Edward L. O'Brein, '*Community education for law, democracy and human rights'*, eds, George J. Andreopoulos and Richard P. Claude, '*Human rights education for the Twenty First Century'*, University of Pennsylvania Press, 1997, p.420

[206] Workshop on Asia pacific human rights education organized by the Australian human rights information centre 25 august 1996, Sidney, Australia.

[207] Para. 79 of The Vienna Declaration and Programme of Action

[208] Gudmundur Alfredsson, 'The right to human rights education', Eds, Asbjorn Eide, Caterina Krause and Allan Rosas, 'Economic, social and cultural rights-Atext book', Kluwer Academic publishers, 1995. p. 223

[209] Audrey Chapman, Herbert Spirer, and Caroline Whitbeck, '*Science, scientists, and human rights education*', eds, George J. Andreopoulos and Richard P. Claude, '*Human rights education for the Twenty First Century*', University of Pennsylvania Press, 1997, p.365

[210] Supra note 208

disobedience has played in this struggle; to exercise personal responsibility and human agency; to develop the imagination and creativity necessary to envision and create a just and caring community; to develop the critical consciousness necessary to sustain rational judgment; the skills of self-reflection and personal transformation; the courage and strength necessary to sustain the struggle.[211] The UN definition states, that "human rights education should involve more than the provision of information and should constitute a comprehensive life-long process by which people at all levels in development and in all strata of society learn respect for the dignity of others and the means and methods of ensuring that respect in all societies,"[212]

Does it mean that human rights education can touch up on other issues that are not strictly related to human rights? Some authors assert that human rights education must include a view of human rights larger than those found only in official enunciation and instruments.[213]

From the above enumerated diverse list of contents, it can be observed that the subjects or contents of human rights education could encompass more than a simple provision of information about human rights as incorporated in the international or national human rights instruments. One writer had the opinion that the listing of human rights education needs can, and must be expanded with care, the implication being that human rights education can never be a static body of given knowledge of rights enunciation but must forever remain a dynamic engagement with these knowledge. He further notes that human rights education will be future oriented as well.[214]

As the contents of human rights education are very vast and varied, it makes human rights education almost meaningless or ambitious or making it similar to peace education or global education. In an attempt to define the scope of human rights education Felissa Tibbitts mentions that human rights education first of all should always make reference to human rights instruments as its basis.[215] On the other hand, the plan of action stated that human rights education should be relevant to the daily lives of peoples where as one of the purposes of the Guideline for National Plan of Action for Human Rights Education is to 'promote a common understanding of the purposes and content of human rights education' in a particular country[216] there by diminishing the vast subject of human rights education in to a manageable size. It can also be argued alternatively that there is perhaps no limit in the number or types of subjects to be covered by human rights

[211] International Consultation on the Pedagogical Foundations of Human Rights Education, Towards A Pedagogy Of Human Rights Education, La Catalina, Costa Rica, 22-26 July, 1996, Retrived on November 22, 2011 from http://www.pdhre.org/dialogue/costarica.html

[212] General Assembly resolution 49/184 of 23 December 1994 proclaiming the Decade for Human Rights Education

[213] Upendra Baxi, '*Human rights education: the promise of the Third Millennium?*' eds, George J. Andreopoulos and Richard P. Claude, '*Human rights education for the Twenty First Century'*, University of Pennsylvania Press, 1997, p. 142-154

[214] Ibid p. 149

[215] Felisa Tibbitts, 'Emerging models for human rights education', Accessed on November 22, 2011from http://usinfo.state.gov/journals/itdhr/0302/ijde/tibbitts.htm

[216] Paragraph D of The Vienna Declaration and Programme of Action

education. But, when carrying it out in a particular community every subject of human rights education will not be the focus but those that are relevant to the problems of the community and target group.[217]

3.2. Human Rights Education and the MOJ

3.2.1. Human Rights Education Mandate of the Ministry

Every government that is party to the aforementioned human rights instruments is duty bound to deliver human rights education to the public. Ethiopia as a party to almost all of the human rights instruments[218] that obliges states to promote human rights through human rights education has the duty to provide human rights education to the public. Keeping this in mind the Ethiopian government has empowered different government institutions to deliver human rights education to the public. And the MOJ is among the institutions that are mandated to provide human rights education. Article 16 (15) of Proclamation no. 691/2010 clearly obliges the MOJ to provide legal education to the public with a view to raising public consciousness in relation to the protection of human rights. Of course, the MOJ is empowered to provide public legal education and not human rights education in the strict sense. But, the wording of the legal provision that empowers the Ministry to provide legal education clearly indicates that the public legal education should be provided for the sake of raising public consciousness in relation to the protection of human rights. Therefore, one way or another the MOJ legally obliged to provide a human rights education. The Ministry provided/s human rights education through legal education by the legal education and training department previously and by the Legal Research, Drafting and Dissemination Directorate currently. And this task is now performed by a team of public prosecutors who are assigned to involve in the provision of education and training. According to Mr. Maazahaymanot Worku[219] there are only about seven public prosecutors who are assigned in this team.[220] In addition to the provision of legal education to the public the Ministry was/is also involved in the provision of capacity building training to public prosecutors, judges, police officers and prison officers to make them efficient in the discharge of their duties.

3.2.2. Strategies for the Provision of Education

The legal provision that empowers the Ministry to provide legal education for sake of raising consciousness of the public in relation to the protection of human rights (i.e. article 15 (16) of proclamation no. 691/2010) clearly indicates how the Ministry should provide legal education saying *"through the use of various methods"*. As it is indicated earlier the various methods of human rights education includes electronic Medias like radio and television; publications such as news papers, periodicals, posters and brochures; websites;

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[217] Belete Retta , Human Rights Education Initiatives in Ethiopia: Challenges and Opportunities, Maters Thesis in the Faculty of Law Lund University, 2002, p. 22

[218] Ethiopia is party to the ICERD, CEDAW, CRC, ICCPR, CESCR and CAT. And it is not party to the ICMW

[219] Mr. Maazahaymanot Worku is a Senior Public Prosecutor working on the area of Legal/Human Rights Education and one of the trainers in the Norway human rights training, FDRE MOJ.

[220] The team that is organized by the Ministry to conduct the task of legal education is called Legal Research and Dissemination team.

workshop, seminar and other strategies. All these strategies have their own strengths and weaknesses from different angles. As regards the strategies that were and are adopted by the MOJ in delivering education to the public using radio is the only strategy. Mr. Assefa Kesito in this regard asserted that the Ministry primarily uses one radio station i.e. Radio Fana (Fana Broadcasting Corporate) for about a maximum of 25 minutes per week for a long period of time. Mr. Maazahaymanot Worku and Mr. Kiflay Mehari strengthen this idea and alleges that the Ministry is still using Radio Fana's 25 minutes air time per week as a constant strategy of delivering education and now the Ministry has started a live programme on Ethiopian Radio station up on the initiation of the radio station for about an hour per week where legal professionals from the Ministry respond to questions that are raised by the public. The professional from the Ministry have clearly explained that there are no other strategies adopted by the Ministry to provide education to the public. The Ministry doesn't have its own website, any contact with newspapers, regular periodical, approach the public through workshop and seminars, distribute brochures and doesn't even prepared a poster to teach the public and raise its awareness in relation to the protection of human rights. It does not have also a regular as well as temporary programme on television.

3.2.3. Content of the Education

The MOJ provides human rights education through legal education. The educations and trainings given by the Ministry to the public as well as professionals of the justice sector largely focus on the legal aspect rather than accommodating human rights components. Mr. Kiflay Mehari in this regard insists in his part that sometimes the topics for education and training are not totally related with human rights issues and most of the topics are indirectly related with human rights issues. For instance, legal education on the topics of wild animals' protection, utilization of cross boarder rivers and the rights and benefits of countries sharing Abay river, law of succession, pardon proclamation and amnesty, general points on tax, share companies, contracts, meaning and implementation of parole, alternative dispute resolution mechanisms and other related topics that were available on FBC[221] does not have direct relationship with human rights and the possibility of raising public consciousness in relation to human rights using these topics of education is minimal.

The same is true in the case of training to judges, public prosecutors, police and other staffs of the Ministry. The Ministry provided trainings to different professionals on topics like government policies and strategies (three rounds), preparation and follow up of plans and reports, upholding of data (files) and service provision (two rounds), BSC trainings (three rounds) and other related topics.[222] These topics of trainings itself may help the trainees to actively and efficiently perform their tasks. However, the topics are not related with human rights issues and do not build their capacity in the sense protecting the human rights of citizens.

[221] Annual report of the budget year of 2003 E.C. of the Legal Research, Drafting and Dissemination Directorate of MOJ, pp. 16-19

[222] Ibid, pp. 6-10

The education provided by the Ministry through radio and the training that is provided for judges, public prosecutors, police officers and others includes commercial law, law of contract, penal law, family law, law of business organizations etc. The human rights element could only be investigating the legal right of women in the family law in relation to the human rights standards as provided in the Ethiopian Constitution.[223] The issue of harmful traditional practices like FGM, child marriage, and abduction are discussed while going through the vast topic of criminal law. In the case of the police and prosecutors human rights issues are dealt with while dealing with some provisions of Criminal Procedure law focusing on the powers and responsibilities of the police and prosecutors. Generally, legal awareness overshadows the human right element.[224] However, this does not mean that the Ministry is not providing human rights education to the public and training for judges, prosecutors and police officers. The Ministry provides human rights education through radio and prepares trainings on general human rights issues.

Topics like the rights and duties of plaintiffs and defendants before court of law, criminal liabilities in relation to defamation and cultural practices, human trafficking, the role of public prosecutors, elements of crime, legal protection of vulnerable groups, the right to bail, the right to justice, the right to appeal, the rights of arrested, accused and sentenced and others for legal education;[225] and topics like human trafficking (four rounds), problems and solutions in the relationship between public prosecutors and police, problems and solutions in relation to quality of preparation of charges and litigation skills (three rounds), legislative drafting, money laundering, women and children rights and others for training[226] are directly related with human rights issues and can for sure upgrade the knowledge of professionals in the protection of human rights. But, inclusion of human rights issues is not seriously taken in the provision of human rights education. The Norway Human rights training program which was launched based on the cooperation of the FDRE MOJ and the government of Norway was successful content wise and fully accommodated issues of human rights.

3.2.4. Methodology for the Provision of Education

The major issue concerning the methodology of human rights education particularly relates to how the education or training activities in particular should be conducted. For a human rights education to be effective and fruitful the way educations are delivered to the public should as much as possible be attractive and participatory of the public. In this regard the Ministry's performance can be said very poor. The business process re-engineering document of legal research, drafting and dissemination of the MOJ has also indicated that the educations given by the Ministry through radio are not attractive and participatory of the public. Professionals in the Ministry simply prepare a document on a title and submit it to the Fana Broadcasting Corporate (FBC) or professionals may provide interview to journalists of FBC on a given issue and have no

[223] Supra note 217, p. 41
[224] Ibid
[225] Supra note 221
[226] Ibid, pp. 6-10

role after that. The radio stations will then take full responsibility to decide on the way of delivery of the education either to simply read it to the public or devise any other mechanism. Reading education materials for the public using radio is the usual method of delivery of human rights education.[227] The public is simply a recipient of the educations given by radio stations. And commencement of live programmes by the Ministry since this month (December, 2011) through Ethiopian Radio is a good start to assure a methodology of active participation the provision of human rights education.

The same is true as regards attractiveness and inclusion of participatory methodology in the provision of trainings to judges, public prosecutors and police officers. The usual way of methodology of trainings is a one way direction from the trainer to the trainees. An expert on specific legal and human rights issue simply presents what he/she has in his/her research paper to the trainees and may depending up on situations answer the question that are raised by trainees. The Ministry has never used a manual containing participatory methodologies for human rights educations and trainings.[228] Now days there are very few developments in adopting a participatory methodology of delivering trainings. The training which was delivered under the Norway Human rights training program can be cited as an example in terms of attractiveness of provision of trainings as well as adoption of effective participatory methodology.

3.2.5. Need and Impact Assessment of Educations

Knowing the specific subject areas on which what the interest of the public is always vital for successful delivery of human rights education. Conducting need assessment research in this respect will help to know the interest of the public. The MOJ in this respect has no system to conduct need assessment and topics for legal education are simply selected by professionals in the Ministry thinking that it would be suitable for the public to have education. According to Mr. Maazahaymanot Worku and Mr. Kiflay Mehari the Ministry does not have a coordinated and regular means to collect need assessment of the public. Mr. Eyuel Seife on the other hand alleges that even though there is no need assessment that is undertaken by the Ministry FBC collect listeners comment through telephone, SMS, post and other ways. And these comments will then be used as a need assessment for future educations.

There is also no need assessment on all the trainings that are provided to judges, public prosecutors and police officers and other staffs of the Ministry. The topic of trainings is simply selected by the professionals in the directorate.[229]

As regards impact assessment there is almost a consensus that measuring impact of human rights education is not an easy task. It is rather a challenging task because the complexity of issues makes it difficult to determine

[227] Mr. Eyuel Seife, Journalist and Producer in FBC Amharic Programme
[228] Supra note 223, p. 45
[229] Mr. Maazahaymanot Worku and Mr. Kiflay Mehari, Senior Public prosecutor in the MOJ working on the provision of Legal Education.

the cause and effect relationship between a particular project and its outcome. The problem is more difficult when attempting to influence general attitudes and values in a society as human rights education is striving to bring about.[230] Like that of need assessment the MOJ has no system to collect impact assessment from the public and trainees and it does not have a system to measure the success and failure of its human rights education on the basis of changes on the public and trainees after education and training.[231] The only means of collecting impact assessment is the feed backs from radio listeners to FBC through telephone, SMS, post and other ways after the transmission of radio programmes.[232] But, it not considered as a real impact assessment, if we think consider all the measurements of standard impact assessment strictly.

Although provision of numerous human rights education and training can be considered as successes, most organizations do not have systematic data as to whether what they have done actually helped in changing the attitude of the public.[233] The MOJ also evaluates the impact of its human rights education and training quantitatively and not qualitatively i.e. in terms of the number of trainees or the number of radio programmes it has put on the air with cooperation of FBC, and based on the impression of trainees at the end of a particular training workshop.

The MOJ has the mandate of providing legal education to the public with a view to raising public consciousness in relation to protection of human right. And its main target is the public at large. However, the MOJ has no system to contact with the public except simple delivery of education to the public through FBC. And the fact that there is no system of connection between the public and the Ministry makes it hard to simply access and collect the needs and impact assessments from the public. The radio programme on FBC is a one way direction activity from the MOJ to the public and doesn't connect the Ministry and the public in a meaningful manner.

3.2.6. Interaction and Cooperation between MOJ and other Institutes with Similar Task

In addition to the MOJ, there are many government and non-government organs that are involved in the activity of legal and human rights education. These includes the Ethiopian Human Rights Commission,[234] the Institution of Ombudsman,[235] the Federal Supreme Court of Ethiopia,[236] the Ministry of Education,[237] the

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[230] Jennifer Chapman, 'Monitoring and Evaluating Advocacy', Eds, Angella Milligan, 'Advocacy and citizen participation, International institute for environment and development.' 2002. P.48-49

[231] Supra note 229

[232] Supra note 227

[233] Supra note 228, p. 51

[234] Article 6 (3) of Proclamation no. 210/2000

[235] The establishment proclamation (proclamation no. 211/2000) of the Institution of Ombudsman does not consider human rights education as a mandate of the institution. However, article 3 (iv) (g) of the Paris Principles Relating to the Status of National Institutions consider human rights education as a task of institutes like the institution of Ombudsman. Even though the Institution of Ombudsman is not mandated to provide human rights education, it has considered it as its mandate and provides human rights education through different methods.

Justice Sector Personnel Training Center,[238] the Justice and Legal System Research Institute[239] and others are mentioned from government organs; and the Ethiopian Women Lawyers Association (EWLA), Action Professionals Association for the People (APAP), the African Child Policy Forum Children's Legal Protection Centre and others are mentioned from non-governmental organizations who are involved in the provision of legal/human rights education. Line Ministries like the Ministry of Health (MOH) and the Ministry of Agriculture (MOA) also involve in delivering educations related with the right to health and the right to food in some instances.

All these institutions have their own resource, budget, man power and plan to provide legal as well as human rights education. And these institutions were and are independently providing legal and human rights education and training to the public and concerned trainees through different methods in a disintegrated manner. And the fact that there is no coordination among all these organs for the sake of provision of legal and human rights education pushes them to waste their time, energy and above all their budget. It will also expose the public and trainees for redundancy of education and training.

The MOJ in this respect is legally mandated '*to cooperate with the appropriate bodies in relation to legal education and training'*. However, the Ministry has no cooperation with all the above mentioned institutes in providing education and training except assisting the Justice Sector Personnel Training Center in providing professionals to train on specific topics.[240] And apart from this it simply provides education and training by itself to accomplish its annual plans without cooperation with others. This indicates that the Ministry does not consider the cooperation and assistance part of the obligation seriously in relation to the education and training.

3.2.7. Legal/Human Rights Education and the Concept of Ignorance of Law

Under the Ethiopian legal system citizens cannot defend their mistakes, wrongful acts and omissions on the basis of their lack of knowledge or unawareness of laws. Article 81 (1) of the Criminal Code and article 2035 (2) of the Civil Code of Ethiopia similarly indicates that ignorance or mistake of law is no defense. As a result of this once laws are enacted by government, it is presumed that citizens are aware of and know it. Whether citizens know specifics of laws or not they are abide by it in their day to day activities. And it is obvious that all citizens will not have the same understanding and awareness of all laws. The MOJ itself uses the argument

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[236] The Federal Courts Proclamation No. 25/1996 also does not empower the Federal Supreme Court to provide legal and human rights education. However, it considers it as its mandate and provides legal education to the public through different methods including a weekly programme in Ethiopian Television.

[237] Article 28 of Proclamation No. 691/2010 empowers it to formulate an appropriate curriculum in the country's educational system. It has signed a memorandum of understanding with the Ethiopian Human Rights Commission to accommodate human rights components and issues in the educational curriculum.

[238] Article 6 (1) and (2) of Proclamation 364/2003 empowers the Justice Sector Personnel Training Center to provide training in relation to the justice sector to members of the justice sector.

[239] Article 5 (7) of Regulation no. 22/1997 also empowers the Justice and Legal System Research Institute to help and involve in providing legal educations and trainings.

[240] Supra note 231

of “ignorance or mistake of law is no defense” in cases where citizens claim that they don’t know or misunderstand illegality of their acts and omissions in criminal cases. However, together with existence of this principle, governments are highly responsible in equipping citizens about knowledge of laws through various ways. The MOJ is responsible in this regard to build up the legal knowledge of citizens. That is why article 16 (15) of Proclamation no. 691/2010 empowers the Ministry to provide legal education with a view to raising public consciousness in relation to protection of human rights.

3.2.8. Achievements, Opportunities and Problems

Achievements

Having seen all the experiences, impacts and reports of the MOJ as regards human rights education we can undeniably say that the Ministry does not have a success story as regards human rights education to the public. However, we can pick the Norway human rights training program as an achievement for the Ministry. The Norway human rights education program is a human rights training project, which is the result of a human rights project agreement signed between the Royal Norwegian Government and Ethiopian Government.[241] The Norway government then trained twenty Ethiopian Lawyers in OSLO for about 25 days. And then the lawyers were at Mekelle University to have a two weeks seminar to prepare training manuals.[242]

The Ministry then appointed a steering committee and coordinator of the programme is assigned to efficiently implement the project. The project’s main target was building the capacity of professionals of the justice sector i.e. to train judges, public prosecutors, police and prison officers of the federal as well as regional governments on the topic called “Human Rights in the Ethiopian Justice Administration”. The project had a planned to train 4000 judges, public prosecutors, police and prison officers.[243] The projected has now finished its task. Therefore, it is critical to evaluate the effectiveness of the training in light of the quality of the trainers, composition of trainees, quality and usefulness of the training manuals, accommodation of effective methods of delivery, content of the training and plan of the project.

The trainers were twenty in number. And many of the trainers were senior lawyers with masters and bachelor degrees and a maximum of one month training in Oslo Norway. They have had also enormous experience in

[241] The agreement was signed between the two governments on 15th of June, 2003. The MOJ signed the agreement representing the Ethiopian government took the responsibility for the implementation of the project. And this Agreement emanates from the General Agreement concluded between the two governments regarding cooperation for the promotion of economic and social development on 28th April, 1995. In anticipation of a human rights training program, the Royal Norwegian Government agreed on 26-06-2002, a year before the human rights training Agreement, to support training of trainers.

[242] Mr. Maazahaymanot Worku and Ms. Hibret Abahoy, Senior Public Prosecutors in the MOJ and trainers in the Norway human rights training. Message of the former Minister of the MOJ during the commencement of the project Mr. Harka Haroye on the training manual prepared for the delivery of the training.

[243] FDRE MOJ and the Government of Norway Cooperation, 2006. Trainee’s Manual on the topic Human Rights in the Ethiopian Justice Administration (በኢ.ፌ.ዲ.ሪ. የፍትህ ሚኒስቴርና በኖርዌይ መንግስት ትብብር የተዘጋጀ፣ ሰብአዊ መብቶች በኢትዮጵያ የፍትህ አስተዳደር የሠልጣኞች መመሪያ)

relation to topic of the training. Therefore, the trainers were qualified with their educational background, experience and area of the training.

As regards trainees, since the training was intended to be delivered to professionals who are working within the justice sector, it had involved judges, public prosecutors, police and prison officers as well as few members of the defense force, women lawyers association and lawyers association. The composition of trainees was really good in addressing all members of participants in the justice sector.

The training manuals on the other side were two in number. Both of them have a topic called "Human Rights in the Ethiopian Justice Administration". One of the manual explain specific human rights issues in relation the justice administration and the other one deals about questions and activities to facilitate discussion among the trainees. The first manual is classified into five major parts each with its own classification and specifically touches upon human rights issues in general with its meaning, characteristics, historical background and development, classification, necessity, duties in relation to human rights and limitations and derogations; human rights in the Ethiopian legal system in relation with international human rights treaties, the judiciary and the constitution; human rights in the pre trail stage in relation with police investigation, arrest of suspects, seizure, search, the right to bail, remand and the role of public prosecutors; human rights during trial process in relation with the rights of accused; and human rights of women, children, persons with disability and elderly. The second manual is prepared in a way that is compatible with the first manual holding 69 activities (cases) with several questions that were designed to facilitate discussion among trainees and better explain the issues that are raised under the first manual. And these training manuals were distributed to all the trainees together with Amharic translation of all international human rights instruments. Therefore, we can fairly say that the manuals have quality and useful to trainees both to simplify the training and apply them in their day to day activities.

The methods that were adopted in the training encompassed several components. These includes accessibility of the training to all members of the justice administration in Ethiopia, number of trainees in one room, duration of one training and involvement and participation of trainees the training. To start with accessibility the training was delivered to the members of the justice sector in many parts of the country including Addis Ababa, Oromia, Amhara, and Southern Regional States and as much as possible train very many judges, public prosecutors, police and prison officers as well as others who were working in relation to the justice sector.[244] The number of trainees in one room doesn't exceed 50; duration of trainings was to the maximum of 10 days and trainees were active participants in each and every portion of the training discussing on cases and questions of the second manual.[245] Thus, the method of delivery of training can be taken as effective. As

[244] Supra note 242
[245] Ibid

regards content of the training, it was fully of human rights issues from general to specific and equipped the trainees with basic knowledge of human rights.

To compare the plan of the project with its implementation, the project was launched for a period of four consecutive years and its plan to provide human rights training to 4000 judges, public prosecutors, police and prison officers. However at the end of the project it is indicated that 4495 judges, public prosecutors, police and prison officers as well as others are trained. This shows that the original plan of the project is achieved and there is an increment of 11.2375% in addition to what is intended in the plan. Generally, in addition to what has been said earlier as the writer of this paper is among the trainees of the project, I can also testify that the Norway human rights training program is an achievement for the MOJ in relation to human rights training in terms its content, method of deliver, training manual, quantity of trainees, preparation and coordination for the training as well as its impact on the trainees. The feedback of trainees after training and an in-depth research by two professional of the Ministry after the winding up of the project also shows that there are some of changes on professionals of the justice sector.[246]

Opportunities

There several opportunities for the MOJ that create favorable conditions for the provision of a successful human rights education and training to the public in general and professionals in particular. This includes the very nature of the mandate of the Ministry itself. That is the Ministry justice has more than 15 core mandates with its subdivisions. And it has working contacts with federal courts, police, prison, different Ministries and other organs of government, and nongovernmental organs, sub regional, regional and international organizations as well as the public at large. These contacts can be used as a means to access and invite these different organs to involve through different methods in the provision of human rights education and training. It can also simply access the public to provide a face to face human rights education through its branch justice offices in Addis Ababa and Dire Dawa in addition the radio programme, since the justice offices are organized in a manner to simply access the public. Court gatherings and other gatherings within the society can also be good opportunities to provide a human rights education to the public. Adopting an experience of public participation in the process of drafting laws will also facilitate an opportunity to access and teach the public from the initiation, drafting and promulgation of law with its human rights implications.

Problems

The Ministry's mandate of raising public consciousness in relation to protection of human rights through providing legal education is surrounded by many problems. The first problem starts from the relationship between the Ministry and the public.[247] That is since the Ministry is responsible to provide education to the

[246] Ibid
[247] MOJ, The Business Process Re-engineering (BPR) document on Legal Research, Drafting and Dissemination, p. 21

public; it is expected to have a system of connection between the two to facilitate a successful and continuous human rights education to the public. Absence of contact be it systematic or unsystematic between the Ministry and the public in relation to human rights education until now has a direct influence in the collection and evaluation of need and impact assessment of educations. Absence contact has also contributed to failure of the Ministry in providing human rights education to the public through face to face manner.

The second problem relies on the fact that the educations and trainings that are provided by the Ministry until now are not need based.[248] And providing educations and trainings for the sake of implementation of annual plans numerically will not contribute anything to the public and doesn't accomplish successful raising of public awareness in relation to protection of human rights.

The third problem relates with the issue working manual.[249] The Ministry has no manual on legal/human rights education and training that guides and determines the strategies, methodologies, contents, materials and other relevant criterion of education that specifically demarcate the role of professionals who are working in the Ministry and contribute for continuous, standard and effective education.

The fourth problem is related with the number and quality of public prosecutors who are working on within the legal research and dissemination team.[250] The information from the Human Resource Directorate of the MOJ indicates that there are currently seven public prosecutors who are involved in the provision of legal education. According to Mr. Maazahaymanot and Mr. Kiflay Mehari the number of professionals is limited to provide education and training through different methods. And professionals in the team do not have pedagogical and journalist aspect of knowledge to effectively teach the public by their own face to face and handle media where they are invited.

Violation of the right to participation of the public in the delivery of human rights education can also be raised as a major problem. All the issues related with weak participation of the public, absence of the need and impact assessments can at the same time prove that there is a violation of the right to participation of the public in the process and delivery of human rights education by the Ministry.

In addition to these, the problem of budget to provide education through different strategies like face to face, website, brochures, television and others is another problem that hinders the Ministry to perform more on the provision of education the public. Existence of these problems in the MOJ directly affects its service on the area and all these problems together with other minor problems negatively influence the Ministry's provision of legal/human rights education.

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[248] Supra note 40
[249] Ibid
[250] Ibid

CHAPTER FOUR

SYNTHESIS OF CONTEMPORARY PROBLEMS ASSOCIATED WITH LEGISLATIVE DRAFTING AND HUMAN RIGHTS EDUCATION MANDATES OF MOJ

4.1. Synopsis of the Problems

Although the MOJ has a directorate that is empowered to conduct the task of legislative drafting and legal education, the above presented and analyzed data reveals that there are diverse acts which are generally violating the rights of citizens. It is when citizens are informed and participated in the process of drafting of laws that laws are democratic and free from imposition so that citizen can easily understood and implement laws. On the hand, it is when citizens are aware of their rights and duties that they can actively participate in economic, social, cultural, political and developmental activities as well as in the protection of human rights in a meaningful manner.

However, despite the right to information and the right to participation of citizens are guaranteed in many of international, regional and national instruments, these essential rights are not respected by the MOJ in the discharge its legislative drafting mandate. In addition to this, the legal education mandate of the Ministry is not also effective for many reasons and citizens are not getting the desired service from the Ministry in respect of legal education. This part of the paper assesses all the problems being encountered in the course of drafting legislations and delivering human rights education by the Ministry with the possible solutions that are derived from other countries and the writer of this paper think to be appropriate in the present status quo.

4.1.1. Problems in relation with Legislative Drafting

a. Weak Power of the MOJ

The MOJ has weak power to check and oversee all the laws that are initiated and drafted by executive and other organs of the government. Article 16 (3) of proclamation no. 691/2010 clearly indicates that the power and duty of the MOJ in relation to legislative drafting is to *"assist the preparation of draft laws when so requested by federal organs and regional states"*. This provision does not empower the Ministry to play a vetting role and the wording of the provision that says *"…when so requested…"* diminishes the Ministry's legislative drafting mandate to control and check constitutionality, human rights friendliness and other relevant legislative drafting criteria of all the laws that are initiated and drafted by other government organs. It is because the Ministry does not have any power to request over checking of laws that are drafted by other organs unless and otherwise the Ministry is requested to assist in drafting or commenting laws. The Ministry has also no power to stop the process of ratification and correct the errors in cases where there are laws that are contrary to the constitution, violates human rights and poorly drafted simply because of its weak power to influence other government organs.

The MOJ of Finland, Germany, Netherlands, Afghanistan and the Gambia has strong power in checking and monitoring the quality of legislations that are drafted by other government organs.

In Finland there is a concept called legislative inspection. And the proposals for acts and decrees, drafted in the Ministries, go through a legislative inspection in the Unit of Legislative Inspection at the MOJ, before they are submitted forward for decision-making.[251] In the inspection, it is checked that the technical structure of the proposal is correct, the content of the proposal is consistent, and the proposal is in accordance with the general legal principles and other provisions on the same or similar matters. Special attention is also paid to the linguistic accuracy, comprehensibility, preciseness and consistency of the proposal and it is ensured that the content of the Finnish and the Swedish text is identical.[252]

In the Federal Republic of Germany, as in every parliamentary democracy, responsibility for passing legislation lies with the legislative bodies, namely the German Bundestag and the Bundesrat. The Federal MOJ participates in this legislative process, primarily in the capacity of drawing up new legislation as well as preparing legislative amendments or the repeal of laws.[253] The Federal MOJ also has the task of performing the scrutiny of legislation drafted by all other federal Ministries, as well as of international agreements, in terms of their compatibility with constitutional law, international law, European law and existing federal law. The scrutiny of draft legislation also extends to an examination of the drafting methodology and to ensuring that a uniform style and unambiguous legal language has been adopted.[254]

In Netherlands; legal certainty, legal protection and legal equality are the central principles applied by the Ministry of Security and Justice in discharging its duties. Legislation is one of the instruments used by the Ministry to give effect to these principles.[255] The Ministry's responsibility for legislation takes two forms: it is responsible for the quality of its own legislation and regulations and it has a special role in monitoring the quality of legislation and regulations introduced by central government as a whole. This demonstrates that the Ministry feels responsible for legislation and for attainment of the intended legal consequences.

In Afghanistan, the MOJ has traditionally played a central role in the passage of laws in Afghanistan. The MOJ is tasked in drafting and examining all of Afghanistan’s legislative documents; Providing advice to the

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[251] Official Website of The MOJ of Finland accessed on 12/22/2011 http://www.om.fi/en/Etusivu/Parempisaantely/LawdraftinginFinland/Lawdraftingprocess

[252] Ibid

[253] Official Website of the Federal MOJ of Germany, accessed on 12/22/2011 https://www.bmj.de/EN/Home/_doc/field_of_legislation_doc.html

[254] Ibid

[255] Official Website of the Ministry of Security and Justice of the Netherlands, accessed on 12/22/2011 http://english.justitie.nl/currenttopics/pressreleases/archives2000/-Quality-control-a-major-responsibility-of-Justice-Ministry.aspx

government as to the conformity of Afghanistan's laws with international agreements to which the country is (or may become) a party and others.[256]

The same is true in the MOJ of the Gambia and it is clearly mandated for the preparation and vetting of all government Bills and the amendment of Bills as well as subsidiary legislations. All the laws of the Gambia pass through the MOJ and the Cabinet will not accept legislations for discussion unless it is approved by the MOJ.[257]

The experience of these countries in the area of legislative drafting shows that vetting, monitoring and scrutinizing of all draft legislations by the MOJ is very essential to confirm compatibility of draft legislations with constitutions, international treaties and other laws; to confirm human rights friendliness of draft legislations; and to assure the quality of draft legislations in many respects. The role of the MOJ in the area of legislative drafting in these countries is very decisive and the MOJ is very influential in shaping and correcting the laws that are drafted by other organs of government. Compared with the MOJ of these and other countries, the FDRE MOJ has a very weak power in monitoring and scrutinizing all laws of Ethiopia. The law does not empower it to do so. Rather it clearly diminishes the power of the Ministry. The Ministry does not also organize the directorate that is specifically assigned for legislative drafting tasks in a position to handle such kind of tasks with qualified professionals. Generally, the FDRE MOJ has no legal mandate to oversee, scrutinize and monitor constitutionality, human rights friendliness and quality of legislations that are drafted by other organs of the government.

b. Absence of Binding Working Manual

The MOJ does not have a binding legislative drafting manual that is applicable in the process of drafting legislations. Professionals in the Ministry draft laws without common direction and guidance of legislative drafting manual. They can simply adopt and follow any of the styles that they think best in drafting legislations. And there is no mechanism in the MOJ that guarantee uniformity in drafting style, consistency of legislations, usage of similar terminologies for similar issues and others. Legislative drafting manual is a guideline for the preparation of quality legislative drafts and its existence is very essential to the quality of legislation drafts.

Many institutions with the mandate of legislative drafting have a manual that guides the preparation and strives for the quality as well as consistency of legislative drafts. The MOJ of Finland and many of states in

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[256] Official Website of the MOJ of Afghanistan, accessed on 12/22/2011 http://www.MOJ.gov.af/en/page/1670

[257] Official Website of the MOJ of the Gambia, accessed on 12/22/2011 http://www.MOJ.gov.gm/index.php?option=com_content&view=article&id=49&Itemid=74

United States of America have their own binding legislative drafting manual the guides and shapes the drafting process.

In Finland, the MOJ has a binding document of drafting instruction that specifically indicates how legislations should be drafted. Most of this document is devoted to a checklist of matters to cover in drafting instructions and a discussion of particular points in the checklist. The best way for the instructions to make the process of drafting a Bill as easy as possible for you and the drafters is for the instructions to address the issues raised in the checklist and related discussion.[258] The document has fifteen Checklist items. Legislative drafters in the MOJ of Finland are duty bound to cross check fulfillment of these criteria in the process of drafting legislation.

In USA the Office of Legislative Counsel has a manual on legislative drafting style It is hoped that the House Legislative Counsel's Manual on Drafting Style will assist the Members, committees, and staff of the House in carrying out their duties, while at the same time furthering public knowledge about the crafting of legislation.[259] The manual has three parts with detail explanation. And every attorney who are assigned to draft legislation are supposed to refer this manual and to check whether draft legislations are in agreement with the manual's instruction.

In Massachusetts one of the states of the United States of America the House and Senate Counsel have prepared a legislative research and drafting manual to help legislative lawyers and other staff who are drafting or reviewing bills for the Massachusetts General Court. Its purpose is to promote uniformity in drafting style, and to make the resulting statutes clear, simple and easy to understand and use. This manual is binding and not a substitute for advice and drafting assistance from the House and Senate Counsel.[260] It has about eight chapters dealing with several issues ranging from legislative research to grammatical issues of legislative drafts.

In Arizona one of the states of the United States of America the legislative council had enacted the Arizona legislative bill drafting manual of 2003. The manual is of form and style to be used in the preparation of bills and other legislative proposals. It is based on generally accepted drafting principles and conventions.[261] It has six chapters with detailed instructions for legislative drafters.

All these experiences of the MOJ of Finland, USA and its states shows that having a legislative drafting manual is very essential in ensuring the consistency and quality of legislations drafts. And as compared to the experience of these countries and states of the USA absence of binding legislative drafting manual can be considered as a failure for the Ethiopian MOJ.

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[258] Drafting instructions of the MOJ of Finland pp. 1-2

[259] Page iv of HOUSE LEGISLATIVE COUNSEL'S MANUAL ON DRAFTING STYLE NOVEMBER 1995 PREPARED BY THE OFFICE OF THE LEGISLATIVE COUNSEL U.S. HOUSE OF REPRESENTATIVES

[260] Counsel to the Senate and Counsel to the House of Representatives of the state of MASSACHUSETTS, Legislative Research and Drafting Manual, page 1, 2010 5th edition

[261] THE ARIZONA LEGISLATIVE COUNCIL, THE ARIZONA LEGISLATIVE BILL DRAFTING MANUAL

c. Failure to Participate the Public in the Lawmaking Process

The right to participation of the public in government's decision making process is guaranteed under many international, regional and national instruments and states at every level are obliged to invite the public to participate in their decision making. Participation of the public becomes very essential in the case of legislative drafting for the sake of equipping the public about acts of states, gathering views of the public and paving the road for implementation of laws. The FDRE MOJ in this respect has never invited the public to participate in its legislative drafting in almost all the laws that are drafted by the Ministry and the public has no say on the laws that are drafted by the Ministry.

In Canada, government policy becomes law via a three step process the cabinet stage, the parliamentary stage and the entering into force stage. The decision to address a matter through a bill or a regulation is made by the cabinet at the first stage, on the basis of information developed by the relevant minister's departmental officials. To gather this information, the department should, amongst other things engage in consultation with the general public, those who have an interest on the matter, including other departments that may be affected by the proposal solution.[262] The Guidelines to making Federal Acts and Regulations: Cabinet Directive on Lawmaking also clearly indicates that the Minster of Justice or Attorney General is expected to use the results of public participation processes to make decisions on policy and legislative directions affecting the justice sector. In addition to this deputy minister of justice is expected to make sure that public participation is an integral part of the design, delivery, and evaluation of public policies, programmes and services.[263] The Department of Justice is committed to encouraging the participation of all Canadians and justice-sector stakeholders in the development of law, policy and programs, as well as in identifying emerging trends in law and policy. To this end, the Department uses many different types of public participation activities, ensuring that a broad cross-section of views are taken into consideration when developing law and policy. In the past, the results of public participation activities have influenced the development of policy on youth justice, crime prevention and the rights of victims of crime, as well as law reform and policy.[264]

In United States of America (USA), it is vital to encourage comments from the public on legislation originating in congress or rules being promulgated by the federal agencies, an even more powerful form of public participation is guaranteeing citizens the right to demand that congress consider and take up certain issues for legislation.[265] The general public is involved in the lawmaking and rulemaking process through different methods. The level of participation depends upon the type of instrument, with more extensive

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[262] Supra note 151, p. 20
[263] Ibid, p. 22
[264] Official Website of the Department of Justice of Canada accessed on 12/28/2011 http://www.justice.gc.ca/eng/cons/index.html
[265] Supra note, p. 45

opportunities for involvement in the rulemaking process than in public hearings and committee meetings of the chambers of congress conducted during the passage of federal bills.[266]

In Finland, openness is a central goal in Finnish legislative drafting. Consultation is an established part of the MOJ's legislative drafting process. The goal is to promote the possibilities of the most important stakeholders to take part in the preparatory drafting or to hear their views at the beginning of the drafting through requests for comments, hearings or discussion meetings. Stakeholders mean in this context experts, organizations, businesses and also the citizens.[267] A well planned and implemented consultation process promotes effective drafting and decision-making. It also makes it easier to enforce the regulations, because the stakeholders and citizens have been informed about the regulations and their objectives during the consultation. The stakeholders and citizens are heard also in the Parliament in the Committee debate.[268] In consultation with the stakeholders both traditional hearing methods, such as written comments, and modern information and communication technology can be used. The choice of the method depends on the situation and the target group. It is recommended that several different methods for consultation are used during the drafting process to ensure as extensive consultation as possible.[269] There is also a guideline on Consultation in legislative drafting in Finland that specifically deals with details of consultation in relation to legislative drafting. The extensive participation of the stakeholders in the drafting process is promoted by applying different methods for consultation variedly. Methods such as setting up preparatory bodies consisting of several members, written statements, discussion meetings, negotiations, unofficial communication, surveys and on-line discussions are used.[270]

These countries have a legal framework as well as practical experience as regards public participation in relation to the process of legislative drafting both through their MOJ and their legislator. Whereas, the MOJ of Ethiopia is not legally mandated to invite the public to participate in the process of legislative drafting and the Ministry does not also have an experience that invites the public to participate in its legislative drafting process. This by large violates the right of the public to participate in the legislative drafting of the Ministry.

d. Failure to Inform the Public about Draft Legislations

As we have seen earlier on the different levels of public participation access to or the right to information is the first, basic and important component of the right to public participation. And a government is supposed to inform the public about its plans and the types of documents it wants to adopt at the beginning of the process; it also should highlights the right of the public to have access to all information (e.g., drafts, comments and reasoning) throughout the process. Publication and openness of draft laws prior to consultation by concerned

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[266] Ibid, p. 56
[267] Supra note, 252
[268] Ibid
[269] Ibid
[270] Article 2.4 of the Finnish guideline on Consultation in Legislative Drafting, March 2010

government organs is a vital activity to practically guarantee the rights of citizens in terms of the right to information. And a responsible government should not only expect information requests from citizens about draft laws rather it should in advance publish draft laws and make accessible it to inform citizens. The FDRE MOJ in this respect doesn't have any system to inform citizens about the laws that are under the process of draft and it has never formally informed the public about legislations under draft for the sake of informing the public in its history.

In many of civilized nations before the public is invited to take part and contribute its view on draft legislations, all the laws that are drafted by government will be informed and made accessible to the public to have awareness about draft laws. We can raise the experience of Finland, South Africa, Canada and others in this respect.

In Finland, the MOJ as well as other concerned government organs are legally mandated to Inform the public about draft legislations with its progress through different methods including publishing draft legislations through gazette, releasing draft legislations through web pages, releasing information about draft laws through mass media.[271] In South Africa before an ordinary bill is introduced to the National Assembly (NA) or the National Council of Provinces (NCOP) prior notice of the bill must be published in the government Gazette including an explanatory summary or a draft version of the bill which must, in most cases, include an invitation for public comment.[272] In Canada, information is also provided by publication of relevant legislative documents and proceedings in a variety of media. For example, in Manitoba all the legislative proceedings are made available to the public via *Hansard,* in verbatim transcript of House debates.[273]

The experience of these countries indicates that the rights t information is crucial right of citizens and its significance is immense in the case of legislative drafting. Both the legal framework as well as the practice is in line with the respect of this right in these countries. However, the Ethiopian MOJ doesn't have such kind of experience in its legislative drafting and violates the right to information of citizens in its day to day activity of legislative drafting as compared to the experience of these counties.

e. Failure to Domesticate International and Regional Human Rights Treaties

As it is explained and analyzed earlier the interplay between national and international human rights treaties has its own problem in Ethiopia due to the fact that the domestic legal system doesn't provide a conducive legislative, judicial and administrative framework for the effective implementation of international and regional human right conventions. And absence of specific and detailed laws through Federal Negarit Gazette that incorporates Amharic version of all the treaties pursuant to pursuant to article 2 (4) of proclamation no. 3/1995 has its own restriction to translate all the rights that are guaranteed under the treaties into reality for

[271] Supra note 269
[272] Supra note 263, p. 10
[273] Ibid p. 24

domestic beneficiaries. However, as a result of a reason that is not clearly identified all the international and regional human rights treaties that are signed and ratified by the Ethiopian government are not still incorporated as Ethiopian law pursuant to pursuant to article 2 (4) of proclamation no. 3/1995. The judiciary and executive defend their failure to apply and use international and regional human rights treaties on the basis of absence of proclamations holding the Amharic version of the treaties. And this problem of absence of domestication of international and regional human rights treaties leads us to raise the question of "which government organ is supposed to take this responsibility"?

Close reading of article 15 (4) of proclamation no. 691/2010 indicates that the duty to domesticate international and regional treaties seems the duty of MOFA. But, MOFA does not still domesticate international and regional human rights treaties. Legally speaking the FDRE MOJ does not have any legal duty to take all the necessary steps to domesticate international and regional human rights instruments. The writer of this paper as well as other professionals in the FDRE MOJ in this regard claims that the duty of nationalizing international and regional human rights treaties should be assigned to the MOJ. It is because the issue of human rights is highly related with the tasks and vision MOJ; and the fact that the MOJ has a mandate in relation to legislative drafting makes it more comfortable to simply take all the necessary measure for the domestication of human rights treaties and follow up their implementation. And there is no other government organ better than the MOJ that can simply discharge domestication of human rights treaties.

The experience of other countries also shows that the task of nationalizing international and regional human rights treaties is undertaken by MOJ.

For instance, Afghanistan ratified most of the core international human rights treaties and ratification of these human rights treaties obliges Afghanistan to incorporate them into the domestic laws and enforce them.[274] The Afghan government established the Human Rights Support Unit (HRSU) within the MOJ to assist the executive branch to fulfill the State obligations to respect, promote and protect fundamental human rights and integrate human rights principles and standards into its legislation, policy, and programs. The HRSU will assist the Government of Afghanistan to meet its treaty obligations and improve human rights in the country.[275]

New Zealand is a party to seven core international human rights treaties of the United Nations. By signing up to these instruments, New Zealand has assumed obligations under international law to respect, protect and fulfill the human rights of everyone in New Zealand. New Zealand has undertaken to put into place domestic measures and legislation compatible with its obligations under the treaties, and has agreed to submit periodic reports on the measures taken to give effect to its treaty obligations.[276] International treaties do not

[274] Supra note 256
[275] Ibid
[276] Official Website of the MOJ of New Zealand, accessed on 12/22/2011

automatically become part of the law of New Zealand simply by the process of ratification, accession or acceptance of a treaty. For an international treaty to have domestic effect either its provisions must have already been reflected in New Zealand's existing law or new legislation must be enacted.[277] In doing so, the MOJ provides legal and policy advice on domestic human rights matters and the implementation of international human rights obligations, including preparing the periodic reports under various international human rights treaties. The Ministry advises the Attorney-General on the consistency of legislation with the New Zealand Bill of Rights Act 1990 and international instruments.[278] The Ministry also provides assistance and guidance to government departments so as to ensure human rights considerations are integrated into the development of policy proposals. The Ministry has also other related tasks in relation to implementation of international human rights treaties.[279]

The MOJ of these countries play outstanding role in domesticating international and regional human rights treaties. Whereas the FDRE MOJ does not have any role in domesticating international and regional human rights treaties even though the issue of protection and promotion of human rights is its principal task. Let alone the task of domesticating all international and regional human treaties which is not clearly designated to the MOJ, it doesn't even take all the necessary measures to domesticate the African Charter on Democracy, Election and Good Governance that Ethiopia is a party and the MOJ is clearly mandated by article 3 of Proclamation No. 613/2008 to take all the necessary measures for the proper implementation of the charter.

4.1.2. Problems in relation with Human Rights Education

a. Absence of Contact between the MOJ and Public

The law that enumerates the powers and functions of the MOJ has clearly indicated that the Ministry is duty bound to provide legal education to the public with a view to raising public consciousness in relation to the protection of human rights. And law has also clearly indicated that the audience of the MOJ is the general public. As a result of this the MOJ is supposed to have systematic way to contact the public. However, there is no system of connection between the Ministry and the public to facilitate a successful and continuous human rights education through several methods. It will also help to simply collect need and impact assessment of human rights educations.

The writer of this paper in this regard thinks that the FDRE MOJ can easily build system of connection with the public and can easily access them. Since the Ministry has eleven branch offices in all the ten sub cities in

http://www.courts.govt.nz/policy/constitutional-law-and-human-rights/human-rights

[277] CHAU Pak-kwan Page 14 of Monitoring Mechanisms for the Implementation of International Human Rights Treaties in the United Kingdom, New Zealand and Canada, Research and Library Services Division Legislative Council Secretariat, Hong Kong, 24 February 2004

[278] Supra note 276

[279] Ibid

Addis Ababa and the city of Dire Dawa for the sake of handling criminal and civil matters together with police, it can easily contact the public through these branch offices and build up a formal session for the sake of achievement of its human rights education. The fact that there are eleven branch offices all over Addis Ababa and Dire Dawa can be used as an opportunity to facilitate continuous connection between the Ministry and the public. In addition to this the Ministry should clearly inform the public about its mandate to provide human rights education to the public and should create a regular session of conferences, seminars and workshops on specific legal topics with the public in addition to its radio programmes to build up connection with the public. The system of connection between the Ministry and public can also be strengthened through an effective and up-to-date website of the Ministry.

b. Failure to Provide Educations without Need and Impact Assessment

Conducting need and impact assessments directly from the public usually helps institutions like the MOJ to clearly understand the real needs, interests and opinions of the public about the topics of human rights education and to clearly evaluate and assess performance of the Ministry in relation to human rights education. Absence of contact between the Ministry and public in this respect has its own influence for the failure to conduct need and impact assessment. Whatever the case may be to look into the experience of the MOJ, the Ministry doesn't ever conduct need and impact assessment directly from the public. And all the topics of human rights education were/are selected by professionals of the Ministry thinking that the topics are suitable for the public and it doesn't really address needs of the public on the ground. The same is true in relation to impact assessment and the Ministry doesn't evaluate its human rights education on the basis direct comments from the public as a result of failure to conduct impact assessment of educations.

In Canada, the Department of Justice provides Public Legal Education and Information (PLEI) to Canadian citizens. The department has a policy on Public Legal Education and Information (PLEI) that guides how educations should be given to the public. And the policy clearly indicates that public legal educations should be given to the public in a way that meets the needs of Canadians. As a result of this the department always contacts the public directly and conducts need assessment before delivery of educations.[280] It has also methods to evaluate and assess the cause and effect relationship between a particular education and its outcome.[281]

The MOJ do not also have systematic data and experience as to whether what they have done actually helped in changing the attitude of the public.

[280] Supra note 264
[281] Ibid

c. Absence of Working Manual

Existence of working manual on legal/human rights education is very essential in determining the strategies, methodologies, contents, materials and other relevant criterion of education and it can also specifically demarcate the role of professionals who are working in the provision of education and contribute for continuous, standard and effective education. The MOJ in this respect doesn't have a manual on legal/human rights education. And professionals in the Ministry can adopt any of strategies and methodologies unless there are budget and other constraints.

To look into the experience of others in this regard the Department of Justice of Canada has a policy on Public Legal Education and Information (PLEI) beyond a manual on it. The Policy empowers the Department of Justice to develop and deliver public legal education and information through different strategies; indicates the goals of education and information; clarifies what the content of education and information should be; orders collaboration with others involving on similar tasks; and provides emphasis to those living in an isolated area, having a disability or because of cultural or linguistic differences.[282] The department conducts its undertaking on the basis of this policy and professionals working within the department use this policy in their day to day activities.

Amnesty International Human Rights Education Team has also a manual for starting a human rights education. This manual is for teachers and others who work with young people and who want to introduce human rights in their educational practices. It is designed to be a basic introduction, with age-specific activities for younger and older children. There is also advice on methodology, and help for those who want to go further into this subject. The approach stresses the practical rather than theoretical.[283]

d. Absence of Co-operation and Partnership with others

It explained earlier that there are many governmental and nongovernmental organizations who are working on legal and human rights education in Ethiopian and the MOJ is legally mandated to cooperate with other institutions working on education and training. However, the MOJ does not take seriously its obligation of cooperation with these institutions and there is no meaningful cooperation between the Ministry and other institutions in relation to legal/human rights education and training except assisting the Justice Sector Personnel Training Center in providing professionals to train on specific topics. But, the cooperation and partnership between the Ministry and other institutions with similar mandate is very essential in delivering effective educations and trainings; in avoiding redundancy of educations and trainings on the same topics for the public and trainees; and at the same time will help institutions to save unnecessary wastage of resources.

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[282] Department of Justice of Canada, Policy on Public Legal Education and Information, November 2009

[283] http://www.hrea.org/erc/Library/First_Steps/index_eng.html accessed on 12/29/2011

The experience of others in this respect shows that cooperation and partnership is a secret for successful delivery of legal/human rights education.

For instance, cooperation and partnership is a strong theme in human rights education programmes in New Zealand and there are many examples of collaborative efforts. There is a vast range of agencies across civil societies that are involved in human rights education. The New Zealand National Commission for UNESCO, Amnesty International New Zealand, the Red Cross, and the Equal Employment Opportunities (EEO) Trust are just a few examples of NGOs involved in human rights education. Collaboration and joint activities are frequent.[284] A partnership between the Citizens' Advice Bureau (CAB) and the Human Rights Commission has resulted in a nationwide distribution of human rights information through CAB offices. The Human Rights Commission of New Zealand has also joined with a wide range of other public and private-sector agencies to deliver human rights education. Partnerships in the field of human rights education also happen in the international context, both with non-governmental organizations and through avenues such as the Asia Pacific Forum for National Human Rights Institutions.[285]

In Canada, the Ontario Human Rights Commission engages in a wide range of educational activities and partnership initiatives, such as public awareness campaigns, presentations, workshops and conferences. It also engages in national and international cooperation, participates in intergovernmental task forces and receives delegations from around the world.[286]

The UN High Commissioner for Human Rights (UNHCHR) has also recommended in 2003 a number of actions to strengthen human rights education. These actions fall under ten broad areas and two of which are partnership and creating national committees for human rights education.[287]

4.2. Human Rights of Citizens in relation to Legislative Drafting and Legal Education

The legislative drafting and legal/human rights education mandates of the MOJ are directly and indirectly related with several human rights of citizens. And any kind failure to discharge its mandates in a proper manner from the MOJ will directly and indirectly narrow the horizon of promotion and protection of human rights of citizens. Both the legislative drafting and legal/human rights education mandates of the Ministry are related with specific human rights issues like the right to public participation, the right to information and the right to know rights; and generally related with issues of protection and promotion of human rights.

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[284] Official Website of Human Rights Commission of New Zealand accessed on 12/29/2011 http://www.hrc.co.nz/report/chapters/chapter20/hredu01.html

[285] Ibid

[286] Official Website of the Ontario Human Rights Commission accessed on 12/29/2011 http://www.ohrc.on.ca/en/education/

287 Supra note 284

Deprivation of participation of the public in the legislative drafting process; denial of information about the laws that are under drafting with their specific provisions; drafting laws that are contradictory with the constitution, other laws of the country and international human rights instruments; weak power of the Ministry to stop the process of ratification and oversee legislative drafts that are made by other government organizations and contradict with the constitution, other laws of the country and international human rights instruments; conducting legislative drafting without having a binding legislative drafting manual that guides the overall techniques and standard of drafting; failure to draft laws with legal experts having sufficient experience and specialization in legislative drafting; drafting laws with limited number of professionals; lack of consistent working system despite change of Ministers; failure to domesticate international and regional human rights instruments and following up their implementation; duplication of legislative drafting mandate between MOJ and other institutions and unnecessary competition between them; and others are common problems surrounding legislative drafting mandate of the MOJ in particular and Ethiopia in general that affect protection, promotion, respect, fulfillment and enforcement of human rights of citizens.

Usage of very limited strategy for the provision of education i.e. provision of education only through radio; sticking to legal and other issues and isolation of human rights aspects within the content of educations and trainings as opposed to the provision that empowers the Ministry to raise consciousness of the public in relation to human rights protection; adoption of methodology in delivering education and training that did not invite participation of the public and trainees; failure to conduct need and impact assessment and failure to provide educations and trainings without assessments; absence of contact between MOJ and the public despite its primary audience is the general public; conducting education and training without having a binding legal/human rights manual that guides the overall strategies, content and methodology of education; failure to provide education and training in partnership and cooperation with others having similar mandate; failure to provide legal/human rights education with professionals having strong pedagogical knowledge and experience; and other problems have affected the efficiency of the MOJ in relation to its legal/human rights education mandate.

Generally, performance of the FDRE MOJ as regards the tasks of legislative drafting and legal/human rights education specifically violate the right to public participation, the right to information and the right to human rights education of citizens; and generally affect the protection and promotion of human rights of citizens.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1. Conclusion

The FDRE MOJ has very many powers and functions that are assigned to it by proclamation no. 691/2010 and other laws. Legislative drafting and provision of legal education for the sake of raising consciousness of the public in relation to protection of human rights are among its major powers and functions.

If there is no law and state, humanity will reveal to the state of nature which was typified in pre social contractarian society and only those having the physical and intellectual fitness will survive over the weakest. And just because human beings are selfish by their nature, not operating based on morality and not living for their conscience the need to have law is so essential to regulate the day to day interaction of societies and life is impossible without the existence of law. As a result of this, it is highly significant to have a well organized and intellectual based lawmaking so as to have a fair and just law that equally govern everyone. In addition to this, as our world is dynamic in terms of the nature and coverage of several types of rights, technological shifts and promulgation of international as well as regional treaties, it is essential to draft new laws to follow-up social and universal changes.

As stated before, legislative drafting is one of the most intellectually demanding of all lawyering skills. It requires knowledge of the law, the ability to deal with abstract concepts, investigative instincts, an extraordinary degree of prescience, and organizational skills.[288] It is also a highly technical skill whose finer details may not be widely known or appreciated. Yet good policy may become bad law as a result of the poor arrangement of words in a legislative sentence, so that legislative drafting plays a central role.[289] And institutions like the FDRE MOJ that are assigned to draft laws should have strong political as well as technical power and take at most care to draft laws that didn't violate human rights and should also respect human rights of citizens in the process of drafting legislations.

As regards human rights education the World Conference on Human Rights (1993) demonstrated a worldwide consensus that human rights education is necessary for the realization of other human rights. And it is particularly important for the poor, women, children and other marginalized groups to pull them out of their suffering as long as appropriate targets, strategies and methodologies are employed. It can also help prevent violations, strengthens actions and campaigns, creates a space for dialogue and change, encourages respect and tolerance and integrates the principles of human rights into everyday life.[290] The human rights education

[288] Kelly Kunsch. DRAFTING LEGAL DOCUMENTS: A RESOURCE GUIDE, Seattle University Law Library Updated for Bridge the Gap. 2003 p. 1

[289] Commonwealth Law Bulletin, Special Issue on Legislative Drafting Vol. 36, No. 1 2010 p. 1

[290] http://www.web.amnesty.org/web/web.nsf/pages/hre_home accessed on October 12, 2011

that is provided by the MOJ to the public through legal education is also expected to achieve the same kind of goals.

Generally, as has been explained earlier the tasks of legislative drafting and legal/human rights education by the MOJ have its own positives and drawbacks. Amongst the positives the following could be highlighted;

- Identification of some of the problems in relation to legislative drafting and legal/human rights education on the BPR of the Ministry can be cited as a positive sign for the successful drafting of legislations and provision of human rights education.
- Inclusion of the JSLRI with in the MOJ and supportive undertakings between the two will to some extent avoid duplication of mandates on legislative drafting between the MOJ and other institutions.
- Distribution of circular letter from the Prime Minister's office to many of government institutes informing them to have approval of their draft laws from the MOJ before submission of draft laws to the COM will to some extent strengthen power of the MOJ in vetting laws that are drafted by other institutes.
- Accessibility of non binding legislative drafting manual and its application by some professionals of the Ministry in drafting legislations.
- Commencement of provision of trainings based on need assessment.
- Outstanding provision of human rights training for judges, prosecutors, police officers and others in cooperation with the government of Norway with its content, method of deliver, training manual, quantity of trainees, preparation and coordination for the training as well as its impact on the trainees.
- Cooperation between the Ministry and Justice Sector Personnel Training Center in relation to provision of trainers.
- Commencement of provision of human rights education by branch justice offices of the MOJ here and there in a disintegrated manner.

As far as drawbacks are concerned the following may be mentioned:

- The MOJ does not have the political strength to impose its technical views on other Ministries in ensuring constitutionality, human rights friendliness and smartness of laws that are drafted by other Ministries. The Ministry has weak power to check and oversee laws that are drafted by others unless requested to comment and assist. Article 16 (3) of proclamation no. 691/2010 has destabilized the power of the MOJ and denied vetting role of the Ministry saying it will only assist other Ministries in drafting legislation only where requested to do so.
- The Ministry does not have a binding legislative drafting manual to ensure consistency of legislative drafts, uniformity in drafting style and usage of similar terminologies for similar issues.

- Long years of experience by the Ministry to conduct legislative drafts without inviting participation of the general public. The public has had no role and contribution in the legislative drafting of the MOJ.
- Long years of experience by the Ministry to conduct legislative drafts without informing the public about the laws that are under the process of legislative drafting. The public will only have the chance to know about the laws where they are ratified and publicized by the House of Peoples' Representative and Council of Ministers.
- Failure to take all the necessary legislative and administrative measures to domesticate international and regional human rights instruments in Ethiopia and failure to follow up their practical implementation by the MOJ as a government institute striving for the protection, promotion and enforcement of human rights.
- The MOJ does not have any linkage or system of connection with the public to facilitate a successful and continuous human rights education despite the fact that it is legally mandated to provide human rights education to the public.
- The educations provided by the MOJ are not need based and are simply delivered for the sake of accomplishment of annual plans. The Ministry does not have also a mechanism to assess the impacts of educations in the actual life of the society.
- The Ministry does not use different strategies and appropriate methodologies of human rights education that can effectively aware and participate the public. Its education was/is highly stuck to a 25 minutes air time of Fana Broadcasting Corporate radio programme of very fewer participation of the public.
- Content of educations are sometimes out of human rights issues and totally focused on legal issues.
- The Ministry does not also have a manual on legal/human rights education that guides and delimits the strategies, methodologies, content and other aspects of human rights education.
- There is no cooperation and partnership between the Ministry and other institutes with similar mandate at all and the very few exiting co operations with others is not going in a meaningful manner.
- Problems relating to professionals both in terms of quality and quantity have also its immense impact for the success of the Ministry in relation to human rights education as well as legislative drafting. The Ministry does not have professionals who are specifically trained and qualified for the sake of drafting legislations and providing human rights education even though the two fields require high level of knowledge and skills in the areas.
- Absence of official website of the FDRE MOJ is also a barrier to link with the public, to inform citizens about draft laws, to invite participation of the public and even to teach the public.

5.2. Recommendations

Having thoroughly considered the legal and practical problems surrounding legislative drafting and legal/human rights education mandates of the MOJ the writer of this paper recommend the following for the efficiency of the Ministry. The understated recommendations are more or less based on developed nation's experience.

- The Ethiopian government should legally provide a strong power to the FDRE MOJ to play a vetting role and work as clearing house in Ethiopia so as to enable the Ministry to check and oversee constitutionality, human rights friendliness and smartness of all draft legislations like the MOJ of Finland, Germany, the Netherlands, Afghanistan and the Gambia.
- The MOJ should ratify and implement a binding legislative drafting manual that guides all professionals working on legislative drafting to ensure consistency of legislative drafts, uniformity in drafting style and usage of similar terminologies for similar issues like the MOJ of Finland and different government institutions with the power of legislative drafting in the USA.
- The Ministry should respect the right to public participation of citizens and invite them to participate in its legislative drafting through different methods like the Department of Justice of Canada, MOJ of Finland and different government institutions with the power of legislative drafting in the USA.
- The Ministry should respect the right to information of citizens and inform the public concerning legislations that are under the process of drafting both generally and specifically through its official website, newspapers and other means like the experience of the MOJ of Finland, Department of Justice of Canada and South Africa.
- The Ethiopian government should clearly and legally empower the MOJ to take all the necessary measures to domesticate international and regional human rights treaties; and to follow up implementation of these treaties due to the fact that there is no other government institution better than the MOJ to carry out such type of tasks like the experience of the MOJ of Afghanistan and New Zealand. The MOJ should also take full responsibility of domesticating international and regional human rights treaties since it is a government institution striving for the protection, promotion and enforcement of human rights.
- The Ministry should create a systematic and regular way of connection with the public through its branch justice offices, official website and other methods so as to make sure that there is an effective and continuous human rights education, simplify the task of conducting need and impact assessments and above all to simply deliver all its services since its principal client is the general public.

- All the human rights educations that are provided by the Ministry should be based on a research of need assessment and the Ministry should every time plan a strategy to evaluate real impacts of educations in the day to day activities of citizens like the experience of the Department of Justice of Canada.

- The Ministry should adopt a working condition that widens the strategies of education and accommodates participatory methodologies of human rights education. It should as much as possible provide its human rights education to the public and trainees through electronic Medias like radio and television; publications such as news papers, periodicals, posters and brochures; websites; workshop, seminar and other strategies.

- The Ministry should in practice focus on inclusion of human rights issues in the provision of legal education since its establishing provision clearly indicates that the goal of legal education should be raising awareness of the public in relation to protection of human rights.

- The MOJ should ratify and implement a binding manual on legal/human rights education that guides all professionals working on human rights education to ensure selection of appropriate strategy, methodology, targets, topics and even determination of content of educations.

- The Ministry should also be at the forefront to facilitate partnership and cooperation between other organs having the mandate of legal/human rights education. It should at the same time take full responsibility in the establishment of National Committee or Task Force for Human Rights Education so as to jointly and effectively provide human rights education in addition to individual efforts of institutions.

- Problems in relation to quality and quantity of professionals should be alleviated through hiring qualified professionals as well as successive trainings and educations to professionals.

- The Ministry should also immediately construct its official website to alleviate many of the problems that are associated with tasks of legislative drafting and human rights education.

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