

The Status of Armed Forces Under the FDRE Constitution

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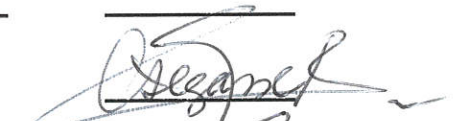
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Glory to GOD!

The Status of the Armed Forces under the FDRE Constitution

Abstract

The army had a significant role in Ethiopia's political past. But its status and role in the country's constitutions have not been clearly established. This paper is a result of the study of the status and role of the armed forces in the Ethiopian Constitution. As such it is an attempt at examining the constitutional legal space given to the armed forces in Ethiopia. In this study, an exploration of the status of the armed forces in Ethiopia's constitutional tradition (in the eras of both unwritten and written constitutions of historic Ethiopia) is made. In particular, the status of the Armed Forces in the constitution of the Federal Democratic Republic of Ethiopia (FDRE) is closely examined. A diverse array of legislations pertaining to the army are reviewed with a view to circumscribing the ambit of the power of the army and the extent to which it can remain neutral to the political dynamics of the day while also being loyal to the constitution.

Issues related to the relationship between the army and the civilian political leadership, the mechanisms via which we can keep the former accountable to the wider public and the House of Peoples' Representatives (HPR), situations in which the army can intervene in states on request by the civilian leadership, situations in which the army can act to create stability in moments of emergency, the independence of the army to administer and regulate its own personnel, etc are raised and discussed in this study. Also, issues of how to defend and protect the constitution or of how to ensure equitable representation of all nations, nationalities, and peoples of Ethiopia in the composition of the army are discussed. Throughout the paper, it has been argued that the army ought to be loyal primarily to the constitution (as per art 87(4)) according to which it is given the mandate to protect the sovereignty and the territorial integrity of the country and discharge responsibilities assigned to it in times of emergency (art 87(3)). It is also stressed that the army should be neutral in its dealings with political parties or factions and impartial in the process of discharging all its responsibilities (art 87(5)). It is in the light of this basic premise (rooted in the constitution) that all other laws and practices pertaining to the armed forces are reviewed, analyzed, discussed, and assessed.

Chapter One

Introduction

1.1. The Statement of the problem and its approach.

“Armed Forces” refers to the military, as a social category which implies an acceptance of organized violence as a legitimate means for realizing social objectives.¹ Military organizations, it follows, are structures for the co-ordination of activities meant to ensure victory on the battlefield.

Black’s Law Dictionary also defines a Armed Forces as a body pertaining to war or to the Army, Concerned with war and the whole military forces. (Ground Force, Air Force, Naval Force).²

The status of Armed Forces is therefore, to imply the state or position of the Armed Forces in a given society. “Status” is to mean “the Legal relation of individual to the rest of community or the rights and duties, capacities and incapacities which determine a person to a given class”. While this definition is used to serve, the status of the Armed Forces is to mean the legal position of the Armed Forces, whether they are legally established or not, how they are organized, what their mission and purpose is, what duties and responsibilities they have and to what rights and privileges they are entitled. In other words, the status of Armed Forces is the legal and constitutional position of the Armed Forces in a given political system.

Armed Forces under this research refers to the Ethiopian Military Forces under the Ministry of Defense and does not include the police, Militia and other Security Forces. IT only deals with the military forces pertaining to war.

Therefore, the status of Armed Forces under the FDRE constitution is to say, how the constitution of Federal Democratic Republic of Ethiopia has dealt with the issues regarding the Armed Forces. These include issues such as whether the Armed Forces are established by the rules of the constitution or other Laws under the Framework of the constitution; whether the constitution attributes power and regulates the power given to the Armed Forces; how the armed Forces are organized, their structure and hierarch, the rights and duties of the members of the Armed Forces how the parliament controls the Armed Forces. In general it is to mean, how and to what extent the constitution covers the issue of Armed Forces.

Once a country determined the establishment of armed forces, their legal position must be determined by the Constitution.

Whether standing Armed Forces should be established or not has been an agenda and a subject of debate since long time mainly after the 2nd World War.³

However, no country or regime stays in power with out using coercive power by alleging that it is efficient or legitimate to come impower.⁴ Thus the power that it exercises is through the military and the police force.⁵

As it is also forwarded during the making of the US Constitution, “No government could be energetic on paper only, which was no more than straw . . . , there must be a small standing force to give every government weight”⁶ This opinion is also expressed by a Maxim as, “political power grows out of the barrel of a gun”⁷

These are some of the reasons why the status of the armed forces is defined mostly under the Constitutions based on the specific situations of every country and the background nature of the Army. Either to establish autonomous armed forces or strictly constitutional Armed Forces depends upon the particular situation of the country. For instance, the reason why the German Armed Forces are governed directly by the parliament is their background nature during and before 2nd World War.⁸The Japanese

Armed Forces are not provided to involve in international peace operations and the Australian Armed Forces too.⁹

The Framers of the US constitution here also gave emphasis is on the determination of basic missions of the Armed Forces and agreed on the importance of including a provision in the constitution to control the military power, to place the authority to raise forces and to have an Army in congress rather than in the hands of the president.¹⁰

Moreover, a government that is considered more efficient and that can be effective during military operations is a government strictly follows the Armed Forces not to be either an instrument of Coup D'etat or other destructive missions.¹¹

Therefore, Roles of the military forces should be defined to avoid it from playing destructive roles in a country, should be controlled in times where the military seizes power and how it is functioning based on its nature and objective of its construction.¹²

1.2. Background to the problem

Constitution as a law has various norms. Some of its rules prohibit, some rules attribute and some other rules of a constitution regulate the power attributed.

The constitutions of most countries of the world have rules that establish and constitute Armed Forces. On the other hand there are countries with a constitutional rule which prohibits the establishment of Armed Forces.

For instance, the 1948 constitution of Costa Rica under its Article (12) states that the Army is abolished unless there is a continental agreement and a need to defend. The Constitution prohibits the establishment of permanent/standing Armed Forces.

The 1944 constitution of Japan prohibits standing Army also. The German Constitution after the 2nd World War until the adoption of the current constitution prohibited to have an Army as well.

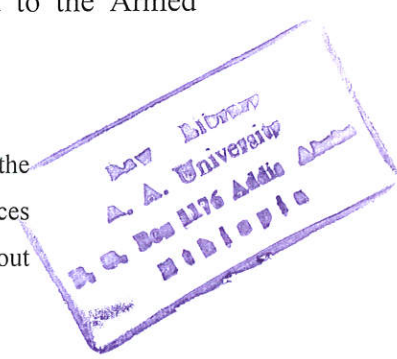
When we refer to the FDRE constitution in relation to the issues of the establishment of the Armed Forces and the power given to it and regulation of its activities, there are rules for its establishment and determines its organization as well as guiding principles of the National Defense.

Under the FDRE constitution Art. (51) a provision which determines the powers and Functions of the Federal Government, in its sub article (6) has stated that the Federal government through the House of People's Representatives (the parliament) has the power to establish and administer the national defense (the Armed Forces). This article thought it does not directly permit the establishment of the armed forces, it provides ground for the establishment of the Armed Forces through the parliament.

The other Constitutional provision which address issues related to the Armed Forces is Article 55 (7).

It reads:

“It (the house of peoples” representatives) shall determine the organization of national defense If the conduct of these Forces infringes up on human rights and the nation's security, it shall carry out investigations and take necessary measures.



The sub provision deals with two points, one is that the organization of the Armed Forces shall be determined by the House of Peoples' Representatives. The second point is the accountability of the Armed Forces when they violate rules while discharging their duty is to the House.

However, while it states the power of determining the organization of the Armed Forces to be the power of the House, the constitution did not clarify what the organization is. Whether the constitution of the Armed Forces includes the ground force and the Air

Force is not stated in the constitution. Also it does not address the deployment of the Armed Forces to peace keeping and peace enforcement missions abroad.

Art 87 of FDRE Constitution deals with the principles that guide the Armed Forces composition, accountability, purpose of its establishment.

It addresses the following key points:-

1. Equitable Representation of Nations, Nationalities and peoples of Ethiopia (composition of armed Forces.)
2. Civilian minister of Defense (Accountability of the Armed Forces to Civilian Authorities.)
3. The armed forces shall protect the sovereignty of the country and carryout and responsibilities as may be assigned to them under any state of emergency declared in accordance with the Constitution. [To some extent attribution of powers and functions of the Armed Forces].
4. The Armed Forces shall at all times obey and respect the constitution [Loyalty to the constitution and Accountability of the Armed Forces.]
5. Armed Forces should be free of any partisanship (members of the armed Forces can not stand for elections with uniforms and can not be political party members. This point also manifests that the Armed Forces shall be loyal to the constitution and keeps their neutrality in the political process.)

The other constitutional provision that can be sited as an issue regarding Armed Forces is Article 74 (1). It stipulates that the Prime Minister of the country is, among others, the commander in chief of the national Armed Forces. Sub Article (10) of this provision also states that the Prime Minister recommends nominees including members of the Armed Forces for the award of medals, prizes and gifts.

Though the constitution does not state clearly as to the establishment of the armed Forces, indirectly, by giving power to the federal government to establish and administer the national defense, it can be said that the FDRE constitution has constitutive norm in relation to the Armed Forces. Accordingly, the parliament of the Federal government has established the ministry of Defense which runs the responsibilities of the Armed Forces, as per proclamation 4/1995 Art (9).

Moreover the Federal Parliament according to the power given to it by Art 55 (7) of the constitution has determined the organization of the Armed Forces through proclamation no 27/1996. Accordingly, “the Ethiopian Armed Forces” consists of ground force and Air Force by virtue of Art (3) of pro N^o (27/1996)

This proclamation deals also with pre requisites to join the armed forces, terms of service, the powers and Functions of the Defense Minister and Chief of General Staff of the Armed Forces as well as with some aspects of justice administration in the armed forces.

A constitution is believed to embrace basic principles regarding the armed forces.¹³ These include, the purpose of establishment of the Armed Forces, the consciousness and the internal life of the members of the armed forces, its relationship with the civil society, its command and accountability; its size and composition, the role of the Armed Forces in maintaining the constitutional system and promoting peace and development.

The researcher would examine the FDRE constitution and other laws enacted under its framework, so as to these issues regarding the above principles and issues which the researcher believes reflect the legal status of the Armed Forces. For this purpose, the following research questions are put forth:

1.3. Research Questions

1. What does the constitutional/legal framework for the Armed Forces look like in Ethiopia
2. One of the missions of the Armed Forces Carry out any responsibility as may be assigned to them under any state of emergency declared in accordance with the constitution. What procedures did the framers of the FDRE constitution specify for this intervention especially in times of internal constitutional crises?

3. Does the FDRE Constitution make clear as to the powers, duties and responsibilities as well as the purpose and mission of the Armed Forces?
4. What was the intention of the framers of the constitution to omit the issue of the deployment of the Armed Forces abroad for peace keeping and peace enforcement from the constitution? Whose power is this to decide? Why did they keep silent to address even in other Laws enacted under the constitutional Framework?
5. How do the framers of the constitution address the parliamentary (Civilian) control over the Armed Forces? Which provision does serve this purpose? And how did they address the question of Civil-Military relationship?
6. Can we say that the FDRE constitution has exhaustively addressed issues related to the Armed Forces? Why? Why not?
7. Some fundamental Constitutional rights of the members of the Armed Force are limited due to the mission and responsibilities entrusted to them; what mechanisms does the constitution establish in place of the limited rights and to protect soldiers' right as citizens?
8. What does the justice administration look like in the Armed Forces? How does it reveal the right of access to justice of the members of the Armed Forces? To what extent does the justice administration fill the gaps created due to the limitation imposed upon the constitutional rights of the members of the armed forces?

1.4. Objectives of the Study

A) General Objective

- The General objective of this study is to examine how the FDRE constitution has framed and addressed the issues of the military forces in terms of its organization, composition, power, purpose and mission of the armed forces.

B) Specific Objective

- The specific objective of this paper is to inquire into how the Armed Forces are made to best serve their mission to defend the Constitution and the well being of the Nation.

1.5. Significance of the Study

- It will try to identify what actual gaps exist in the constitution in defining the status of the Armed Forces.
- It will sensitize policy makers to foresee the possible challenges to the role of the Armed Forces in defending the constitutional system?
- It serves as provoking idea for further researches and arguments of constitutional lawyers to deal with this issue as it is sensitive and fundamental to the well being of the Ethiopian constitutional system?

1.6. Scope of the Study

The main theme of the study is to discuss the FDRE constitutional provisions regarding the Ethiopian Armed Forces and analyze the legal challenges that might be created in the use of Armed Forces as defenders of the constitution and the constitutional system caused by the very absence of clear provision that empower, administer and regulate the Armed Forces. It also presents an overview of the previous constitutions of Ethiopia in relation to the status of the Armed Forces. However, it emphasizes on the FDRE constitutional provisions and other laws under its framework and the status of the Armed Forces. Issues on to what role have the Armed Forces to play during Constitutional crises and what procedures are laid down to this effect is not covered by this paper. The Armed Forces are expected to be politically neutral and loyal to the constitution. In times where any political party or group assumes power and run the country in contravention to the constitution and with out making formal amendment, or abuses of power as well gross violations of human rights are witnessed, what will be the role of the Armed Forces, who are said defenders of the constitution and constitutional system? What does defending a constitutional system mean and what makes it different from defending a country? These research questions though they are important to be dealt with because they need more time and are not covered by this thesis.

1.7. Research Methodology

The study primarily depends on secondary sources which will be complemented by primary data. The major sources of data will be secondary sources [journals, reports,

minutes, policy briefs published and unpublished materials, books, articles and classified reports]. Furthermore, the researcher will conduct interviews with individuals both in the Army and in the politics. These include, members of the constitutional Framers (Founding fathers of the FDRE constitution) the Chief Army Commanders and top middle level government officials.

1.8. Limitations

Non-availability of relevant documents and time constraint of government officials to provide information might be a limitation. However, the back ground of the researcher as a member of the Armed Forces is hoped to compensate for the limitations thus anticipated.

1.9. Organization of the study

The Research will be organized in four chapters. The First chapter is the introductory part which will discuss the statement of the problem and its approach. The second chapter takes up an over view of the discussion on the status of the armed forces in the times prior to the adoption of FDRE constitution. The third chapter, which embodies the main theme of the study, will deal with the status of the Armed Forces under the FDRE constitution. The fourth chapter will examine separately the justice administration of the Armed Forces under the FDRE Constitutional Framework. In the conclusion, the researcher summarizes the findings and submits a set of recommendations as might be found necessary.

Chapter one endnotes

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4. Andrew Hey wood, "Politics", 2003 P.374
5. Ibid.
6. Kohn, H, (ed) "The US Military under the US constitution" 1991, p.67
7. MAO Zedong, problems of war and strategy (1938), as cited in, Andrew Heywood, "Politics", 2003,p.377
8. Leonard Besselink, "Introduction to Military Law, 2001 P.145-150
9. The Japan and the Australian Constitutions
10. Kohn, H.(ed) "The US Military under the US Constitution. 1991, P.83
11. Ibid. P.85
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Chapter Two

The Status of Ethiopian Armed Forces under the Imperial and the Derg Constitutions (An OverView)

2.1 The Imperial Constitutions and the Status of Armed Forces

2.1.1 Historical Back Ground

The existence of war and armed men in Ethiopia is as old as the nation itself.¹ However, the then armed men, as soldiers did not constitute a separate section of society and did not have a separate Law that governs their activity and life.² The soldiers were neither paid nor supplied by the state whereas during campaigns against invasion or else, every man had an obligation to carry any kind of food required.³

Though the armed men had served for the well-being of the country and strengthen the power of the then governors, their role as defenders of the independence of the country is not defined by Law or any other document that was guiding the Emperors.

Thus the evolution and the legal status of the Ethiopian Armed Forces can only be examined from such time when modern standing army was established by Emperor Haileselassie.

Emperor Menilik had also an interest on military reorganization, but this issue has got considerable attention on the era of Emperor Haileselassie.⁴

Moreover, Ethiopian military power and its ability to defend its independence over so long a span of History was inspired by a devout faith in the Almighty. H.I.M. Haileselassie I had observed;

Many and severe have been the waves of attack which have beaten against the fastness of our beloved homeland . . . yet, thought her three thousand years of independence, Ethiopia has always sought to defend herself alone but for the transcendent aid and courage inspired by a devout faith in the almighty, in her national defense, as in her national

life, as it is recorded in holy writ; Ethiopia stretches out her hands unto God.

The Military Chronicles of the 14th, 15th and 16th centuries; the victorious war of Dogali and of Adwa in the 19th and over memorable defense entered upon our leadership a few months following the establishment of the Guenet Military Training Centre; as indeed the founding of that institution itself; all testify the traditional determination of Ethiopia to defend herself by her own means with out compromise and with out outer. . .

We recall with gratitude the service of the Swedish military officers who made the initial and expertly successful contribution towards the Functioning of the Military Training Centre and whose successors are to day continuing their collaboration in the building of a strong and modern national army; Belgian military tradition and science have also made their valued contribution towards the resilient Imperial Body Guard.⁵

Hence, it is clear that the establishment and discipline of the Ethiopian Armed Forces before the Ethio - Italian war of 1935 was highly influenced by European Military traditions.

However, until the adoption of the 1931 Imperial Constitution and other Laws regarding the Armed Forces, there was no any law or document that supports the role of played by the then Armed men.

2.1.2 The Fetha Negust and the Armed Forces.

The Fetha Negust which is literary translated as “the law of kings.” has served as law not only to the orthodox church but also to the whole country by different Ethiopian kings.⁶ It is said that this law was first introduced into Ethiopia in 1⁴34 – 1468, the era of Zar’a ya’gob.⁷ This document though it is more of religious, but traditionally it has been closely tied to the kings.

However, as it has served the kings in giving judgment and penalizing criminals as well as administering the country, it has no detailed provisions related to administration issues. Thus it does not give space to the administration, role and status to the armed men or soldiers.

A point that can be cited from Fetha Negust is, as it is as a source to penal and civil Laws of Ethiopia,⁸ it gives a clue to the Military Law especially to the relationship of superiors and subordinates. The Master-Servant relationship specified therein clearly served the same purpose. It was provided:-

[T]hat servants must obey their masters and that masters must love their servants. Paul has said . . . servants; obey your worldly masters in all things, not with feigned flattery towards them to be praised by men, but with peaceful heart . . . masters, deal justly with your servants, observing equality between them.⁹

Apart from the obligation to obey superiors, a subordinate's disloyalty and failure to render aid to superiors was severely punishable under the Fetha Negust, for it was specified that:-

The servants who attempted to take the life of their master must be thrown into the fire so also, the servants who heard the aeries of their master while he was being killed, or knew or were certainly aware of what was happening to him but did not render any help.¹⁰

The above provision of the Fetha Negust has served as a basis to the military crimes embodied in the penal codes of 1930.¹¹

Therefore, even the Fetha Negust, apart from telling us the servants (soldiers) to obey and protect their masters and masters to love their servants did not provide any provision to the existence, organization or pure mission of the army, which had outshining role at that period.

2.1.3 The 1931 Imperial Constitution and the Armed Forces

The 1931 Imperial Constitution was the first written constitution of Ethiopia. This Constitution was established with seven chapters and fifty five provisions. Among these provisions very few deal with the issue of the then Ethiopian Armed Forces.

Under chapter two of the constitution Art 11 dealt with the power of the Emperor to specifically determine the administration, the nature and organization of the work, departments of government and their activity, which includes the “National Defense”. Further, the appointment and dismissal of officers of the Armed Forces is also determined by the Emperor.

As Art 12 of the constitution specified, war, which is the business of the Armed Forces, is declared by the Emperor who had the power to determine it. Though it is not stated in detail, the Emperor was also empowered to determine the nature, the size and the capacity of the Armed Forces both in time of war and peace, as stated in Art 13 of the 1931 Constitution.

Chapter three of the 1931 constitution which dealt with the rights and duties of the people of Ethiopia had also laid down duties to the members of the Armed Forces and to Ethiopian nationals in relation to the Armed Forces. Art 19 of the constitution went on putting that Every Ethiopian national who fulfils the conditions determined by law and by decrees promulgated by the Emperor had a duty to serve as an officer of the Armed Forces when appointed. Members of the Armed Forces are also under obligation to respect the commands of the Emperor and to serve him.

Since the 1931 First Ethiopian written constitution did not address the issue of the administration of the Armed Forces, the Emperor had tried to cover such issues by enacting various proclamations and issuing decrees and orders in different times.

Before the promulgation of the 1944 Army Proclamation, which was the Basic Army Act, a Decree, was issued in 1942 with the title of “Administration Regulations.”

Art 11 of this Decree No.1, had laid down that the Emperor shall determine the Military Forces necessary for the security of provinces. It has also provided that the Emperor has the power, on the recommendation of the Ministry of War, to appoint a commanding officer for such a force. The soldiers and officers shall camp in places provided for them and their salaries was fixed and paid by the Imperial government.

Moreover, the above mentioned article had stated that the Governor-General of a province was entitled in case of serious disturbances in his province to call upon the Military Forces of his province for assistance. No such call shall be made before instructions are received from the Ministry of War.¹²

Regarding the uniforms of the Armed Forces, Proc.No 63/1944 had appeared in the Negarit Gazeta of June 28/1949 entitled “The proclamation governing the wearing of military uniforms 1944. “ No person other than the military may wear any uniform. “Uniform” is interpreted to mean any clothing insignias, belts, caps, badges, buttons, shoulder marks, ribbons, stripes, medals, distinctions, swords and side arms.¹³

2.1.4 The Army Proclamation of 1944

The Army Proclamation of 1944 was provided for the establishment and government of the Imperial Army. It has defined the constitution and duties of the Army, specified military offences and punishments and created the Ethiopian courts-martial. The legislative history of the Army Proclamation was described thus:

At the end of the Italian occupation in the late 1930's administration and training of the Ethiopian Army was in the hands of officers and other ranks of the British Army Proclamation. No. 68 of 1944 (the Army act) was passed at the time the British Command was still in Ethiopia. It establishes the powers and jurisdiction of courts-martial in Ethiopia. The Navy was established under Proclamation No. 136 of 1953, and Air Force under Order No. 11 of 1953. The latter forces did not have separate laws and they follow the Army act.¹⁴

The influence of the British military tradition was also noted by H.I.M. Haileselasie I when he said:

In addition to the invaluable assistance of the British during the liberation of Ethiopia at a time when Ethiopia lay vulnerable and exhausted from the struggle of national liberation, the British Military Mission made a powerful and never to be forgotten contribution towards the rebuilding of a modern army and in these very walls resumed the instruction and the academic conflict. If today, Ethiopia stands to the forefront among the military forces in Africa . . . it is due to this vital military tradition, to the strong sense of discipline inculcated over the years within this training centre by devoted officers from abroad. ¹⁵

2.1.5. Organization and duties of the armed forces

“One or more battalions of infantry and such other troops as may be required were to be established from time to time charged with the defense of the Empire and the maintenance of good order.”¹⁶ Whether the proclamation envisaged the organization of an air force or a naval force is debatable. The adoption the two proclamations, (Proc. No136/1953 and Proc No 11/1953 which established the Naval and the Air Force; shows that proclamation No.68/1944 did not include the establishment of such forces.

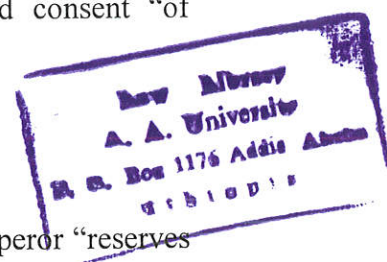
Any how, the Imperial Army was established for the purpose of defending the sovereignty and well-being of the country as well as to maintain peace and order in the country. Therefore, the 1931 constitution under its frame work had addressed the mission and/or the purpose of the Army when it is established. An issue that should deserve mention under this provision is, the Army is not only established to protect the country from foreign aggression but also it has a role of maintaining internal peace and order so that intervene in security forces mission. What is left here is there was no rule of procedure how to intervene in internal security operations and play its role.

2.1.6 The Revised Constitution of 1955.

This constitution had produced that all Ethiopian subjects have the duty of defending the Emperor and the Empire against all enemies, foreign and domestic, to perform public

services, including military services, when called upon to do so.¹⁷ It must be noted that the Revised Constitution extended the task of defending the Empire and the Emperor to all Ethiopian subjects. This task was entrusted to the military by the earlier legislation; viz the Army proclamation of 1944.

The defense of the Empire is appropriately affected under the leadership of the Emperor, who reserves the constitutional right, with the “advice and consent “of parliament, to declare war.



2.1.6.1 Commander-in chief.

Article 29 of the Revised Constitution had provided that the Emperor “reserves the right to decide what armed forces shall be maintained both in time of peace and in time of war.” It is further provided that” as commander-in-chief of the Armed Forces He has the right to organize and command the said forces, to commission and to confer military rank upon the officers of the said forces; and promote, transfer or dismiss any of the said officers.”

By virtue of the administration of officers of the Armed Forces Order No. 81/1973 the Minister of National Defense has been authorized to issue regulations concerning the promotion and dismissal of officers, to prescribe the period of initial and obligatory services, and generally on matters relating to the administration of officers.¹⁸

The Armed Forces Officers Promotion, Obligatory Services as well as Dismissal Regulation No.29/1973, whose purpose was “ to create uniformity in the administration of officers” in the Armed Forces, established a promotion Board which was periodically appointed by such armed Force Commander.¹⁹ It prescribes an initial and subsequent obligatory services of officers who graduate from the Haileselasie I Military Training Centre on the one hand and from the HIM Military Air Force, and the Naval Force Academies on the other.

2.1.6.2 The Emergency Power of the Emperor

In addition to the power of control over the Armed Forces, the Emperor exercises “emergency power”. It is established in Art. 29 of the Revised Constitution that the Emperor has “the right to declare a state of siege, Martial Law, or a national emergency, and to take such measures as necessary to meet a threat to the defense or integrity of the Empire and to assure its defense and integrity.”

These concepts are not new to Ethiopia although they were introduced with the revised constitution under such names. They are not different from the “Yakitet awaj” declared by the Emperors during a foreign war or an armed revolt.

In the Revised Constitution of Ethiopia the terms “state of siege” “martial law” and “state of emergency” are all utilized under Art.29. But whether they are to be employed under differing circumstances, or alternatively, or whether they cover one and the same concept is difficult to apprehend.

2.1.7. Military Justice administration under the Imperial Constitutional Framework

2.1.7.1 Military offences and punishments

Categories of offences in respect to military law and offence punishable by ordinary law were specified by the proclamation. The offences in respect of military service includes mutiny and insubordination, desertion, absence without leave, drunkenness, and disgraceful conduct.²⁰

Also included are offences in relation to prisoners, property false documents and statements, and other miscellaneous military offences. Disciplinary power of commanding officers, officers commanding a detachment or a company to deal with a soldier summarily was also spelt out in the proclamation.²¹

2.1.7.2. Offences punishable by ordinary law and by the Army Proclamation

The proclamation has established that non-military offences committed by military personnel are under the jurisdiction of the competent civil court. But civil offences particularly treason, homicide, robbery and rape are deemed to be offences against military law, and any military person who is guilty of such offences is liable to be tried by court-martial, unless such person at the time he committed the offence was not on active service; in which case he is tried by the competent civil court.²² A person convicted of treason is to be sentenced to death, and the penalties for the other three offences were as prescribed in the penal code.

Whereas the Army proclamation, the death penalty is specially provided for, for the offences of treason, of shameful and treacherous conduct on active service, of mutiny and insubordination. For the rest of the offences under the proclamation, court-martial is authorized to sentence the convicted person any or any combination of the following penalties:²³

- (a) imprisonment not exceeding twenty years;
- (b) discharge with ignominy from the army;
- (c) Reduction in rank in the case of a non-commissioned officer to a lower grade or to the ranks.
- (d) Corporal punishment not exceeding twenty-five strokes if the offender is on active service. The instrument of flagging is to be prescribed by the General officer commanding the Army.
- (e) Forfeiture, fine or stoppage;
- (f) Reprimand or severe reprimand.

In addition to any of the above punishments, an offender may be sentenced to any deduction from his ordinary pay and to such field punishment as may be prescribed by the General Officer Commanding the Army.

2.1.7.3 The Imperial Courts-Martial.

A court-martial is a military tribunal composed of two or more eligible members of the armed forces the functions of which is to decide whether a person subject to military law has committed a violation of the military offences and, if it finds he is guilty,

to adjudge punishment for the offence.²⁴ The Army proclamation established two kinds of courts-martial, defined their composition, power and the convening authority of these courts-martial.²⁵

A. General court-martial.

The General Officer Commanding the Army or his delegate is authorized to convene the General Court-martial. The court may consist of three to five commissioned officers of not less than three years service in the army. It has the power to try all persons subject to military law and to the sentence of death or such less punishment by a majority vote. Unless the court consists of less than five members whose unanimity is essential to pass the death sentence.

B. District Court-Martial.

The court is convened by an authorized officer or a delegate of an officer authorized to convene a General Court-Martial. The Court may consist of not less than three commissioned officers of not less than two years service.

It has power to pass a sentence of up to two years imprisonment in addition to any or any combination of the penalties specified under Article 35 of the proclamation as long as the sentence of imprisonment does not exceed two years.²⁶

Apart from the above two categories of courts- martial, the Army Proclamation authorizes the commanding officer of any unit on active service, as a matter of expediency; to convene a field General Court-Martial even if such commanding officer may not be authorized to convene a General Court-Martial.²⁷

C. Field General Court-Martial.

The court may consist of two to three commissioned officers, and the convening officer himself may preside over such a court. The accused is required to be under the command of the convening officer and the offence with which the person is charged must be an offence against the property or person who is not subject to military law. The court

may award any sentence which a General Court-Martial is competent to award for such offences.

D. **Military Court of Appeal**

The Administrator of the Emergency area is the convening authority of such military courts-martial as shall be necessary to try offences specified in the Emergency Regulations. The most radical and sophisticated provision of the 1970 Emergency Regulations.²⁸ is the one which created an appeal court-martial to hear appeals involving

(a) Death penalty

(b) Rigorous imprisonment exceeding ten (10) Years.²⁹

The administrator of the Emergency Area a person designated by him brings before the military court-martial a charge or charges against a person alleged to have committed an offence or offences specified under Article 12 of the Regulations.

A court of military appeals was never envisaged under the Army proclamation 1944, and therefore, the right of appeal was not at that time enjoyed by military personnel tried by court-martial.

In conclusion, the Imperial Constitutions and Constitutional frame work had almost envisaged all issues regarding the Armed Forces. Its organization, establishment, Mission and Administration since the Emperor was the owner of all powers in the Country, he had made all rounded effort to control the Armed Forces through Laws, Regulations and Decrees and made it to serve the imperial. That is what is shown under the army proclamations and Army Administration Regulations.

2.2 **The Constitution of the Peoples' Democratic Republic of Ethiopia (PDRE) and the Status of the Armed Forces**

2.2.1 **Before the Adoption of the Constitution**

The thirteen years period before the adoption of the PDRE Constitution is the time where Ethiopia was ruled by provisional Military Administrative counsel (PMAC) and with out any written Constitution.³⁰ So that Examining the Status of the Armed Forces under a Military government may be of no use, since it is clear the Armed Forces are disposed with the upper political power of the country. However, the researcher

believes it will have a great significance to see the case and reach to a conclusion whether the Armed Forces of the then government, was an instrument for, or vanguards of, or an interest Group of the highest political body of the country.

After the deposition of the Emperor from the power; the provisional Military Administrative Counsel had suspended the 1955 Imperial Constitution.³¹ Though the 1955 constitution had been suspended and no new constitution was promulgated at the time, the number of proclamations, Regulations, Decrees and orders were promulgated that guide the then government to rule the country and achieve its goals.

2.2.2 The Establishment of PMAC and the status of the Armed Forces

The Provisional Military Administrative Council, PMAC was established by the consolidation of military committees from different military units and factions in which the Ethiopian “Revolution” of 1974 has brought about.³² As a result of this consolidation; a new coordinating committee had been formed in June 1973 from the Armed Forces, police and territorial Army, known as “the Derg(The committee).³³ This committee was made up of 125 representatives elected by the men in the ranks and junior officers in all military units. The majority were from the ranks though they included some officers up to the level of major and lieutenant colonel.³⁴



The Derg took charge of the “Revolution” step by step as well as acted to respond to the mood of the people.³⁵ The first proclamation promulgated by “the Derg” was proc. No.1/1967, which established the Provisional military administration counsel. The 2nd proclamation cited as proc-No.2/1967 also was provided to define the power of the PMAC and its chairman. To see to what extent the Derg had acted to the mood of the people, let’s see some of the points addressed in the preamble of the proc.No.1/1967.

Realizing that the constitution of 1955 was prepared to confer on the Emperor absolute powers; that it does not safeguard democratic rights but merely serves as a democratic facade for the benefit of world public opinion; that it was not conceived to serve the interests of the Ethiopian people, that it was designed to give the baseless Impression that Fundamental natural rights are gifts from the Emperor; and that above all it is inconsistent with the popular

movement in progress under the motto “Ethiopia Tikdem” and with the fostering of economic; political and social development . . . that it has become necessary to establish a strong provisional administration dedicated to serve the public good and coping with the various security problems prevailing at this provisional period; It is hereby proclaimed as follows: . . .

Obviously Article one of this proclamation has declared the Establishment of the provisional Military government. Though the established government was military, there was significant trust of the people that the revolution is genuine and achieving its goals. But there was and still there is an argument as to whether the then situation was revolution or a creeping coup;³⁶ As one author discussed it, this argument remains cogent for three main reasons. “First, the political and social structures of the imperial system have been comprehensively dismantled. Second, the subaltern upheaval in the Armed forces was part of the popular revolt against the Imperial system. Barracks’ mutinies coincided with the series of strikes and demonstrations by civilian groups, including teachers, students, taxi drivers and urban workers during the crucial months of 1974. Third, there was a systematic and at the beginning fairly successful attempt to implement major redistributive programs, especially under the Derg’s urban and Rural land reforms as well as to consolidate the revolution politically on classic Marxist Leninist principles.”³⁷

In the course of time, however, the “Revolution” became more and more militarized. What started as a more or less equal partnership between military radicals, leftist intellectuals, trade unions and other civilian groups was quickly taken by “the Derg” starting with a major break with the trade unions in the autumn of 1974.³⁸

There was also a simultaneous consolidation of the revolutionary government’s political structure which followed classic Marxist-Leninist lines. Although, instead of a vanguard party, the Derg” and the Armed Forces themselves formed the nucleus of the revolutionary vanguard.³⁹ Marxism Leninism, together with democratic centralism, provided an attractive organizational blueprint, offering a ready-made way of filling the organizational vacuums left by the destruction of the pre-revolutionary state and military

hierarchies.⁴⁰ It was all more seductive to the soldiers of “the Derg” because of its emphasis on the centralization of power and on secretive and conspiratorial governance.⁴¹

2.2.3 The Imperial Army Proclamations and their application to the PMAC’s Armed Forces

As it is discussed under section one of this chapter, the 1944 proclamation is an Army act proclaimed for the establishment of Ethiopian Army by the Emperor. It had also established the courts Martial as well as specified the rights and duties of the members of the Armed Forces and the crimes and punishments.⁴²

Taking that Article 3 of proclamation No 68/1944 had established only the Army, two other proclamations had been proclaimed later in 1953.⁴³ Though the establishment proclamation of the three forces (Army, Navy and Air forces) was separate; the governing Law of all Forces was proclamation No 68/1944.⁴⁴ These proclamations had been applied to the Armed Forces of PMAC. For that matter it is the Military which served the Emperor and again served the PMAC. Except Later after the adoption of the PDRE constitution, almost all the mentioned proclamation were applied.⁴⁵ Moreover, proclamation No 63 of 1944 Governing the wearing of military uniforms as amended by proclamations No 96/1947 was applied to the Armed Forces of the PMAC.⁴⁶ Though, the PMAC took no time to issue legislations of statutory character by repealing those Laws that were “incompatible” with the then political order, no more efforts were done in relation to the administration and government of the Armed Forces until the issuance of the Rule regarding the establishment of the Revolutionary Discipline Committee and . “Field disciplinary offence and punishment Rule.”⁴⁷

Meanwhile, proclamation No 238/1983 as amended by proclamation No 268/1984 was also provided for the establishment of National Military Service. Upon promulgation of these proclamations, the Imperial proclamations regarding National Military service, National Military service Boards establishment and order no. 87/1973 which was also an Imperial regulation regarding National Military service were repealed.⁴⁸

The above mentioned National Military Service was different from the regular military service. It was made upon call and every Ethiopian National from the age of 18 to 50 years of age had an obligation to serve for 24 consecutive and in accordance with the establishment proclamation and the national service men are governed by a separate regulation No 82/1984.⁴⁹ However, as provided under Art.12 of the proc. No 238 of 1983, inductees shall observe military laws, directives and orders while on training and inactive military service.

2.2.4 The Constitution of People's Democratic Republic of Ethiopia and the Armed Forces.

It was in 1987, after 13 years of suspension of the 1955 imperial constitution that a new constitution came into existence and introduced the establishment of people's Democratic Republic of Ethiopia, PDRE.⁵⁰ This constitution had also transferred power to an elected legislature guided by the Ethiopian workers party (WPE) which in reality, made virtually no difference to the way power was exercised during the PMAC.⁵¹

Though it was pretended as if power was transferred to the elected body of government, the Ethiopian Workers; Party, which guided the legislature, was heavily dominated by the Armed Forces.⁵²

2.2.4.1 The Policy on the Defense of the Country Under the PDRE Constitution

As stated under chapter four, Article 24(1) of the Constitution, the Ethiopian people have the duty to defend the sovereignty, the territorial integrity and safeguard the revolution. Art 25 further stated that the PDRE shall maintain a strong defense force. While determining the nature and the mission of the Armed Forces, Art 24(2) of PDRE Constitution had provided:-

The Defense force of the peoples' Democratic Ethiopia is an Army of the working people that stands and struggles for the unity of the country, the supremacy of the working people and for peace and socialism.

The issue of National Military service had also got recognition pursuant to Art 26(3) of the PDRE Constitution. The Constitution had further introduced that National military service is the right and duty of every Ethiopian.⁵³

While defining the powers and duties of the president of PDRE, Art 85 of chapter eleven of the constitution, in addition to the title of head of state, the president is the commander in chief of the Armed Forces. More over, the president has a power to appoint members of the Defense Council and preside over the meetings as well as confer high state civil and military ranks.⁵⁴

2.3.5 Military Justice Administration under the PDRE Frame Work

Until the Military courts were established under the frame work of the PDRE Constitution in 1987, the martial Courts established upon proclamation No 68/1944 was applied to the Armed Forces of the Military government.⁵⁵ Apart from the offences enumerated and punishments introduced in the proclamation, the penal code of 1957 and the 1961 criminal procedure were used to administer justice in the Armed Forces. It is in 1987 that the Military courts establishment was introduced by proclamation No 10/1987.

Before proceeding to discuss about the PDRE Military courts, the researcher feels will have of great importance to see the nature and the role of the Revolutionary Discipline committee as well as the field disciplinary offences and punishments which she thinks will reveal the status of the Armed Forces in the process of justice administration.

2.3.5.1 The Revolutionary Discipline Committee(RDC)

It is for the first time in 1977 the RDC was formed in the 2nd Revolutionary Army located in Asmara on the basis of order given by the secretary General of the PMAC.⁵⁶ Its purpose of formation was to take measures on those who infiltrated in the Armed Forces and to strictly control the members of the Armed Forces in their attitude towards the

Derg.⁵⁷ This strict control was followed by taking severe punishments to the extent of taking “Revolutionary measures.”⁵⁸

The members of RDC appointed to deal with such cases were with unlimited power in sentencing and at the same time they did not have clear and defined procedure how to carry their duties as RDC, though deliberately done. It was simply stated that any one who violated any of the 23 offences under the RDC rule would be subject to Revolutionary measures.⁵⁹

The said 23 offences enumerated in the RDC are addressed in the penal code of 1957, though some of them are general. However, it was a duplication of the penal code.

Since the members assigned as RDC are not strictly Lawyers, obviously higher commanders, and with the discretion given to them, the rights of the members of the Armed Forces was at risk.

Later the RDC of 1977 was replaced by a new “Field Revolutionary Offences and punishments order” as well as its execution procedure.⁶⁰

2.3.5.2 The Military Courts of PDRE

The PDRE Constitution under its Art. 100(1) had provided the establishment of a supreme court as the highest judicial organ to review the Judicial Functions of any court. The Supreme Court had three divisions; the civil division, the criminal Division and the military division; each headed by one of the Supreme Court’s vice presidents.⁶¹

The Military Division of the Supreme Court had also branches, such as; the Military primary court and the Military high court, established by a separate proclamation.⁶² The PDRE Military Courts are made permanent and continue existing the same as the regular courts of the country.

Each of the levels of the military court has their original and appellate Jurisdiction. The Military primary court had only original Jurisdiction, the military high court had both original and appellate jurisdiction.⁶³ The military division of the supreme

court apart from its first instance and appellate jurisdiction, it is empowered to supervise the judicial Function of the Military primary court and military high court, which are structurally subordinate to it.⁶⁴

Though they weren't properly and fully Functional, the Military courts of PDRE were established to administer military Justice in the Defense Forces under the PDRE frame work.⁶⁵ On this basis, their organization had been related some how to the organizational level of the defense Forces. Accordingly, the military courts establishment Act had provided for their establishment level with in the organizational structure of the Armed Forces. For example Art 29 of Proclamation No 10/1987 stipulates for what units the military primary court may be established, viz . . .” A chilot of Military primary court may be established for more than one independent brigades or divisions or equivalent military formations.”

More over, Art 6 of proclamation no 10/1987 has answered as to who may serve as a judge. Thus; “Any officer of the Armed Forces on active service; who is trained in law or has acquired broad legal knowledge through experience is of highest caliber and character; and has the right to elect and be elected, may be selected as a judge of military court.”

Chapter two end notes

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18. The administration of officers of the Armed Forces order 1973 Art.3
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20. The Imperial army Proclamation No.68/1944 Arts 4-32
21. Ibid, Arts. 37-40
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25. The Imperial Army Proclamation, No.68 /1944, Art.4
26. Ibid, Art 35
27. Ibid, Art 42
28. Declaration of state Emergency in certain areas of "Teklay Gzat" of Eritrea, order No 66/1970
29. Ibid, Art 13(2)

30. There is an argument between academicians, whether the 13 years pre-adoption of the 1987 constitution of Ethiopia was without any constitution or with out written constitution. The researcher tends to believe the thirteen years weren't without constitution, but without written constitution, since there wore Policies Principles and proclamations that guide the then government to rule the country, it cannot be said there was no constitution.
31. Provisional Military Government Establishment proclamation No. 1/1974,Art.5 (a)
32. Kees Koonings and Dirk Kruis (eds) "Political Armies; the Military and Nation Building in the age of Democracy", 2000, P.243
33. Addis Zemen, Daily Journal of Ethiopia, June 8, 1973. P.1
34. Ibid, P.3
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38. Clap ham Christopher, "Transformation and Coeternity in Revolutionary Ethiopia", 1988, P.94
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40. Ibid
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42. Proclamation No 68/1944, Art 3 and see also chapter 3 of the proclamation
43. Proclamation No. 2136/1953 established the Ethiopian Naval Force and the air force has been established According to Order No. 11/1953

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51. Ibid, as cited at note 32, p.246
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56. Tibebu Gashu, as cited at note 45. P.28
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59. offences enumerated under the RDC were 23, they are almost the same with the military crimes as provided in the 1957 penal code
60. Ibid, as cited at note 45.
61. Proclamation No. 9/1987, Art 17 (1), (2)
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Chapter III

The Status of the Armed forces under the FDRE Constitution

After the downfall of the Derg Regime and before the adoption of the constitution of Federal Democratic Republic of Ethiopia (FDRE), a transitional government had been established up on the promulgation of the Charter of the Transitional Government of Ethiopia (TGE)¹. In the section that follows, the researcher goes on to examine the status of the Armed forces under the transitional government charter and its frame work.

3.1 The Transitional Period Charter and the Armed Forces

The transitional period charter has served as a Basic law and principle with which to guide the transitional Government.² However, the charter, apart from addressing very general and selected issues, did not deal with policies on Defense or other issues related to the Armed forces. An article that may be cited as relevant to the mission or purpose of the Armed forces is Art. 3 of part two of the charter. It reads as:-

The policy of destabilization and conflict promotion hitherto actively pursued by the previous regime with respect to the country's neighbors shall cease forth with the issuance of this charter.

This provision is laid down under the guiding principle of foreign policy. However, the researcher thinks it has significance to the use or purpose of armed forces. That means the Armed forces of the transitional period can not be used for destructive purposes and should not be aggressive forces.

Though the transitional period charter did not address the issues as to the establishment, organization, size and purpose of the transitional period Armed forces, a proclamation made up of its frame work has been promulgated to determine the

establishment and deployment of the national Armed forces.³ And has some indicators of its status under the law.

Proclamation No. 8/1992

This proclamation has established a transitional period Army under its part two Art. 3(1):- reads:-

The Army of the EPRDF shall serve as a state Defense army for the transition period in accordance with the Basic principles of Defense and security adopted by the council of Representatives at its 7th ordinary meeting held on August 8/1991.

As it is revealed in the minutes of the 7th ordinary meeting of the council of Representatives of the Transitional Government, a draft of the basic principles of Security and Defense of the Transitional Government was submitted for discussion by the standing committee of council for Defense and security.⁴

It is this principle used as back ground and a justification for the proclamation No. 8/1992, that established the transitional government army.

Organization, Size and Responsibility of the Army

The state Defense Army is organized only as ground force and there were no Air force or Navy. The name it self indicates that the established Defense force is only inland fighting Army.

The term Defense Army did not include the Air force, Navy. It refers to "a military force that is organized for fighting on land."⁵ As Armed forces is a general title for all military forces, Army, Navy and air force . . . , Army refers to the branch of state's Armed forces which operates on land, for example the infantry armor and artillery.⁶

Since, it is decided that the EPRDF Army be a state Defense Army, the EPRDF Army was purely organized to fight on land. Thus the proclamation was in the right

direction to address the issue of establishment of the Army. A question may be raised as to the non-existence of the Air force during the transitional period. There was Air force Head Quarter, and a commander was assigned to the Air Force, etc. But there was no air force. The question was with what legal Basis and how was the Ethiopian air force made to function? The then Chief of General staff has explained to the researcher, that EPRDF had no Air force, when it was fighting against Derg and after it became Transitional Government Defense Force it has been provided that its mission was to defend the country from foreign aggression and, since there were not well organized security forces at that time, maintaining peace and order in the country was also the other mission of the Army.⁷

More over, the then Ministry of Defense was given a duty to work on preparatory activities for the future National Armed Force, to be established by the future popularly elected government.⁸ The former chief General noted that this staff mission mean that we hare, to conduct researches to study as to how to establish regular Armed forces with clear Defense policy, military Doctrine and military Art and science.⁹

On this basis, the Air Force and the Navy, until their issue was resolved by the future elected government, it was decided to maintain them so that, the Ministry of Defense called one former commander of Air force to help in preserving the Air force and to begin trainings. As a result, the well being of the aircrafts was ensured; training of new technicians and pilots was begun. This is what was being done by transitional government regarding the air force.¹⁰

As to the issue of the Naval forces, although up on the independence of Eritrea it was known Ethiopia will be a land locked country the warships of Ethiopia were made preserved while under the asylum of government of Djibouti until the issue of whether Ethiopia will need a Navy is resolved by the elected government and the constitution of Ethiopia. For this purpose, a former Deputy Commander of Naval Forces was called by the then Ministry of Defense to help in the maintaining process and serve as commander



of the Navy at the head quarter. Another Capitan was also assigned to follow up the Naval ships in Djibouti.¹¹

As to the responsibility or mission of the state Defense Army, Art 3(2) of the proclamation has stated that "The state Defense Army shall:-

- a) Defend the independence and sovereignty of the state
- b) Bring under control if any major subversion erupts endangering the charter and the central government established in accordance with the charter.
- c) Safeguard the major institutions, transport and communication lines as well as the principal economic establishment of the country."

The State Defense Army, apart from Defending the country's sovereignty and independence, and protecting the system from any threat, it has been given to intervene in internal security crises beyond the capacity of the regional governments to control the crises. The provision reads as follows:-

"Where it ascertains that any armed conflict between various Nations, nationalities and peoples arises which is beyond the capacity of the concerned governments to stop, it may, on its own initiation intervene, with out being requested by any self government and stop conflict as an arbiter" (emphasis added)

The Defense Army had the role of arbiter in internal conflicts by involving on the said internal security operation with out being requested. Why was such power given to the Army? What was the rationale behind the then law makers to enact such a law?

As explained by the then higher officials, certain reasons push the then transitional government Council of Representatives to decide so. "It was not ignoring that an abuse may take place if the Army is to intervene with out request. But one thing that is considered is the current security situation of the country and the existence of number of armed organizations in different directions of the country. Since this situation endangers the stability of the country, when ever conflicts arise which are backed by arms and beyond the capacity of the administration of the concerned regions, to stop, the violence, the Defense Army intervenes and arrests the conflict with impartiality. Otherwise, with the times poor administrative capacity and tensions with in the armed

fronts, it was not possible to intervene merely up on request. And effectively maintain peace and order.¹² The other point with due consideration is the nature of the members of the Defense Forces. The members were members of the EPRDF forces having strict discipline and democratic practice as well as very human traits. So it was assumed that they were trusted not to abuse their power.”¹³

In the contrary, the organized armies of other liberation movements like the Oromo Liberation Front (OLF), Afar Liberation Front (ALF) and West Somalia Liberation Front (WSLF) were subject to encampment and prohibited to raise a new force and train provided that there shall be an agreement that each organization is to maintain the size of the Army that existed on the eve of the down fall of the Derg Regime.¹⁴

The encampment process and the decision on making the EPRDF Army as state Defense Army of the transition period was not an easy task. As it is revealed in the research interview with one Higher government officials, there was a tendency and of course an open demand of the liberation movements for the consideration of their Armies to take part as transitional period state Army particularly in their respective nations/regions.¹⁵ As the result of dissatisfaction with this process and other political motives the OLF later break out of its camp and launched an insurrection.¹⁶

According to the proclamation No 8/1992 and up on the establishment of the commission for the Rehabilitation of the members of the former Army and disabled war veterans in 1991, disarming and demobilizing process has began.¹⁷

The proclamation has also addressed about disarming under its Art 12(1) it says

"Subject to the future decision of the council of Representatives Of the central Transitional Government concerning the mode of Procedure of Disarming:-

(1) Members of WPE, the security, the former kebele Leadership and of the former Armed forces shall be disarmed . . ."

As a result, the commission had processed hundreds of thousands soldiers of the Derg Regime most of them surrendered and were given orientation through extensive discussions and self-criticism.¹⁸ The commission has also demobilized about 30,000

EPRDF'S own forces that had an impact on the size and composition of the transitional period State Defense army.¹⁹

More over, the proclamation has specified the rights and duties of those Armies of other organizations and to some extent to the members of the Army transitional period.

It reads:-

- “1) a member of an army of each organization
 - a) Shall be given regular and technical education that can prepare him for civilian life.
 - b) Shall be given necessary military education and training if he wishes to serve the Army to be established by the central government in the future.
 - c) May volunteer for deployment in Defense of the country up on request by the central Defense authority
- 2) The Army of each organization may be notifying its movement to the central Defense authority and by consulting with the National/Regional self-government participates in development Activity.
- 3) The central Transitional government shall bear expenditure for education, training and other logistical expenses of each organization's Army and the details shall be worked in the future.”²⁰

The rights and duties of the state Defense Army members as well as administrative Rules that govern them were according to the EPRDF'S Army internal regulation working during the armed struggle.²¹

During the transitional period, the legal frame work has tried to address the issues of the armed forces at least by establishing it and determining its purpose and by providing its mission. Further, Military restructuring had also begun to some extent as one author noted the restructuring process;

“The restructuring process had four main components military cuts, including demobilization of part of EPRDF'S own force, broadening the national composition of the armed forces, introducing pay and rank structures, and separating the Armed forces from the EPRDF'S political structures.”²²

The roles of the armed forces were clear especially in defending the independence and the sovereignty of the country, in maintaining peace and order during internal security crises as well as to serve as an arbiter during conflicts as between Nations, Nationalities and the people. As the EPRDF army is chosen to be state Army, its internal administration and government was not adjusted with the type of life of the members and with having different mission as national Army. The relationship between the high ranking commanders and soldiers was not supported by official ranks except for salary purpose; there was no ranking system and decoration of higher general officers.²³

Therefore, with some, limitations it can be said, the military structuring and providing due considerations to the issues of the Armed forces had begun during the transition period. But, how does the FDRE constitution determine the status of the Armed forces? Its mission, purpose organization composition and, its role in the constitutional system will be examined under subsequent sections.

3.2 The FDRE constitution and the status of the armed forces

The constitution of the federal Democratic republic of Ethiopia (EPRDF) was adopted in August 1995 with 106 provisions categorized under eleven chapters.²⁴ Among the said provisions, only one Article which is Art. 87 deal purely with the issue of Armed forces, but there are other provisions which raise some aspects of the armed forces affairs. These provisions will be examined under different areas of discussions of this section.

3.2.1 The purpose and mission of the armed forces

Art. 87 of the FDRE constitution is said to be an article providing the principle that guides the poling of national Defense. Under this provision sub-art (3) a mission is given to the Ethiopian armed forces which at the same time seems determines the purpose of the establishment of the armed forces.

It reads:-

The Armed forces shall protect the sovereignty of the country and carry out any responsibilities as may be assigned to them under any state of emergency declared in accordance with the constitution.

From this provision it can be inferred that a) the armed forces' mission/duty is to protect national sovereignty and b) that it has a duty to ensure peace and order of the country in case of state of emergency.

The Armed forces, while given these missions, are going to perform their duties according to the procedures laid down by the law of the land and its legal frame work. For example if the Armed force are to involve in a war to defend the sovereignty of the country, there must be state of war declared by the parliament.

As it is provided under Art. 55(9) of the FDRE constitution "On the Basis of Draft law submitted to it by the Council of minister, it shall proclaim a state of war."

Moreover, based on this declaration of state of war the commander in chief of the armed forces should pass an order and direct the general chief of staff to command the Armed forces and involve in military operations.²⁵ it is through this procedure that the Armed forces defend the sovereignty and the well being of the country.

On the other hand, the Armed forces are also entrusted with the duty of maintaining internal peace and order whenever there is state of emergency declared in conformity with the constitution.

This duty of maintenance of peace and security is also implemented within the limits stated by the law. As indicated in Art 87(3) of constitution, state of emergency should be declared and this state of emergency is declared when the security crises are beyond the capacity of local police and administration to control, as introduced under proclamation No. 359/2003, {Art(3) a proclamation on a system for the intervention of the Federal Government in the regions.}

Furthermore, in order for the Armed Forces to involve in the internal peace operations, there shall be a request and a call for intervention of Federal Forces by the concerned region and this request should be accepted by the Federal government pursuant

to Arts (4) and 5 (1) of the above mentioned proclamation No 359/2003. Therefore, upon the order of the commander in chief, the Armed Forces will intervene and accomplish their constitutional mission of maintaining internal peace and order.

As one Former higher Military officer put his view on the missions of the New National Army:-

“The Future national army can not be an instrument to suppress internal political dissent or to resolve political problems within Ethiopia that should be resolved politically and democratically. The National Army could be called upon to support Local Security Forces when internal security problems are beyond their control, but **as the professionalism and capacity of local police and security forces is increased, that will be come less necessary.** Ultimately the primary role of the national Army should be to defend Ethiopian territory from external aggression.²⁶
(emphases added)

The researcher had raised a question on the prolonged procedure of intervention; thinking that this will affect the effective settlement of conflicts between people or Nations. However, as one higher government official said, the government should seriously consider the procedures of intervention; it should not be open for the Armed Forces to take action without observing the procedures of intervention. If the Armed Forces react with out request, the action will be unconstitutional.²⁷ There may be conditions that push the Army stationed around some areas of conflicting ethnicities to intervene and stop the destructions and save Lives. However, it will be unconstitutional to intervene with out call and order from the Federal government. Currently, there is effective Communication of telephone and Fax so that the procedure would become short. But, the Fundamental point is if the Federal structure is supported by institutions to solve the challenges of Federalism, if the Leadership on regions improved its capacity to administer and if the capacity and over all profession of the Local security Forces is improved, such conflicts will be minimized or abolished and there may not be situations that call frequent interventions of armed Forces.²⁸

On top of this procedure, Standing Rules of Engagement (ROE) has developed that can help to prevent abuse and excessive use of Force by the armed Forces.²⁹ This standing ROE, although is done written recently, there was unwritten ROE observed by the Armed Forces while discharging their duty in internal security operations as well as during international wars.³⁰

The researcher has attempted to examine whether the constitution exhaustively put the mission and the purpose of the establishment of the armed forces or not.

Art. 87 of the 1995 constitution have stated no other mission apart from the above mentioned ones. But the armed forces have a mission of international peace keeping which is now being a regular mission of the Ethiopian Armed forces. So far, the Armed Forces have deployed for UN peace keeping missions in Rwanda Burundi and Liberia. Since this mission is addressed neither in the constitution nor in other laws of the armed forces, the researcher has forwarded a question towards the “founding fathers” the reason why this mission is not included in the constitution or in other laws.

A higher government official who was one of “the founding fathers” said, "of course international peace keeping is becoming a mission of our armed forces but since, it is an international mission it is determined by UN Security Council and as Ethiopia is a member to the UN, she has an obligation to deploy troops on request. It is not a domestic issue that is determined internally. So, that is a matter of implementation handled by the executive and which should not be stated as a mission. However, he said, putting its implementation procedure in a law or other manners may be of great significance that should be seen in the future."³¹

Another higher public official concurred with the previous opinion and argues that a peace keeping mission is an international and regional issue determined by those international, UN, and regional, AU organizations. Although it demands the deployment of troops, it is a matter of execution on the basis of the international laws ratified by Ethiopia. The parliament may check its implementation up on reports of the

executive or ministry of Defense. It is not a constitutional matter that should have been provided for in the constitution.³²

Further, one high ranking military officer continues to argue that a peace keeping mission is a matter of execution and is considered in five years strategic plan of the ministry of Defense as a major task of the armed forces. As it is determined by an international body, UN or AU if the Army is with the capacity to discharge the mission no need of parliament approval. The ministry with the commander in chief can decide its deployment. The parliament can check its implementation and how the financial income is used through reports. Otherwise it should not be included in the constitution or other laws as a basic mission as defending the sovereignty of the armed forces.³³

However, As the first public official tried to state, one former higher military officer has expressed his view that, though during the making of the FDRE constitution, peace keeping was not that much a big issue even in international level, Now it is a very important issue that shall be determined by a higher government body. Therefore, it should be stated among the basic missions of the Armed forces and should get enough consideration by the parliament.³⁴

From the above forwarded opinions it can be understood that the issue is debatable. However, the researcher feels that, though the issue seems a matter of execution of international obligation of UN charter signatories, since it evolves deployment of troops to abroad it needs clear legal provision for its determination. It may be determined by the parliament or executive, but it shall be stated by law. Since it is among the major tasks of the Armed forces it shall be considered constitutionally and introduced by law. Moreover, with the intention of the founding fathers of the constitution to build a strict constitutional armed forces it would have a great relevance the highest government body to determine the deployment of the army abroad.

3.2.2 Organization and composition of the Armed forces

Though Art. 87 of FDRE constitution, which lays the principle for National Defense, is silent about organization of the armed forces, Art 55, which provides the powers and functions of the house of peoples representatives, under its sub-Art(7) has stated that:- "It shall determine the organization of national Defense, Public security and national police force..."

Moreover, Art. 51 of the constitution, which provides the powers and functions of the Federal Government, under its sub-art(6) has specified that the Federal government shall establish and administer the national Defense.

Up on the above constitutional basis the federal House of Peoples Representatives has enacted law which established the armed forces and determined its organization.³⁵ Accordingly the enacted proclamation No. 27/1996 under its part two Art(3) has determined the organization of the armed forces as follows:- The National Defense forces of the Federal Democratic Republic of Ethiopia shall consist of the ground force and the air force."

The issue of the organization of the armed forces is more elaborated under the administrative regulation of FDRE Defense forces. Art 4 of part (2). It reads:-

- 4.1 "Based on the proclamation No. 27/1996 Art(3) the Defense force consists of ground force and Air Force.
- 4.2 The Defense force will have industrial, infrastructural, training and medical institutions to enable it implement its mission
- 4.3 The Defense force will have a reserve force mainly based on its army
- 4.4 Based on the Art. 24(1) proclamation 27/1996, it considers the existence of council of Defense commanders. There will be also a secretariat that follows the affairs of the council under the command of the Chief of General Staff."³⁶ (Translation from Amharic made by the researcher)

The administrative regulation has further provided the principles of organization of the Defense forces under its Art. (3) As follows:-

- 3.1 The organization should allow the appropriate implementation of creating/building up, maintaining the already built force and utilizing it.
- 3.2. The organization and working modalities of the Defense for Insure mission-oriented, flexible and task-force organization
- 3.3 .It also includes efficient, effective and guaranteed war support and war Service support
- 3.4 The Defense force organization insures joiness
- 3.5 The organization allows decisions and achievement of expected
- 3.6 Results through collective leadership, based on given authority, budget and using existing staff.
- 3.7. The organization considers reserve force and core leadership that incorporates this force." (Translation by the researcher)

It is based on the above organizational principles and determinations that the FDRE Defense force are carrying out their missions. The air force and the ground force, though both the air and the land fighting tasks are being carried out, have no separate head quarters and not structurally considered as forces compare to their previous existence.³⁷

During the transitional period and until four years after the adoption of the constitution the air and the ground forces were established having their head quarters and the main head quarter of the ministry of Defense was separately organized, with clear chain of command and of course leading both forces. But, recently the two forces head quarters dissolved and merged with the main head quarters staff.³⁸ so the researcher posed the following questions. What does this change of structure mean to the organization determined by the legislature under proc. No. 27/1996 Art.(3) and what justifies the "deviation" from the universal way of organization of the air and ground force? These questions were forwarded to the Chief of General Staff Ethiopian ministry of Defense.

He firmly stated that the Armed forces are organized as ground and air forces that fight on air and on land. “There is nothing done in contravention with the Defense proclamation. However the organization was made flexible to serve the given mission of the Armed forces. Organization was made considering proper usage of Human Resource as well as materials. On this basis and on the principle of joint ness the Army and the air forces are performing their duty. But this does not mean they don't have their separate structural existence as one command.”³⁹ The only adjusted structure is instead of scattering the resources to have ground force or Air force as it was in the previous regimes and which was consuming the economy, by strengthening the central head quarter the forces are made to accomplish their missions.

Further, he has noted that it should not be taken as a deviation from the experiences of other countries of the world where this kind of organizational structure normal. In fact, Ethiopia is late to implement it. The South Africans have practiced it. Even the rich countries like USA, though they have the three force's strong head quarters, the Navy works having the air crafts, helicopters and the infantry. Therefore, the kind of organization followed by Ethiopia is flexible and wise usage of resources.⁴⁰

B. Composition of the Armed Forces

The FDRE constitution under its Art 87(1) has clearly stated that the composition of the national armed forces is to reflect the fair representation of Ethiopian Nations, Nationalities and peoples.

As it is revealed in the minutes of the discussion of the constituent assembly, an assembly held to ratify the draft constitution; this was a serious issue in the assembly which raised several questions as to the possibility of ensuring equitable representation of nations Nationalities and peoples of Ethiopia. Since the National Defense army was numerically dominated by members from one Nation (i.e.) From Tigray.⁴¹

However, it was reached to the agreement that although due to historical reasons there exist unbalanced representation of Ethiopian Nations and Nationalities corrective measures are taken to bring the equitable representation up on consensus of the

transitional government and its army.⁴² This was taken as a ground for the future FDRE Armed forces to be composed of members representing all Nations Nationalities and peoples of Ethiopia. More over the constituent assembly has agreed on that the equitable representation not to be based on a quota system.⁴³

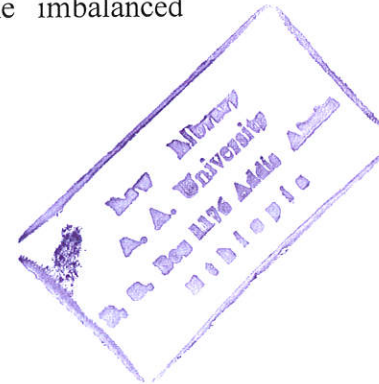
The same position of the then ministry of Defense was also reflected on one of the symposiums held to further develop the contents of the FDRE constitution, through the paper presented by one higher military authority.

It reads:-

“The National Army of Ethiopia must be broadly representative of the society. This does not mean that its composition should be based on an ethnic quota system, but that it must be truly national in character and sufficient diversity to allow the people of Ethiopia to feel ownership. The Army must be their Army. Therefore, the army must be composed in such a way as to serve as a symbol of Ethiopia's diversity and of its unity.”⁴⁴

In relation to the measures which are taken to correct the imbalanced representation of the army, the paper goes on segues:-

" The existing army - is not for historical reasons as representative as it should be this fact has caused some difficulties during the transition, and needs to be rectified. In order to do so, it will be necessary to demobilize many Tigrian members of the armed forces and to reshape the Army to reflect the participation of all nations and nationalities.⁴⁵



During the transitional period, the commission established for the rehabilitation of the members of the former Army and disabled war veterans has also demobilized about 30,000 members of the EPRDF Army parallel with its main mission.⁴⁶

Moreover, a reasonable number from the former regime Army was recruited provided that, this people were not involved in human rights violations and did not serve as WPE members.⁴⁷ Further, new soldiers especially from Oromia and Southern Ethiopia

were recruited and trained during the transition period; thinking it will help to balance the representation of Nations and Nationalities.⁴⁸

An important issue to be raised here is if quota system or other affirmative action measures are not taken, how the vision on composition of the armed forces can be realized. It seems there is still an imbalance in the representation of nations and nationalities, especially at high level commanders.⁴⁹ What mechanisms can be used to effectively realize the composition of the Armed forces as intended by the founding fathers? What is the disadvantage or the difficulty of following a quota system, provided that some efforts to be made to raise the capacity of individuals to serve at high level command?

As understood from the interview made with some of the high officials, a quota system is destructive and can not bring the intended constitutional army. Instead of keeping the unity and strength of the Armed Forces, it will push the members to conflict, because of their confusing status as members of the army with their status as agents of their respective Nations or Nationalities.⁵⁰

The main and only mechanism to ensure fair composition is during recruitment by giving opportunity to those unrepresented groups fairly and through further trainings and education.⁵¹

3.2.3 Recruitment, employment and term of service of the members of the armed forces.

a) Recruitment

Recruitment is based on voluntarism. Obligatory National service is not addressed either in the constitution or in other documents under its frame work.⁵² The Defense forces proclamation No 27/1996 Art(4) has stated that the recruitment to be based on voluntarism and fitness of persons as well as the recruitment to embody a fair representation of nations nationalities and peoples of Ethiopia. More over this proclamation under its Art 4(3) has introduced that officers to be recruited only from among the ranks of the Defense forces. This way of recruitment is different from the

previous regimes in which officers were directly recruited from high schools or higher education and up on getting officers special course and they became directly officers of high level.⁵³

The rationale behind this recruitment process as revealed in the Document "Building an army in the revolutionary Democratic system" (የሠራዊት ግንባታ በአብዮታዊ ዲሞክራሲ) " every higher commander/officer, unless passed through the lower level service as private soldier, couldn't defend the system and build a strong army who can be the final and the strong Defense of the system. The lower level soldier is the main Beneficiary of the system so that protects the system." ⁵⁴

b) Employment and terms of service

Every military recruit has an obligation to sign an employment contract with the ministry of Defense in accordance with directives issued by the later.⁵⁵ Pursuant to art. 6 of proc-No27/1996, basic military training is rendered to recruits before going into service where diverse skills are necessary. Members, while in active duty can be also trained according to their individual disposition and competence. Furthermore, every recruit up on completion of the basic military training and before joining the active duty has an obligation to take military oath to serve his country with full commitment and devotion; art 7 of the proclamation stated.

As indicated under Art 9(1) of the proclamation:-

“Every member of the defense forces shall be employed for a seven-year term of service. Where the member is willing to serve for additional time and the ministry so agrees; the period of service may be extended, with out however, going the age of 45.”

However, the term of service is different for different ranks as it is introduced in sub arts 2 and 3 of the above article, any member of Defense forces who have attained the rank of lance-corporal and sergeant or equivalent have an obligation to serve at least seven years subsequent to his attainment of the said rank, but again not

beyond the age of 45. Where as the officers shall serve for at least ten years after they became officers. However, they have also age limits.

- " a) Second lieutenant to captain 48 years
- b) Major to colonel 52 years
- c) General officers 55 years"⁵⁶

Though there is an age limit provided by the law, the ministry of Defense has the power to extend the term of service of officers for a period not more than two years.⁵⁷ Moreover; the above age limits are taken as retirement ages as stated in Art 13(3) of the proclamation.

The members of the Armed forces are entitled to certain services while discharging their duty, like rations housing, uniform, travel expenses and medical care, which is free of charge.⁵⁸ Such services are specified in a more detailed manner in the Defense Forces Administrative Regulation and other relevant documents.⁵⁹

Obligatory service is also imposed up on officers who received a benefit of special or academic training.⁶⁰ They are obliged to serve for not more than twelve years. However, this obligatory service is extended to any member of the armed forces who has got the opportunity to learn and develop his in or outside Ethiopia, to serve double to the period he has taken to be trained.⁶¹

c) Termination of service and compensation

As it is shown in Art 13(1) and (2) of the proclamation No 27/1996 and Art. 29 of the administrative Regulation of the Defense forces; every member of the Armed forces is entitled to compensation upon completion the seven years service or before completion provided that the termination is not made voluntarily but for other various reasons.

The grounds for termination of service as stated under Art 11 of the proclamation are the following:-

1. "Expiry of his contract of employment
2. His death

3. Acceptance by the ministry of his offer for resignation
4. A medical board testifying his unfitness for further military service owing to serious illness or mental or physical handicap suffered.
5. His being criminally convicted by a law court and where decided that the offence disqualifies him from service
6. It becoming impossible to retain him because of changes in the structure of the ministry.
7. His service being confirmed undesirable due to incompetence in the performance of regular military duties, failure in leadership or misconduct, and
8. His retirement. "

The above mentioned grounds for termination of service are executed up on the examination of the cases by the leaders of the concerned members' unit and up on approval of the competent authority.⁶² The details of this execution procedure is provided in the administrative regulation of the FDRE Defense forces, part four which deals with administrative affairs.

d) Dismissal of the members of the Armed forces

Dismissal is a kind of punishment imposed up on members of the armed forces who acted in violation of certain disciplinary rules or committed serious crimes.⁶³

Defense forces proclamation No. 27/1996 has provided that dismissal shall be made by the organs empowered to give promotions in accordance with Art. 20 of the proclamation it self. Further, the proclamation has also introduced how the dismissal of higher general officers is implemented under its Art. 22(2)(3) .

It reads:-

- 2) "Cases of Dismissal of general officers shall be looked in to by a committee of not less than three persons appointed by the commander in chief of the armed forces. The commander in chief of the Armed forces shall submit the commander's recommendation, together with his opinion there on, to the head of state for final decision.
- 3) Where it finds it necessary, the leadership organ or the committee shall call up on and hear the would be dismissed officer before a final decision is reached under . . . "

As it is revealed under the above sub art(2) of Art (22), the final decision of dismissal of general officers was supposed to be provided by the head ^{of} state, who is entitled to decorate the general officers as stated under Art 20(2)(d). However, this provision is deleted and replaced by the following provision, under proclamation No 343/2003 which is cited as "Defense forces amendment proclamation."

"Cases of general officers shall be looked into by the Defense Council and final decision shall be rendered by the commander in chief." ⁶⁴

The justification for this amendment as explained during the discussions on the amended law is that, though the head of state decorated the officer, dismissal is an administrative issue that should be resolved in administrative level so that the commander in chief, who is the prime minister, is entitled to do so. At the same time, this procedure has an advantage of saving time. ⁶⁵

However, there were arguments against such procedure rising that since the head of state is the one who decorate the general officers and this is a political decision, he should be the one to give decisions on the demotion and dismissal of general officers. ⁶⁶ Though this argument seems sounding the law is done as the above ones and better to study the exact advantages.

3.2.4 Promotions, Medal awards and prizes of the armed forces.

a) The Ranks and Promotion Procedures

The 1996 Army proclamation has introduced the possible ranks and the promotion procedures to these ranks applied both to the ground and Air forces pursuant to Art 19 and 20 of the proclamation.

The ranks introduced were very few and reduced when compared to the previous regimes Armed forces. ⁶⁷

Art 19 of proc. No27/1996 reads.

"The ranks in the Defense forces are the following:- (1)

- a) Lance-corporal

- b) Corporal
- c) Sergeant
- d) Second-lieutenant
- e) lieutenant
- f) Captain
- g) Major
- h) Lieutenant - colonel
- i) Colonel
- j) Brigadier General
- k) Major General
- l) Lieutenant General and
- m) General "

The above ranks are for the ground force and sub art (2) introduce the ranks for the air force. It says

"The ranks in the air force range from

- (2) Second lieutenant to General are similar to those in the ground force
- (3) The ranks below that of second lieutenant in the air force are the following
 - a. Junior Air crafts man
 - b. Senior Technician
 - c. Master Technician
- (4) Ranks, other than those specified here in above, held by members of the former army shall remain in transitory use unless upgraded by way of promotion."

As regards to sub art (4) it is to indicate that few and expertise members of the former Army have joined the new army and with former ranks so that provides how to handle their promotion issue.

The promotion procedure is provided under Art 20 of proc. No 27/1996. This procedure presupposes the issuance of a directive on promotions. Though it has provided that "a member of the Defense forces shall be promoted for excellence in the performance of military duties." ⁶⁸

The directive was issued through the internal Administrative regulation of the Armed forces 1st ed. in 1996 after the promulgation of the Army proclamation No 27/1996 and has provided the following steps to promote from one rank to the next rank.

- from Lance corporal to corporal - 2 years
- from Corporal to Sergeant - 2 years
- from sergeant to second lieutenant - 2 years
- from second lieutenant to lieutenant - 2 years
- from Lieutenant to captain - 4 years
- from captain to major - 5 years
- from Major- to Lt. Colonel - 5 years
- from Lt. colonel to Colonel - 4 years
- from Colonel to Brigadier General and above is a political assignment

This internal administrative regulation of the Armed forces was replaced by the 2nd edition of the FDRE Defense forces administrative regulation in July 2007 and the promotion procedure is changed peace time and war time promotion procedure.⁶⁹ However, the requirements for a member to promote are the same as it is stated in the 1st edition as well as in the Army proclamation No 27/1996 Art. 20(1).

However, the procedure of promotion is as mentioned above and the ranks introduced in proclamation 27/1996 are amended by Defense proclamation No 343/2003. According to the amendment proclamation the previously ignored ranks below the rank of 2nd lieutenant are now recognized. The reason for this amendment was that the private soldier quickly comes to level of officer with out actual responsibility to carry and with out open position to serve as higher commander and needed to use the former ranks of NCO.⁷⁰

The added ranks are between the sergeant and the 2nd lieutenant: - and are the following

- Master sergeant, first sergeant, staff sergeant major,
- Command sergeant major, junior warrant officer
- Senior warrant officer, master warrant officer
- Chief warrant officer 2nd lieutenant"⁷¹

b) **Medals, prizes and orders**

Pursuant to Art 15 of Defense Forces proclamation No27/1996, members of the Armed Forces are entitled to awards of medals and prizes for their notable service, and heroism. Further, their new findings and creative work is also backed by an award.

Concerning what types of medals or prize are to be awarded this proclamation presupposes the issuance of another relevant law or internal Army Regulation. Up on this reference Defense forces amendment proclamation No123/1998 has dealt with.

Part six of the proclamation under its Art 37 (1) has introduced the following Medals & awards:-

“(1) the following are medals, Ribbons and certificates to be bestowed upon members of the Defense Forces.

- a) The Medal of the Victory of Adwa
- b) The Medal of Heroism 1st rank
- c) The Medal of Heroism 2nd rank
- d) The Medal of Heroism 3rd rank
- e) The medal with palm leaf for participation in the Armed struggle
- f) The Medal with out palm leaf for participation in the armed struggle.
- g) The Medal of Distinguished labor
- h) The Medal of Military service 1st rank
- i) The Medal of Military service 2nd rank
- j) The Medal of Military service 3rd rank
- k) The Medal of international peace keeping
- l) The Medal of wounded
- m) The military service Ribbon
- n) Combat certificate Ribbon

“The Medal of Victory of Adwa is the highest award that may be bestowed upon an Ethiopian individual, military unit or group that has performed unparalleled feats of bravery in a battle field.” Art 38 (1) of the proc No 123)1998 stated.

Moreover, an awardee of this medal is entitled to other prizes like 25,000 Birr, one time payment, receiving special identity card autographed by the head of state, may have a school or a hospital, avenue or public square . . . in his birth place named after him etc.⁷²

The proclamation has detailed as what means by the different medals, to whom are they awarded and privileges that follow the awards and enjoyed by the awardee.⁷³

3.2.5 Military Uniforms

Members of the Armed Forces are distinguished by their military uniforms, (clothing insignias, Belts, badges, buttons, shoulder marks, ribbons, stripes, medals, distinctions and side Arms), so that should have uniforms and are obliged to wear it properly.⁷⁴

Accordingly the FDRE Armed Forces have different uniforms to be clothed indifferent times and are entitled to have it. Defense Forces administrative regulations both the 1st and the 2nd edition has addressed the issue of uniforms.

As it is provided under Art 28 of the 2nd edition of FDRE Defense Forces a administrative regulation: there are three kinds of uniforms; such as; the garrison (war) uniform, office uniform and the grand uniform. The grand uniform is dressed during National public holidays. The others, as the name indicates are dressed, in garrison/war and in office duties.

3.3 Accountability of and parliamentary control over the Armed Forces

3.3.1 Accountability of the Armed Forces

As the Armed Forces have an obligation to obey and respect the constitution at all times as per Art87 (4) of the FDRE constitution, they shall be accountable to the elected peoples' government. This principle is envisaged not only in the constitution but also in the laws and regulations of the Armed Forces made up on the legal frame work of the constitution.

Defense Forces Proclamation No 27/1996 under its Art 8 has provided that “Every member of the Defense Forces has the duty to uphold the constitution as well as to obey military laws, rules, directives and all standing orders.” Thus the members of the Armed Forces are not above the law and are accountable to those legally elected officials. Moreover, the Defense Forces administrative regulation has provided a duty of the members of the Armed Forces to be loyal to the constitution under its Art 2 (2). On top of that, Art 2 (2) has also provided the members of the Armed Forces have an obligation to respect and to protect elected civilian officials as well as public institutions.

In Relation to the issue of Accountability of the Armed Forces, an idea was stated in one of the symposiums during the adoption of FDRE constitution that:-

“If the National Army is to be credible, and to function as a guardian of peace in the eyes of the population, it must be accountable at several Levels. In general, the national Army should be accountable to civilian authorities in the execution of its mission. This means that, the highest Legislative body of the land would determine the Army’s size/ structure and budget. It turn, the Army must be accountable to that same authority for its management and spending. The Army must also be accountable to the appropriate elected officials with regard to the over all tasks and duties.”⁷⁵

Since this was the intention of the Founding Fathers of the constitution in making democratic and accountable armed Forces, they provided a civilian minister to lead the Ministry of Defense and Prime Minister to command as the Armed Forces as commander in chief.⁷⁶ Both the Prime Minister and Minister of Defense are elected officials and members of the parliament as well, though the Minister of Defense can be appointed from non-parliament members, is always from the civilian society.⁷⁷

Determining the organization, size and budget of the Armed Forces is also vested in the highest legislative body of the country (i.e.) the House of peoples’ Representatives as provided under Art 55 (7) of the FDRE constitution.

In other words, the Accountability of the members of the Armed Forces is also envisaged by their being responsible for their acts and when in violation of the law, they

are tried by the court of law either in the civil (ordinary) courts or military courts or under the internal disciplinary procedures. Which is to be discussed in detail under the subsequent chapter?

These procedures demonstrate that the Armed Forces are not beyond the law so that can not abuse their power as armed men. This also insures that the Armed Forces will act in accordance with the law and accomplish their missions on the basis of decisions of elected highest officials.

3.3.2 Parliamentary Control over the armed forces

a) Civilian Minister, Listening Report and questioning

As it is discussed in the previous section the National army, to perform its constitutional duties properly and to be credible in the eyes of population, should be accountable to civilian authorities as several levels. In other words, to ensure that the Armed forces are in conformity with their constitutionally given duties and their function is consistent with the law of the country as well as with their administrative regulation, there shall be parliamentary control over the Armed forces in addition to other internal checking mechanisms.

For the purpose of implementation of the above principle, the FDRE constitution has provided under its Art. 87(2) that "the Minister of Defense shall be a civilian". Accordingly the ministers heading the ministry of Defense since the 1st establishment of government are civilians. The Minister of Defense in turn is accountable directly to the Council of Ministers or the Prime Minister, which is also accountable to the Parliament.⁷⁸ Through this mechanism the Parliament controls the Armed forces.

However, to what extent the civilian minister of Defense is empowered to control the Armed forces is debatable due to unclear accountability provision between the minister and the General chief of staff, who is the highest military body entrusted to military operational affairs in the ministry of Defense. As it is envisaged in the Defense proclamation No 27/1996, Art 23 and 24, both duties and powers of the minister and the General chief of staff are provided. However, Apart from Art 24(6) which stated that the

General chief of staff plays an advisory role to the prime minister and to Defense minister in military matters, nothing is provided that indicated either the chief of staff is accountable in Administrative matters to the minister or the minister is the highest political body in the ministry. The general chief of staff is accountable to the commander in chief (the prime minister) as can be understood from Art 24(5), which reads as follows:-

"Subject to Directives and decisions of the commander in chief of the Armed forces, (the general chief of staff have the power and duty) to command the Armed forces and direct military operations."

At the same time the Minister is accountable to the prime Minister or/and to the council of ministers.

What if tensions exist between the two higher authorities? Like differences in administration decisions or an overlap between the measures taken by the two authorities, when one of them wanted to be the higher decision make?

There are two opinions regarding this issue. The first is that there shall be clear provision which provides that the minister is the highest political body and face of government in the ministry and the chief shall be accountable to him in managerial affairs. So that shall submit requests for budget, plans and the like in addition to his accountability to the prime minister in military affairs.⁷⁹

The second opinion is that as far as the duties, responsibilities and powers of each authority is provided separately; they shall do their respective responsibilities with their accountability to the prime minister. There is no need of putting hierarchical provisions between them and it will not create any problem as far as they perform their duties harmoniously and as provided by law.⁸⁰

Thus the researcher concurred with the first opinion, that there shall be clearly stated provision that empowers the minister to in sure parliamentarian control over the Armed forces. Otherwise, as tensions are inevitable in this area obviously problems may be created.

Based on the above principle, the parliament, the House of peoples representatives and the federal government in general, are empowered by the constitution to administer the national Defense as well as to conduct an investigation while observed the infringement of Human rights by the Armed forces and take necessary measures.⁸¹

The Parliament has also a power (which exist also towards other ministers and governmental agencies) to request information and be informed about the decision of government on the affairs of the ministry (Armed forces) and its implementation process.⁸² This Is what is known as questioning and through this mechanism parliamentary control over the armed forces is insured.

Parliamentary control over the Armed forces through the accountability of the minister or through other mechanisms mentioned above is facilitated by the standing committee for Defense, security, and foreign affairs in the House of peoples' representatives.⁸³

Further more, the parliamentary control over the Armed forces is also manifested through its legislative power. The House of peoples' Representatives, enacts laws regarding the Armed forces, as they are under federal jurisdiction,⁸⁴ Up on the enactment of such laws, the Armed forces will be bound by the laws and their function is restricted (controlled) to the extent the law permits. In case of violations of such laws, the armed forces and the individual members are responsible and subject to legal proceeding under the court of law or disciplinary measures.⁸⁵

Therefore, Armed forces are not above the law of the country just because they are armed. From this it can also be inferred that the armed forces, through their being subject to legal proceedings is the manifestation of their accountability to civilian authorities and of the civilian control over the armed forces. As one higher military officer stated:-

"Accountability also means that a member of the armed forces who commits a civil crime must be tried in civil courts . . . like all members of the society, they must conduct them selves with in the frame work of

the law of the land and held accountable if they violate the laws. At the same time the national Army must be held accountable by internal laws governing military conduct.⁸⁶

b) Other forms of control

There are various forms of control where the parliament practices control over the armed forces. Receiving petitions from individuals regarding armed forces; investigating the financial affairs of the ministry of Defense including the branches of the Armed forces and making visits to the institution itself are among the forms of control.⁸⁷

The parliament receives petitions from individual members of the Armed forces and from civilian individuals who are dissatisfied by the decisions or measures taken by the ministry and/or individual commander. The petitions after seen by the speaker of the House, are directed to the standing committee for follow up.⁸⁸

The standing committee writes letters regarding the complaints to the Ministry of Defense and orders for Results. As it is revealed from the interview with the vice chairman of the standing committee, though the committee had received number of petitions most of them complaints up on disciplinary measures and demobilization, there was no a situation to make further investigations and change the decisions. Because It was revealed that the ministry of Defense has made the decisions following the proper legal procedure and with the help of legal advisors.⁸⁹

Currently such complaints and petitions against the ministry of Defense from the employees are sending to the ombudsman since this body is in entrusted with handing such problems.⁹⁰

The other controlling mechanism is investigating the financial affairs of the Ministry including all branches of the Armed Forces. The parliament, apart from checking through reports, it makes surprise auditing and verifies the legality and appropriateness of expenditure.⁹¹

Visits are also considered as checking mechanisms but due to budget constraints the standing committee does not make enough visits to the Ministry of Defense or other branches since the past 4-5 years only one visit is conducted by the standing committee.⁹² The researcher has tried to know whether the standing committee has questioned the Minister or the General chief of staff or other higher military commanders to explain what is being done in the Armed Forces in relation to different issues.

However, no effort is done in this regard and this point was not in the minds of the standing committee. Even, the committee has a constraint in understanding its power and responsibility regarding the Armed Forces. For instance, as it is provided in the duties and responsibilities of the committee, under proc. No27/2002,Art(3) the standing committee has duty of checking and insuring that the Armed Forces composition is in line with Art 87 (1) of FDRE constitution. The committee did not do so and have no the capacity to do that since the committee is not supported by experts and there is no budget to conduct researches on the area.⁹³ It seems there is lack of over all capacity to deal with this issues effectively.

C. Internal Institutions and their role

There are various forms of control of the Armed Forces though these are not strictly related to parliament. One of these institutions is Inspector General of the armed Forces. This office has existed recently since 2007 and it is with in the internal structure of Ministry of Defense, accountable to the General Chief of Staff.⁹⁴ This office has a responsibility of checking the over all readiness of the Armed Forces, the implementations of internal rules, regulations and plans of the ministry.⁹⁵

Moreover, the office of the Inspector General has a power to check how commanders are handling their Army: whether there is abuse of power or not and the prevalence of good governance in the Armed Forces administration.⁹⁶ In such a way the office can conduct investigations and upon the final out come of its investigation, legal proceedings may take place through the branch of Justice administration of disciplinary

committee of the armed Forces. So that this office is serving or would serve as control mechanism for insuring appropriate management and mission accomplishment.⁹⁷

The other institutions that should deserve mention is the Legal Affairs Department that provides legal advices to commanders and the Military Justice Administration which insures the right of access to justice of the members of Armed Forces. The Later will be discussed in detail in the subsequent chapter.

Every commander has an obligation to consult legal advisors before they make Final decisions on administrative cases, disciplinary measures as well as during war in identifying targets.⁹⁸ These institutions help and realize the goals of the parliamentary control over the armed Forces as well as in bringing good governance in the armed Forces.

Therefore, by making the internal management of the Armed Forces democratic and accountable to the civilian authority, the Armed Forces can satisfy their constitutionally given duties and serve as a highly motivated and effective fighting Machine.

3.4 Ethiopian National Security Council and the Armed Forces.

Ethiopian National Security Council is established in 2001 to provide additional guaranty against enforceable and potential threats and national security challenges of the country.⁹⁹

As mentioned above the purpose for the establishment of the council is to provide additional guarantee to tackle the potential security threats and challenges. Since the Armed Forces as well as other security forces are established for this purpose, the council is giving support, by assessing before hand the threats and give recommendations of their solution.¹⁰⁰ The overall Function of the council is advising the prime Minister in security related issues. Art 4 of the proclamation has provided the detail Functions as follows:-

- (1) The council shall have the Function of advising the Prime Minister with respect to the integration and the following up of the proper

implementation of domestic, foreign and **defense polices relation to the national security** (emphasis added)

- (2) With out limiting the generality of sub-Art (1) of this article, the council shall:
 - a) asses National Security threats and forward recommendations on measures to be taken
 - b) propose implementation guidelines relating to national security measures
 - c) deliberate on any issue affecting the national security.
- (3) The council shall also carry out functions that may be determined by regulations of the council of ministers in the case where a state of emergency has been declared in accordance with Art 93 of the constitution of Federal Democratic Republic of Ethiopia.

From the above functions it can be understood that the council has the responsibility to follow up the proper implementation of Defense Policy so that works on the main duty of the Armed Forces. This is because the main Missions of the Armed Forces as provided in Art. 87 of the FDRE Constitution is and as discussed at earlier section, is defending the sovereignty of the country and maintaining internal peace and order of the country in case of emergency is declared.

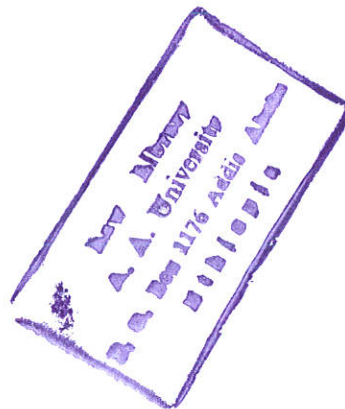
Clear enough, as the advisor of the Prime Minister on the National security matters explain to the researcher, the council works on Defense issues, especially the readiness of the Armed Forces, the internal life of the members, the implementation of rules and regulations regarding the Armed Forces are some of the concerns of the council.¹⁰¹

Moreover, the National Security council is composed of seven members, headed by the Prime Minister Among the members the two are, the Minister of National Defense and the General Chief of Staff of the Ministry of Defense.¹⁰²

Therefore, many issues regarding the Armed Forces are raised as main point of discussion in the meeting of the council. As a result, the council would make additional efforts in building the Armed Forces fit to their constitutionally given duties.

While we see the accountability of the council, the proclamation does not say any thing. However, it can be inferred from Art 3 (a) of the proclamation that the Accountability of the committee may be to the parliaments. Because the chairperson of the committee is the Prime Minister;

This council, since it is established to follow up the integration and the proper implementation of, among others, defense policies if should have link with the parliament's standing committee for defense; security and foreign affairs. But there is no official Relationship and follow up of the standing committee to the activities of the council.¹⁰³



Chapter III endnotes

1. Transitional period charter, Nagarit gazette No 1.1991, section3 Art (6)
2. Ibid, the last paragraph of the preamble
3. Proclamation No.8/1992, cited as “a proclamation to providing of the state Defense army of the transitional government and for the establishment of police Force.”
4. Ethiopian Transitional government Council of Representatives 7th ordinary meeting Minutes, 1991 PP97.105
5. “Oxford Advanced Learners Dictionary” 5th edition, oxford university press, 1995,P.54
6. Bowyer, Richard,” Dictionary of Military Terms,” 3rd edition, 2004, PP.16-17
7. From the Interview with H.E Tsadkan Gebretensae, (Lt.General (Rtd) . Former Chief of the Staff of Ministry of Defense, May.2008
8. Ibid
9. Ibid
10. Ibid
11. Ibid
12. From the Interview with H.E Ato Abay Tsehaye, advisor to the Prime Minister, on National Security affairs, May,2008.
13. Ibid
14. Ibid. as cited at note 12. and see also art 10 (1) of proc-No.8/1992
15. Ibid as cited at note 7 and note 12.
16. Ibid
17. Ibid
18. Luckham, Robin,. “Radical Soldiers, New model Armies and the Nation-state in Ethiopia and Eritrea,2002,P.260
19. Ibid
20. Art 11 (3) of proc-No 8/1992

21. As revealed from the interview with H.E Ato Bereket Simon, advisor to the Prime Minister in Public Relations affairs and from the interview with Lt. General Tsadkan G/Tensae, The EPRDF Army was composed of different independent organizations' armies. And these organizations have their own administrative Rules, most of them unwritten and made traditions. However, they were more or less similar. While the EPRDF Army became the transitional government Army, no other new regulation was enacted or adjusted with the new life as national Army. The only thing done is salary scale arrangement upon the determination the level and standard of participation of each member. Further, the members of the Army were entitled to pension allowances.
22. Ibid, as cited at note 18, P.261
23. From the interview with Lt. General Tsadkan "During the transition period and until the FDRE Armed Forces were established by Law and Military ranks are introduced, there was no official rank except appointment of commanders for the Army Corps, Chief of General Staff. Minister of National Defense, Even the General Chief of Staff was called "ATO". Other members of the Army were ranked for salary purpose, as division commander, Brigade Commander, Battalion Commander; etc according to each member's capacity or service in the armed Struggle."
24. Nagarit Gazzeta No. 1/1995, A proclamation to pronounce the coming in to effect of the constitution of the Federal Democratic Republic of Ethiopia.
25. Defense proclamation No 27/1996, Art 24 (5)
26. Thadkan Gebre Tensae, "A vision of a new Army For Ethiopia", 1993, P.2
27. Ibid, as cited at note 12
28. Ibid
29. The standing Rules of Engagement (ROE) was done in july 2007. The ROE regulates the use of force. The use of fore is not in principle allowed so that the ROE determines when to use force, How to use force, Based on

this SROE cards are prepared for a specific action like during internal Conflicts, Riots or international wars.

30. Ibid as cited at note 23
31. Ibid, as cited at note 12
32. From the interview with H.E Ato Bereket Simon, Advisor to the Prime Minister on public Relation Affairs, march,2008
33. From the Interview, with H.E General Samora Yenus, Chief of General Staff of the Armed Forces. May.2008
34. Ibid, as cited at note 23
35. Defense Proclamation No 27/1996
36. Defense Forces administrative Regulation, 2nd edition, 2007,P.16
37. Personal observation of the researcher
38. Ibid
39. Ibid, as cited at note 33
40. Ibid
41. “Minutes of the constituents Assembly.” Document No.5, 1994, P.24
42. Ibid, P.27
43. Ibid
44. Ibid, as cited at note 26, P.5-6
45. Ibid, P.6
46. Ibid as cited at note 18, P.260
47. Ibid, as cited at note 7
48. Ibid
49. Personal observation of the researcher
50. Ibid, as cited at note 7
51. Ibid
52. Art 4 (1) of proc. No27/1996
53. Ibid as cited at note 33
54. “የሠራዊት ግንባታ በአብዮታዊ ዲሞክራሲ.” Building An Army in the Revolutionary Democracy, by Ministry of Information, 1996, PP.124-126
55. Art.5 Proc. No.27/1996

56. Ibid, Art 9 (3)
57. Ibid, Art 9 (4)
58. Ibid, Art 10
59. Defense Forces administrative regulation, 2nd edition, part five, 2007, PP.51-58
60. Defense Proc. No27/1996, Art 21
61. Art 20 (5) of the Defense Forces Administrative Regulation, 2nd edotopm. 2007
62. Art 22 (1) of proc. No27/1996
63. Ibid. as cited at note 59, Art 43 (9) P.69
64. Art.9 of Defense Amendment Proclamation, No 343/2003
65. Personal Observation of the researcher,
66. Ibid.
67. See the Armed Forces Promotion, obligatory service and dismissal regulation, order No. 81/1973. Which worked in both the Imperial and the Derg regions and compare with the current Armed Forces Proclamations?
68. The Defense Forces administrative Regulation 2nd edition, part four, Art 21 (1) provides that “a member will be promoted while register excellent performance and upon the availability of open position as well as cover his waiting period. . . .” However the length of the waiting period is not yet provided in the Regulation.
69. The need for peace time and war time procedure is explained by the higher officials during the discussion on the approval of the new Regulation of 2007 in May-June 2007. as observed by the researcher.
70. Observed by the researcher from different meetings and explanations on this area since 2002.
71. Defense Amendment Proclamation No 343/2003. Art 6 (d-k)
72. Defense Amendment Proclamation No 123/1998, Art (2) (a-d)
73. See Ibid, Arts. 38-57
74. Ibid as cited at note 59, Art 28 (2) , PP.47-48
75. Ibid, as cited at note 26 P.5

76. Arts, 87 (2) and 74 (1) of the FDRE Constitution, 1995
77. Ibid, Art 74 (2)
78. Ibid, Art 72 (2)
79. Ibid, as cited at note 7.
80. Ibid, as cited at note 33
81. Arts 51 (6) and 55 (7) of the FDRE Constitution, 1995
82. Ibid Art 55 (17)
83. From the interview with H.E Ato Bereded Anmut, vice chairman of the parliament's standing committee for Defense, Security and foreign affairs.
84. Art 55 (1) of the FDRE Constitution,1995
85. Ibid Art 55 (7). 2nd Phrase, and see also Arts 284-322 of the penal Law of 2005, as well as part (7) and (8) of the Defense Forces Administration Regulation, 2nd edition, PP 63-91
86. Ibid, as cited at note 33 P.5
87. Ibid, as cited at not 83
88. Ibid
89. Ibid
90. Ibid, the researcher have asked the vice chairman of the standing committee for defense and security affairs why they relegate the issue which directly affects their affair regarding the Armed Forces and how they catch up the results of the ombudsman's findings on the petitions. But the answer was just, "the ombudsman, it is its duty to finish, there is no follow up mechanism."
91. During the interview, H.E.General Samora has told the researcher that the parliament sends auditors, with out informing the Ministry, to the branches of the Armed Forces. Recently, they have send a team of auditors to the Northern Command head Quarter (Mekelle) and made financial investigations. But the ministry said nothing because they did not inform since they are doing their Job.
92. Ibid, as cited at note 83, and personal observation of the researcher
93. Ibid

94. Personal observation of the researcher as provided in the establishment document of the Inspector General.
95. Ibid
96. Ibid as cited at note 33
97. Ibid
98. Ibid as cited at note 29 and at note 36
99. Proclamation No 257/2001, a proclamation to provide for the Ethiopian National Security Council, preamble
100. Ibid, Art 4 (2) (a)
101. Ibid, as cited at note 12
102. Art (3) of the proc. No 257/2001
103. As revealed in the discussion with the vice chairman of the parliament's standing committee for Defense, Security and foreign affairs, the Council of National Security and the standing Committee do not have any link and the standing Committee is not aware, about the should be relationship between them, may,2008.

CHAPTER IV

Justice Administration in the Armed Forces

Justice administration in the Armed Forces is to refer to both Military criminal Justice administrations in the Armed Forces.¹ It is about the Military Law, military courts and procedures they follow. The existence of proper Justice System helps for the uniform application of laws in the armed forces and manifests the right of access to justice of member of the Armed Forces. This situation by itself not only reveals how justice is administered but also shows the status of the Armed Forces in a given political system. Certain rights of the Armed Forces, as it will be discussed later, are restricted due to their sensitive mission of Defending a Country. For instance, they can't express their opposition or grievance through strikes or demonstrations and they can't be organized on political moirés. If such kinds of constitutionally recognized rights are restricted to the armed force, there must be another mechanism where the members can express their grievance or challenge the mal acts of their superiors. Thus, establishing a Justice system with in the armed forces will play an important role in this area.

More over, members of the armed Forces should be treated as citizen soldiers and their Legal Position as citizens must be given due consideration. The researcher, thinks examining the Justice administration in the Armed Forces will reveal the legal status of the later so that has dealt with.

Therefore, the researcher would examine the rights and duties of the Armed Forces, their responsibility in case of violation of duties, their access to justice and the institutions that insure the observance of such right as well as the overall legal frame work that serves the purpose of application of proper justice administration.

4.1 **Rights and Duties of the Members of the Armed Forces.**

Members of the Armed Forces, as Ethiopian citizens, enjoy the constitutionally recognized rights of citizens and have the duty to obey and insure the observance of the constitution.² Moreover, the penal code of Ethiopia has also provided criminal laws that shall be observed by members of the Armed Forces and penalties for violations of such laws committed by the members of the Armed Forces.³ In addition to the provisions of military crimes, all other criminal provisions are also applied to the members of the Armed Forces as citizens. The only difference may be in adjudicating the ordinary and the military crimes. As it will be discussed subsequently, military crimes are jurisdiction of military courts while the ordinary crimes, even committed by the Armed Forces, are the jurisdiction of ordinary courts.⁴ Since the 1957 penal code have served until recently, the Defense proclamations as well as the internal Army regulation are made on the basis of this repealed Imperial penal code.⁵ However, the researcher refers the provisions of the new penal code of 2005.

The Military offences are specified in Arts 284-318 of the 2005 penal code. The Military Offences include among others, breaches of responsibility or service, Abuse of Military authority, breaches of military duty,⁶ and offences endangering the safety, morale or the power of the Armed Forces.⁷

Since the maintenance of discipline by deterrence is still the primary objective of the Military Justice specially in times of war or emergency, death penalty may be inflicted for a number of military offences, of which the chief ones are Desertion, insubordination, mutiny, breaches of guard duty, demoralization of troops, cowardice, capitulation and breaches of military duty committed by officers.⁸ whilst, commanding officers are subject to “exemplary and drastic punishment”, which may include death penalty. Conversely it must be submitted that the members of the Armed Forces who committed non-military (ordinary) crimes under the penal code are tried by ordinary civilian courts of law unless committed during active duty.⁹ Thus, while any member of

the armed Forces violate such criminal Laws, the case will be hand over to the local police to be investigated and appear before the ordinary courts and if the suspect is detained he/she will be hand over to the local police as well.¹⁰ Though this procedure is not specifically written in the Defense proclamations the Military Justice administration follows the criminal procedure code mutatis mutandis so that applies the above mentioned process.¹¹

4.2 The Defense Proclamations as the legal Frame work to the Justice Administration.

The Defense proclamation No 27/1996 is still in force with some amendments made by other two Proclamations, such as Defense amendment proclamation No 123/1998 and Defense amendment proclamation No 343/2003; that will be discussed under the subsequent sections. This proclamation apart from providing the establishment and government of the National Defense Forces, it has also defined the organization and composition of military courts as well as specified offences that can be subject to the jurisdiction of the military courts.¹²

The most important point to be raised here is that the proclamation has announced the inclusion of all non military crimes under the jurisdiction of military courts. It seems contradictory with the categorization of the crime. However, it can be reconciled by taking that in principle the special crimes that are committed by armed forces are military crimes which lay under the jurisdiction of military courts and in special situations the military courts may deal with the prosecution of the military personnel committing non-military crimes. Other than raising an issue of jurisdiction, it would not have any significance to say all crimes committed by the military are military crimes. According to the law of Ethiopia what categorizes military crime is the nature of the crime, not the identity of the offender.

However, there are countries that categorize all crimes despite their nature, if committed by the military, as military crimes. One way or the other, the main thing is, that there are crimes different from ordinary crimes called military crimes where their

cause and effect as well as their control mechanism may differ from the non military crimes.

4.3 Defense Forces Administrative Regulation

The First edition of the internal regulation of the armed forces was made in 1997 in elaboration of the Army Act and to that of the constitutional principle relating to armed forces. In addition, it has also incorporated rules that regulate the discipline of the armed forces.

When we see the rules regulating the discipline of the armed forces, most of the provisions are about offences that can be committed by the armed forces. As this section of rules is classified into petty disciplinary offences and grave disciplinary offences¹³, the latter is almost similar with that of military offences incorporated under the Ethiopian Penal Law of 2005. Drunkenness absence with out leave and assaults up on person of superior or equal rank are among the provisions.¹⁴

Whatever duplication exist the degree of punishment of these offences when treated as grave disciplinary offence obviously is different from punishment of the same offences as a result of criminal proceeding. Moreover, disciplinary offences are handled up on the finding of disciplinary enquiry assigned by commanding officers.¹⁵

However, the 1st edition of the internal Defense forces regulation is replaced by new Defenses Forces Administrative Regulation in July 2007. This administrative regulation has tried to base itself on main constitutional principles and the 2005 penal code.¹⁶ accordingly this Regulation has provided the detailed rights and duties of the members of the armed Forces as well as the penalties in case of violations, the administrative solution, the disciplinary measures to be taken and the procedures to be followed.¹⁷

The following are the rights obligations and Deprivations of Rights of the members of the Armed Forces, as provided under Article 2 of part two of Defense forces administrative Regulation of 2007:- (translated from Amharic by the researcher)

2.1 Basic Rights and Deprivations

Any member of the army, except those deprived under this article, enjoy all rights provided to all citizens as enshrined in the constitution.

2.1.1 It is not allowed to under take demonstration. Neither participates in those demonstrations called by others.

2.1.2 Will not be a member of a political party.

2.1.3 Deprived of participating in any political mobilization officially or in officially.

2.1.4 Prohibited in mobilizing is support or opposing any political party or candidate; does not hold the logos of political parties and make use of it for mobilizing.

2.1.5 Though a member of the defense force has the right to elect. cannot compete for political power representing a political party or being individual candidate.

2.1.6 Deprived of contribution financial support to, neither take position in support nor opposing political party.

2.1.7 Deprived of under taking /participating in strike

2.1.8 All commanders at any level are expected to ensure that all basic rights are maintained and deprivations are complied.

2.2 Basic obligations

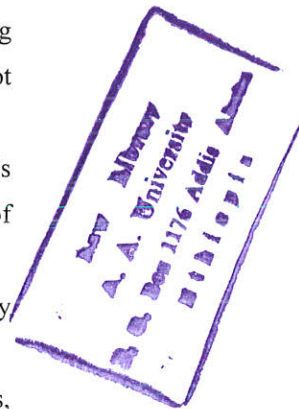
2.2.1 The Armed Forces of the FDRE are expected be loyal and obedient to the constitution;

2.2.2 to forcibly defend and control all violent actions to destroy the constitution;

2.2.3 not to directly and indirectly involve in any action that stand against the integrity of the army such as tribalism/racism and to prevent such acts by others.

2.2.4 Any army commander or a member has the obligation to know, respect, implement and make others know, respect policies, regulations, guidelines formulated at all levels of the [Ministry of] Defense.

- 2.2.5 All members of the army have the obligation to respect and comply all policies, regulations, guide lines formulated at federal, Regional, Zonal and Wereda [Administrative Structures]
- 2.2.6 Any member of the armed forces has the obligation of making “Himself” ready for any mission, Respect all obligations, order to over come the constitutional mission
- 2.2.7 Any member of the armed forces has an obligation to establish relation ship based on comrade ship and mutual trust
- 2.2.8 Any member of the armed forces has to strive preventing and supporting his comrade’s moral physical harm and life threatening actions.
- 2.2.9 Any member of the armed forces has the obligation of keeping institutional secrets confidential. Not to make any efforts to any secret that is not his concern/in his engagement.
- 2.2.10 Any member of the army need to be loyal and transparent to his subordinate, friend [comrade] and commander. Protect the personal secrets of his comrade (friend) as far as it is not a harm to the institution and government
- 2.2.11 Any member of the armed forces has the obligation of working at any place of the country or abroad
- 2.2.12 Has the obligation of protecting and respecting different in situations, peoples representatives, and those elected by people.
- 2.2.13 Has the obligation to participate in the infrastructural development plans developed by different parts (departments) of the Ministry of National Defense.
- 2.2.14 Any member of the armed forces, when the country is under state of Emergency for man-made or natural disaster (calamities) or expecting any threat of danger, has the obligation to undertake any given mission or order.
- 2.2.15 Participate or undertake any assignment given by government, Region, Zone and Wereda in community based social Development activities.
- 2.2.16 All members of the armed forces have the obligation to respect the constitution, military rules and regulations, guidelines and institutional orders
- 2.2.17 All members of the armed forces have the obligation of caring and supporting children, elders and the general public
- 2.2.18 All commanders at any level are expected to implement, insure the implementation of these basic obligations and control. Every member is also expected to comply with them.



4.4 ESTABLISHMENT, ORGANIZATION AND JURISDICTION OF FDRE MILITARY COURTS

4.4.1 Establishment and Organization of Military Courts

Military Courts of FDRE are established by the proclamation that established FDRE Armed Forces.¹⁸The military courts are also organized in two levels of courts.

Those are:-

1. Primary military courts, and
2. The appellate military courts.¹⁹

The establishment level of this court is related to the organizational structure of the armed forces and to the military regions or it is according to the sectors and divisions.²⁰

Though, the military courts were Functioning with the level of organizational structure of the Armed Forces, currently, the military courts are assigned at the Head Quarter having full time judges. These courts when ever there are cases in the branches of the Armed Forces, including the Air force, they move from the center and see cases.²¹ The Appellate court also is a mobile court that work indifferent branches of the armed Forces.²²

4.4.2 Assignment of FDRE Military Courts and Judges.

The primary military courts are appointed upon calling by the following officials or by an officer delegated by them. The officials are the commander in chief of the armed forces, the minister, the General Chief of Staff and Corps of forces commands.²³ The appellate military courts are appointed upon calling by the commander-in-chief of the armed forces.²⁴

However, as proclamation No 27/1996 as amended under the New Defense Amendment Proclamation Art 29 (1), the appointment of judges is done as follows:

- “ 1) (a) Military Judges sitting in the primary military Court Shall be appointed by the council upon Recommendation by the General chief of staff.

(b) In the appellate Military court there sit one civilian judge and two officers to be appointed by the commander in chief of the Armed Forces upon recommendation by the Minister.”

The criteria to select judges for military courts is as provided under Art 30 (1) of proclamation No 27/1996:-Any officer on active duty and having legal skill may sit in primary Military court . . .”

There is an argument between Military Lawyers on the clarity of the criteria, when it says “any officer having legal skill”. The Legal skill may come from education or through experience. In addition to this criterion for the past 6-7 years military officers without legal training or having certificate in legal education were assigned as Military Judges. That is why the argument is raised. Now the Military Judges who are assigned as full time judges are all graduates of law.²⁵

However, the researcher thinks that the criteria is clear and have given due consideration to legal skill which is important to give judgment in accordance with the law. Even though these days, Full time lawyer Judges are appointed, there will be a situation where military officers with legal skill, adopted through experience, assigned as Judges; especially in times of war.

In military courts in addition to the legal skill, to have a higher rank or at least equal rank with the accused is a requirement.²⁶

4.4.3 Jurisdiction of the Military Courts of FDRE

The Military courts of the Federal Democratic Republic of Ethiopia shall have jurisdiction over penal cases only. Proc. No27 of 1996 is silent about disciplinary military offences and civil cases which emanate from criminal cases so that they are not its Jurisdiction.

The general principle in this proclamation is that military courts shall have jurisdiction over persons who violated Articles 284-318 of the penal code. The proclamation also includes other offences which may not be of a military nature of military offences. Art. 26 of proc. 27/96 stated “any offences” committed by a member of the Defense force on “active service.” Since the term “active service” created a confusion, it was amended by replacing “active service” by “on combat duty.” So, if the ordinary crimes like rape, Robbery and murder are committed by a soldier in combat duty the Jurisdiction to see the case will be of the military courts. Out of combat duty, if these crimes are committed by a soldier civil (ordinary) courts will see the case and it is their Jurisdiction.²⁷

a) **Jurisdiction of Military Primary Courts of FDRE**

Article 27 of the proclamation No 27/1996 provides that the primary military courts shall have jurisdiction over offences specified under Art. 26 of the same proclamation.

The Article reads as follows:-

Military courts shall have Jurisdiction over:-

- 1) Persons accused of military offences enumerated in the penal code (296-331, inclusive)
- 2) Without prejudice to sub Article (1) of this Article, any offence committed by a member of the Defense Forces On active service (emphasis added)
- 3) Civilians deployed with members of the Defense Forces on combat duty abroad;
- 4) Offences committed by prisoners of war.

This court has the power to see every offence which is stated in Art. 26. And it has jurisdiction to try offences committed by the members of the Defense forces on combat duty.²⁸ This means the court can see cases which are punishable from simple imprisonment up to death. It has the power like the woreda Court and the High court. Because it has the jurisdiction for all offences of the penal code the ordinary crimes are committed during war. The other point should be mentioned here is, since the penal code

of 1957 is replaced by the 2005 Ethiopian penal law, adjustment to the provisions of military crimes are not yet made.

b) Jurisdiction of the Appellate Military Court

The appellate military court shall have jurisdiction to hear, on appellate cases in which a sentence of imprisonment exceeding two years has been passed.²⁹ One may ask, how about for that the sentence does not exceed two years? This shows that the right of appeal depends on the severity of the sentence. What if the sentence is reduction or rank, or dismissal from the armed force or forfeiture of Fine etc.? This is clearly against the principle of appeal, which contradicts the supreme law of the land. The FDRE constitution in Art. 20(6) state that “all persons have the right of appeal to the competent court against an order or a judgment of the court which first heard the case.” “This was done to minimize the burdens of the appellate court since the judges are par time workers. However the law stated such Limitation to the right of appeal, in practice any case which raised appeal is submitted to the appellate military court regardless the penalty imposed upon.³⁰

c) The Role of the Federal Supreme Court in Military Justice Administration.

The Federal Supreme Court has the power to hold a cassation hearing after final judgment is given by primary and appellate Military Courts. This happens if the decisions of the military courts are alleged to manifest the existence of a the fundamental error of law.³¹

Cassation is heard directly from the primary court’s final judgments and from appellate military court. This is because the primary court has a power to give Final Judgment upon its original Jurisdiction which do not entail a penalty of more than two years so that these are subject to cassation if found Fundamental error of law. Further more, the appellate court does not see cases in which their penalty is less than two years. That is the reason why the federal Supreme Court can hold judgments of both courts having fundamental error of Law.

However, the important point to be raised here is that the Military Justice Administration is made to be in line with the ordinary Justice administration through this link. Therefore it can be said that, although due to its special nature, Military Justice is organized separately, this mechanism has made it subject to civilian and ordinary Justice Administration so that the Armed Forces are not beyond the law and Justice of the country.

d) Procedures applied by the FDRE military courts

The military courts of Federal Democratic republic of Ethiopia shall apply the criminal procedure code, applied in regular courts, *mutatis mutandis*.³²

Since the nature of the military courts and ordinary courts are not the same, the criminal procedure code is applied in Military courts by making some changes or adjustments on certain provisions. But this adjustment opens to anarchy or misuse of the procedure or Abuse because of the difference of the judges in capacity or commitment to the Law.

Therefore, the researcher thinks of having separate procedure for the military court adjusted to conditions of the military and with out transgressing the principle of criminal law as well as the law of the land. This may help for the uniform application of law and for prevalence of justice.

4.5 Amendments made up on Defense Forces Proclamations and their implication to the military justice Administration

As a continuation and elaboration of the constitutional principles regarding the Armed forces about three defense forces' proclamations are enacted consecutively.

The first proclamation, No27/1996, being the main proclamation, the two latest proclamations Defense proclamations No 123/1998 and No 343/2003 are amendments to the former proclamation.

Proclamation No 27/1996 in addition to the establishment and duties of the FDRE Armed forces, it has also provided the establishment of military courts and defined their

jurisdiction.³⁴ Thus, the availability of military courts is one indicator of the existence of military justice system.

It has also provided provisions about proceedings of military courts, about investigation and suit, appointment of council, Execution of sentences and applicability of other laws, particularly the criminal procedure code applied in regular/ordinary courts.³⁵

Proclamation No. 27/1996 is therefore serving as legal frame work for the military justice system. However, since it has encountered difficulties in its application and counter inconsistencies with some of the constitutional principles of fundamental rights, the following amendments are made through other two Defense Forces Proclamations.

4.5.1 Defense Forces Proclamation No.123/1998

This proclamation is enacted to amend the defense forces proclamation No 27/1996, and is cited as “Defense Forces (Amendment) Proclamation No 123/1998.”³⁶

This proclamation, in addition to other provisions regarding military ranks as well as procedure of medal awards it has made amendments regarding the military justice administration. Thus, Art. 33 of proclamation No. 27/1996 which is about investigation and suit have been replaced by new provision. To see the amendment made, it would be better to specify the contents of both proclamations.

Art. 33 of Defense Proclamation 27/1996

- 1)Intensive and impartial investigations shall be carried out prior to bringing a case before a military court.
- 2)The power to cause the carrying out of the investigation of the case of a person to appear before a military court, under this proclamation shall be vested in the person having to appoint the military court.

3)A case for investigation, pursuant to sub-article (1) or this articles may be referred to a soldier or a team of soldiers or to the police as a necessary.

4)Where he finds it necessary to bring a charge the person having to appoint the military court shall refer the case to the concerned bodies up on completion of the investigation.

Art 5 of Defense amendment proclamation No.123/1998 that amended the above article reads as follows:-

It begins by putting that Article 33 is deleted and replaced by the following new article, 33

1)Intensive and impartial investigation shall be carried out prior to bringing a case before a military court.

2)A case for investigation, pursuant to sub article (1) of this Article, may be referred to a soldier or a team of soldiers or to the police as necessary.

3)Where it is necessary to bring a charge, the case shall be referred to the appropriate military court. A public prosecutor will be assigned to follow up the case.

This amendment proclamation, has introduced the existence of military public prosecutor, unlike the former ones. Sub article (1) in both provisions have Addressed similarly the significance of intensive and impartial investigation. Sub article (2) of Art 33 of proclamation 27/1996 is deleted. Any way the purpose of this amendment seems to fulfill the proper application of the military criminal justice.⁵⁴

Other than this provision, the amendment proclamation did not address any other issue in relation to the justice administration.

4.5.2 Defense forces proclamation No. 343/2003

This proclamation has also amended proclamation No.27/1996 and is cited as “Defense forces (amendment) proclamation No. 343/2003.”³⁸

This proclamation has made a number of amendments which among them is the provisions related to the jurisdiction of military courts, appointment of judges, and the

right of the accused military personnel to appeal as well as the right of access to legal counsel. The amendments made will be discussed as follows.

Article 25 proc. No.27/1996

Since this article was about the establishment of military courts, the amending provision of defense proc. No. 343/2000 under its article 11, established the primary military court and the appellate military court, but avoided the fragments of Art. 25 of proc. No 27/1996 and deleted the phrases that imply the nature of the military courts as adhoc. Art. 25 of proc. 27/1996 read as follows.

“There shall be the following military courts to hear cases brought pursuant to Art. 26⁵⁵ of this proclamation and to be established, as **necessary** by officials referred to under Article 29⁵⁶ here of . . .”

and Art. 11 of proc. No 343/2003 replaces the above provision “there shall be the following military courts to hear cases brought pursuant to article 26 of this proclamation . . .”

Article 26 of proc. No 27/1996

This provision has also been amended An issue which was under debate and results in the arbitrary exercise of jurisdiction by military courts. This amendment has also made a significant contribution to the proper administration of justice, particularly to the right of access to regular courts of the military personnel, and relieved the burden of military courts. Reading the above mentioned provisions helps us see the differences.

Art. 26 of proc. No.27/1996

“Military courts shall have jurisdiction over

- 1) Persons accused of military offences enumerated in the penal code (Articles 296-331, inclusive)
- 2) Without prejudice to sub-Article (1) of this article, any offence committed by a member of the Defense forces on active service, (emphases added)
- 3) Civilians deployed with members of the defenses forces on combat duty abroad;
- 4) Offences committed by prisoners-of-war.

From this provision which is amended /deleted/ is sub-article (2)

It is replaced by:

“Without prejudice to sub-Article (1) of this article, any offence committed by a member of the Defense force on combat duty.”

Emphasis added.

Due to the former provision sub-article (2) military courts; jurisdiction was subject to debate. Some lawyers understand the phrase “Active service” as combat duty and say only during wars that military courts have jurisdiction on all crimes (the military crimes and other ordinary crimes). Other lawyers argue, since members of the armed forces are always in “active service” unless they are retired or fired, military courts have the jurisdiction to see all crimes at all situations with out making a distinction on peace time and war time. Thus, all cases other than military crimes, like homicide, rape, theft assault, etc, were prosecuted as jurisdiction of military courts, which was unmanageable by military criminal justice. Because the courts were not standing courts and by the fact that the judge were par time, the right of the military personnel to get speedy trial, due process, and fair trial was affected due to case congestion.³⁹

Article 29 of proc. No.27/1996

is deleted and replaced by new art. 29 as per Article 13 of proc. No 343/2003. Both articles read as follows, consecutively.

The former, says Appointment of military courts.

1. A primary military court shall be appointed up on calling by the following officials or by and officer delegated by them:-
 - a) The commander in chief of the Armed Forces
 - b) The minister
 - c) The General chief of staff
 - d) A corps of force commander
- 2) The appellate military court shall be appointed up on calling by the commander-in-chief of the Armed forces.

The above provision is also replaced by the following statement specified under Article 13 of pro. No. 343/2003.

“Appointment of Judges, Term of service and termination

- 1) (a) Military judges sitting in the primary military court shall be appointed by the council upon recommendation by the General chief of staff.
(b) In the appellate military court there shall sit one civilian judge and two officers to be appointed by the commander-in-chief of the armed forces upon recommendation by the minister.
- 2) Term of service for judges both in primary and appellate military courts shall be five years.
- 3) Judges can be removed because of illness or when decide that they are inefficient in performance or their work and when committing disciplinary offence.
- 4) Where it is stipulated by other law regarding termination.”

Pre-amendment of the provisions of proclamation No.27/1996, there were difficulties to ensure proper justice administration. Since the Military Judges were part time workers and the courts were adhoc, rights of the accused military men were affected. There was delay in justice and many members were detained with out judgment for Long period of time. The right of habeas corps was not implemented.⁴⁰

Therefore, the amendments made upon the above mentioned provisions have contributed to some extent to proper administration of Justice.

Article 30 of proclamation no.27/1996

This provision is regarding proceeding of military courts and it reads as follows:

- 1) Any officer on active duty and having legal skills may sit in a primary military court. However, unless the defendant agrees otherwise, no member of his home-unit may sit there in
- 2) The case of an accused person whose offence is punishable by a prison term of over two years shall be tried by not less than five officers in a primary military court.
- 3) The case of an accused person whose offence is punishable by a prison-term of not less than three officers in a primary military court.

- 4) The number of officers specified in sub-Article (2) of this article may under circumstances of non availability, be reduced to three.
- 5) In the Appellate military court there shall sit one civilian judge and two officers to be appointed by the commander-in-chief of the Armed forces up on recommendation by the minister.
- 6) Officers sitting in a military court, pursuant to sub articles(1), (2) and (3) of this Article, shall be, at least, one notch higher in military rank than the accused person.>>

From the above stated provision, three of the sub-articles are deleted and replaced by new ones as per article (14), Art. (15) and Art.(16) the defense forces proclamation no 343/2003. It reads as:-

(Art.14) says sub-Article (5) deleted and Art. 15) Stated that sub-Article 6 of Article 30 is deleted and replaced by the following new sub-Article (5)

“Officers sitting in military court, pursuant to sub-articles (1) and (3) of this article shall be at least similar in military rank” (i.e.) with the accused.

Art. (16) says

“Sub-Article (6) of article (30) is deleted and replaced by the following new sub-article (6) Judges shall be free from any from any interference of influence of any government body.”

The amendment made on this provision has tried to address and accommodate principles of impartiality and independence of courts, which are core values for the enforcement of the right of access to justice and to attain fair judgment of the military personnel.

However, there are still problems with the provision related to the number of judges and ranks of the judges in light of the rank of the accused. When this requirement is seen to who is the accused, there may be times when this requirement can not work. For instance, the highest military rank in Ethiopia at present has reached four star General (Only one person), whereas judges with the highest rank in the primary military court is colonel and in the appellate military court is, two non-military Judges and a major

general. The question will what would happen if those officers holding a rank above colonel accused of a criminal act where the jurisdiction is of military court? What if the commander-in-chief (the prime minister) committed an offence which should be brought to the military courts; who should sit as a Judge?

It may be said that in case of as higher public official, their issue should be brought before the federal Supreme Court.⁵⁸ However, this may not work always and the law makers should consider that the law should be made to serve for longer time being flexible.

Article 31 of proclamation No. 27/1996

It is about the Jurisdiction of appellate military court. It reads as follows:-

- 1) The appellate military court shall have jurisdiction to hear, on Appeal, cases in which a sentence of imprisonment exceeding two Years have been passed.
- 2) The appellate military court shall have the power to confirm, vary or reverse the judgment of the primary military court.
- 3) In case of appeal against a sentence exceeding two years imprisonment, made within thirty days of its pronouncement, a primary court shall have the file transferred.



Defense forces (amendment) proclamation no 343/2003 has made a change only on the title of the above provision as it reads in Article (17) of the proclamation. It has changed only the title from “appellate military court” to “Jurisdiction of Appellate court”. But the main case that should have been addressed by the amendment was why is the length or severity of punishment taken as a ground or pre-requisite to exercise the basic right of appeal?

Since appeal is a fundamental right of an accused, it should not be restricted when it comes to the military. Though, the law puts as mentioned above, the practice is different. Thus, Military lawyers apply the constitutional right of the accused and no accused military personnel is denied his/her right to appeal on the basis of this provision. It has been repealed defacto since its promulgation.⁴²

Article 34 of proclamation No. 27/1996

Defense forces proclamation no 343/2003 has made some changes on the said provision and recognized the fundamental right of an accused to legal counsel and representation by a lawyer.⁴³

Art 34 of proclamation No 27/1996 reads:-

- 1) The state shall provide a defense counsel to a person charged with an offence punishable with imprisonment of not less than five years and is unable to retain a counsel.
- 2) The defense counsel to be appointed, pursuant to sub-Article (1) of this article, shall be from among members of the Defense forces.

Since this provision was subject to debate among military lawyers as to whether this provision denies right of an accused to legal counsel or not, this Amendment proclamation has explicitly stated under its article 18, that “a person charged with an offence has the right to hire his own counsel “and deleted sub-article (1) of the above provision. One can raise again what if the accused can not retain a counsel? Why is sub-Article (1) of Article 34, deleted?

Obviously, if an accused can not retain a counsel, the state/government has a duty to hire a defense counsel for the accused.⁴⁴ More over, sub-article (2) of Art. 34 is also deleted and replaced by new provision as it is stated under Article 19 of the Proc. No 343/2003.

“The state shall provide a defense counsel to a person charged with an offence punishable with imprisonment of not less than five years and is unable to retain a counsel.”

A restriction is made on the right of the accused. “An offence punishable with imprisonment not less than five years is taken as a requirement, a state to provide a defense counsel for the Accused.

However, the basic point to the researcher is the recognition of the right of an accused. Second is the balance between the right of the accused and resource. The mentioned requirement seems restriction on the right to defense counsel, but, as far as the accused is made protected in serious cases and has a right to hire his/her own lawyer, putting such requirement shall not be taken as restriction in light of the resource management of the state.

Further, Sub-article (3) is added to this provision 34 (3) addressing as to from which category should be a defense council. It reads:-“The court may decide that the defense counsel to be appointed shall be from among members of the Defense force.”

This will be done when necessary. The important thing is that the possibility of hiring civilian defense lawyer is open.

In Conclusion Administration of justice in the armed forces is believed to be a sensitive area since it affects the legal status of citizens during their performance of military service.

As it is discussed earlier, military justice system refers to the criminal justice system that undergo within the military. Thus, it is organized separately based on separate military laws and military courts. These military laws and the military courts are applied on a special part of society, the military, carrying special duty of defending a nation. Since this special duty requires strict discipline and loyalty, the part of society involved in such duty should be, in addition to the laws governing all citizens, governed by special laws and regulations. These special laws and regulations are categorized as military laws.

Moreover, these laws and regulations are supposed to be implemented through special organ called military courts and these courts have the jurisdiction to try basically the members of armed forces who committed a military crime during their military service.

However, the military justice seems special from the ordinary criminal justice system of Ethiopia, it has a constitutional base to be established and function. Because, the laws governing the justice system are enacted by the proper law making body and the courts are established by law as well as apply the formal criminal procedure law of the nation.

According to the defense forces proclamations military courts are made to the extent possible to comply with the ordinary procedures of the ordinary criminal justice system. Although, as it is tried to discuss earlier, the defense forces proclamation has encountered certain weaknesses and in compliances, efforts have been made to develop the army acts through the amendment proclamation of Defense Forces.

Therefore, it can be concluded that the military justice system of FDRE is in progress and coping with the progress of the over all progress of the national justice system. This in turn reveals that the Access to justice of the members of the Armed Forces is maintained by the laws under the constitutional frame work.

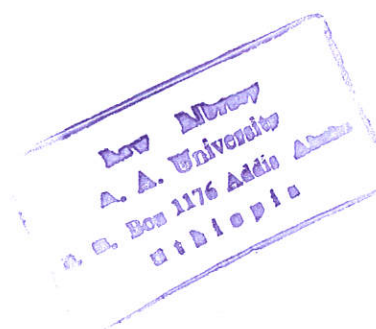
End Notes of Chapter IV

- 1) Henry camp Bell black, "Black's Law Dictionary" 6th ed. 1990 P.1019
- 2) FDRE Constitution, 1999, Art 9 (2) and see also, Art 8 proclamation No 27/1996
- 3) Ethiopian penal Law, 2005, Arts 284-318
- 4) Defense proclamation No 27/1996, Art 26 as a mended by Defense proclamation No 343/2003, Art 12
- 5) See the Defense proclamations No 27/1996, No123/1998 and No 343/2003 and internal Army Regulation 1st edition of 1997.
- 6) Arts 288, 290, 291 of the penal code, 2005.
- 7) Section IV of penal code of 2005, Arts 308-317.
- 8) Arts 15 -21 of the penal code, 2005.
- 9) Ibid, as cited at note 4.
- 10) From the researches personal observation, while working as military Judge and Defense lawyer.
- 11) Art 36 of Defense proclamation. No27/1996
- 12) Ibid, as cited at Note 4.
- 13) Section 4, Defense forces internal regulation, 1997, p.28
- 14) Ibid section II Art (2) p.30
- 15) Ibid section 6, Art 7.p.36
- 16) See part one, Art 1.8 of the Regulation, p.12
- 17) See part two, arts (1-2), section 8, Art 38-46
- 18) Proclamation No 27/1996, Art 25
- 19) Ibid
- 20) As to the practice observed by the researcher the Army is structured, previously in cores (**hC**) and this cores all related to different regions like Northern core, south west core etc. upon this starchier the primary military courts were organized and Functioned in such cores currently the Army is organized in command level, like Northern common, central command

etc. and when ever military courts are needed to convent, they convent at the command level.

- 21) As the researcher has served, in addition to her formal assignment, as a judge, she has observed such way of establishment of the military courts. However, this kind of establishment is not supported by legal document or rule. It is done upon the BPR Document of the Military Justice Department for the purpose of proper use of resource as well as to insure the existence of standing courts and full time Military Judges.
- 22) Ibid
- 23) Art 29 of proclamation No 27/1996
- 24) Ibid
- 25) Personal observation of the researcher
- 26) Art 30 (6) of proclamation No 27/1996
- 27) Ibid see Arts 26-28
- 28) Art 26 of proclamation 27/1996 as amended by Art 12 of proclamation No 343/2003
- 29) Ibid Art 31
- 30) From personal observation and explanation given by the authorities during promulgation of the law
- 31) Art 32, proc.No27/1996
- 32) Ibid, Art 36
- 33) Henry camp bell black "Black's LAW Dictionary," 6th edition, 1990,p.1019
- 34) Art 25 of proc. No 27/1996
- 35) Ibid, Arts 30-36
- 36) Defense proclamation No 1213/1998, art (1)
- 37) The absence of this clear clause about the existence of public prosecutor had troubled the military Lawyers and the justice system in general. It is upon the comment of those military lawyers the amendment is made.
- 38) Defense proclamation No 343/2003, Art (1)
- 39) Personal observation of the researcher.

- 40) Ibid
- 41) Federal courts establishment proclamation No 25/1996. Art.
- 42) Ibid, as cited at note 39
- 43) Art 20 (6) of the FDRE Constitution
- 44) Ibid, art 20 (5)



Conclusion and Recommendation

A. Conclusion

This research has focused on identifying how the constitution of federal Democratic Republic of Ethiopia and its legal frame work has addressed the issues regarding the Armed Forces such as: its establishment, organization, mission and the purpose of its establishment, It has also tried to look at the role of the Armed Forces in defending the country's well being as well as maintaining the internal peace and order. Further, the research has tried to examine the civilian or parliamentarian control over the Armed Forces and the right of access to justice of the members of the Armed Forces.

To this effect, the findings of this research have indicated that the FDRE constitution under its Article 87, has provided the Defense policy, as to the composition of the Armed Forces, the mission and /or the purpose of the Armed Forces, the duty of the Armed Forces to be loyal to the constitution and to serve as non-partisan army as well as to be a Defense Force headed by a civilian minister.

Moreover the FDRE constitution has defined the power of the parliament to establish administer and organize the Armed Forces. While the Armed Forces are to perform their mission of defending the independence of the nation, the constitution has demands that such is to be done up on the declaration of state of war by the parliament. The intervention of the Armed Forces in maintaining internal security is also determined by the parliament to comply with the procedures laid down therein. With out the request of the concerned region or Nation and with out the approval of the highest government body, the Armed Forces shall not intervene to stop the internal security crises.

However, as regards the Role of the Armed Forces, it seems incomplete since the constitution or other laws under its frame work are silent in addressing the role of the Armed Force in international peacekeeping operations. As this mission is becoming among the major tasks of the Armed Forces and involves the deployment of troops abroad, it is not provided due consideration to be determined by a high level decision

makers. Though the mission is being accomplished, it is not known at what level and by whom it is determined.

In relation to the composition of the Armed Forces; beginning from the eve of the adoption of the FDRE constitution, it has been attempted to ensure the fair representation of Nations, Nationalities, and peoples of Ethiopia in the composition of the Armed Forces. However, it seems ineffective especially in raising the number of those unrepresented groups at higher command level. Training and educating mechanisms seem not exhaustively used to give opportunity to join the high level command and raise the level of diversity. One thing that should be clear is, that since the mission of the Armed Forces need pure military competence and fitness, fair representation shall not mean physical presence or raising the number of groups represented. Any one who joins the Armed Forces shall be qualified to perform as a military professional so that should be trained and physically fit. But when the composition of the Armed Forces is needed to manifest the face of all nations, nationalities and peoples of Ethiopia who created the Federation, it is to acquire the ownership or belongingness of the latter. For this purpose, the members of the Federation should be given the opportunity to send their people to serve in the armed Forces, thus the recruitment process would be the main way. In addition, the ones joined the Armed Forces, by providing the opportunity of joining higher military colleges and by improving the academic and military capacity of the members the balanced composition of the Armed Forces can be realized.

Therefore, there seems to be, in the composition of the Armed forces especially at high level command, lack of fairness. And the means of balancing the representation is not exhaustively and effectively followed.

Regarding the parliamentary control over the Armed Forces, the constitutional frame work has provided some mechanisms that ensure the check and balance on the Armed Forces. The Minister of Defense is a civilian; there is parliament's standing committee for defense and security affairs with the power of checking and following the implementation of the Defense policy in the Armed Forces. However, the low capacity

and lack of awareness of the committee on its given parliamentary power is a constraint to ensure on its given parliamentarian control over the Armed Forces.

Though a civil minister is assigned to be a face of government with armed forces and to act as a highest political body therein, the absence of clear provision in the Defense proclamation regarding its position as compare to the General chief of staff having parallel power with the minister would affect the control expected to be realized through the civilian minister.

Further, the FDRE constitutional framework has recognized the right of access to justice of the members of the Armed Forces as citizens and has envisaged the military justice administration through the Defense proclamation No. 27/1996. However, the justice administration lacks clarity on the appointment of judges, the ranks and the skills of the military judges. Although the criteria of higher rank or equal rank are important, the current appointment of military judges does not serve long and at all situations where high ranking officers are accused. The right of appeal is also restricted, though defacto all kinds of court decisions, provided they comply with the criminal procedure can be applied for appeal, the law contravenes the constitutional right of appeal.

In short, the FDRE constitution and the subsequent legislative frame work tries to address several important issues regarding the armed forces. It clearly grants a definite legal status to them. However, it fails to deal with some issues (such as those mentioned above) exhaustively. The fact that such issues are not exhaustively dealt with or are left unclear continues to affect the constitutional status of the armed forces or their operation and performance thereof.

James ...

B. Recommendation

1. There ought to be a clear law that determines as to who should, decide on the and at what level should the deployment of troops for peace keeping operations and how.

- Since peace keeping operations are performed in post war.(international or civil war situations,) it is very a sensitive mission that calls for a serious consideration of the policy / law makers .

- To leave this issue open and ignore the involvement of the parliament in determining the deployment for peace keeping , by enacting law or making direct decision, undermines the principle of the civilian control over the Armed Forces and challenges the strictly constitutional nature of the operation of the Armed Forces.

2. The principle of equitable representation of nations, nationalities, and peoples in the National Armed forces is the first principle provided for under Atr87 (1) of the constitution. Armed Forces composition should reflect the equitable representation of Nations, Nationalities and people's of Ethiopia. Though encouraging efforts are being done to implement this principle through recruitment of those unrepresented groups and demobilization of groups having dominant number, still there is unbalanced representation at higher level. To avoid such unbalance, due consideration should be given to training and educate of the members of the unrepresented groups who joined the Armed Forces late. This mechanism should be exhaustively and strictly followed.

3. The Relationship of the civil Minister of Defense and the Chief of General Staff should be clearly stated. The issue of Administration and political affairs such as ensuring the loyalty of the Armed Forces to the constitution is the responsibility of the Minister and in relation to these administration and policy issues the Chief General Staff shall be accountable to the Minister. Whereas regarding the military operations obviously the Chief is accountable to the Prime Minister, the Commander- in- chief of the Armed Forces.

4. The Parliament ought to exert its authority over the Armed Forces so that it can follow up on the proper and strict control mechanisms, other than listening to periodic reports. It should also follow up the questioning mechanism with a more frequent surprise question and on-site visits. The Standing Committee for Defense and Security should develop its capacity and conduct surprise visits, auditing financial affairs, check the integration and implementation of Defense policy in the Armed Forces. Further, receiving petitions from individuals against the Armed Forces shall be handled or introduce some mechanisms of follow up with the National Ombudsman instead of relegate complaints to.

- Since a number of constitutional rights of the members of the Armed Forces are limited due to the nature of their mission; administering justice and protecting the rights of the members in the uniform is a sensitive and difficult task that calls for a strict follow up.

- Therefore, there shall be a harmony between the Inspector General of the Ministry, the Legal Affairs Office and Justice Administration body of the Ministry that can guarantee the protection of the members thereof.

5. To realize a strictly constitutional Armed Force that operates in accordance with the constitutional frame work, every activity of its members should be guided by the constitution and subsidiary laws such as the internal rules, regulations, and directives that are made in consonance with the constitution.

6. Though the internal institutions of the Ministry of Defense are helping in building a constitutional army and protecting the rights of the members of the Armed Forces, there shall be a responsible body that fights abuse of power and violations of rights of the members.

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Declaration

I hereby declare that this thesis is my original work done under the guidance of Tsegaye Regassa, and it has not been presented for a degree in any other Universities.

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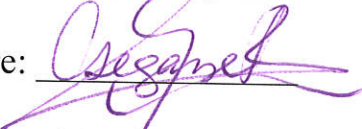
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Date: 5 June, 2008



This thesis has been submitted with my approval as a University advisor.

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