



Addis Ababa University

College of Law and Governance

School of Graduate Studies

**THE RIGHT TO PEACEFUL DEMONSTRATION IN
ETHIOPIA: ITS IMPLIMENTATION AND COMPATIBILITY
WITH INTERNATIONAL HUMAN RIGHTS INSTRUMENTS**

Thesis Submitted in Partial Fulfillment of Master of Laws Degree

**(LL.M) in International Human Rights Law at Addis Ababa
University**

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Addis Ababa

Declaration

I, undersigned, hereby declare that this work is original and has not been presented in any other institution before. To the best of my knowledge and belief, I also declare that any information used has been duly acknowledged and cited.

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Synopsis

Demonstrations have been practiced for so long. There are different reasons that compel protesters to exercise the right to peaceful demonstration. For instance, economic imbalance and wealth distribution between ethnic groups in a given state are some of them. In the international and regional human right law the right to peaceful demonstration is the right that is used to exercise other rights and freedoms such as the right to assembly, freedom of expression and the right to association. Simply put, it is a right that is an implementing agent for many other civil and political, socio-economic or group rights.

The main focus of the thesis is on the right to peaceful demonstration under Ethiopian human right system. The difference and compatibility of the right to peaceful demonstration under the Ethiopian human right law with that of the international human right system and regional human right system i.e. African Charter Human and People Right will be examined. The compatibility and difference will be assessed based on the limitations applicable to the right and its normative content as enshrined in the FDRE constitution and other relevant laws such as proclamation No.1/1993 proclamation. There will be emphasis on how the right is implemented in Ethiopia in practice. Thus the purpose of the thesis is identifying the gaps in terms of notification, place, and time and other limitations comparing with international human rights instruments; and also will identify the problem of implementation. It takes an objective look into the legal strategies in place and also addresses some welcome changes which might alter the course of the right in issue and the application of the concerned law.

Acronyms

ACHPR African Charter on Human and Peoples' Rights

IACHR Inter-American Convention on Human Rights

IACHR Inter-American Commission on Human Rights

CRC Convention on Rights of Children

ECHR European Convention on Human Rights

ECtHR European Court of Human Rights

HRC Human Rights Committee

ICCPR International Covenant on Civil and Political Rights

UDHR Universal Declaration of Human Rights

FDRE Federal Democratic Republic of Ethiopia

UNHRC United Nations Human Rights Council

UNSR United Nations Special Rapporteur

Table of Contents

Chapter one: General Overview.....	1
1.1. Background of the Study.....	1
1.2. Statement of the problem.....	6
1.4. Research Questions.....	7
1.5. Objective of the study.....	7
1.5.1. General Objective of the study.....	7
1.5.2. Specific Objective of the study.....	8
1.6. Significance of the study	8
1.7. Scope of the Study.....	8
1.8. Limitation of the study.....	9
1.9. Research methodology.....	9
1.10. Structure of the Study.....	9
Chapter two: Protection of Peaceful Demonstration in the International and Regional Human Right System.....	10
2.1. Introduction.....	10
2.2. Protection of Peaceful Demonstration in the International Human Right System.....	10
2.2.1. Resolutions on the promotion and protection of Human Rights in the Context of Peaceful protests.....	13
2.3. Protection of Peaceful Demonstration in the Regional Human Right System.....	14
Chapter Three: The Law of Peaceful Demonstration in Ethiopia.....	19
3.1. Introduction.....	19

3.2. Freedom of Assembly and Demonstration in the Pre-FDRE constitutions.....	19
3.3. Peaceful Demonstration in the FDRE Constitutions.....	20
3.4. The Right to Freedom of Peaceful Demonstration in the Proclamation No 3/1991.....	24
3.5. The Right to Remedy for Peaceful Demonstration.....	29
3.6. National Human Right Institutions of Ethiopia	31
Chapter Four: Implementation of the Law of Peaceful Demonstrations of Ethiopia.....	34
4.1. Introduction.....	34
4.2. Peaceful Demonstrations in Action during Emperor Haile Slassie in Ethiopia	34
4.3. Peaceful Demonstration under current Regime	35
4.4. The Role of Ordinary Courts in the Protection of Peaceful Demonstration.....	39
4.5. The Role of Ethiopian Human right commission in the Protection of Peaceful Demonstration.....	39
Chapter Five: Conclusion and Recommendations.....	42
5.1. Conclusion.....	42
5.2. Recommendation.....	45
Bibliography	

CHAPTER ONE

GENERAL OVERVIEW

1.1. Background of the Study

There is an argument that peaceful demonstration does not need definition; because the right can be recognized when seen by people, and the right is not formulated one but it is a mixture of different rights including the right to freedom of expression, to freedom of assembly, rights to opinion, and to freedom of thought, conscience and religion.¹ Demonstration is also taken as part of assembly.² On the other hand there are attempts to define peaceful demonstration and it is defined as “a form of assembly whose objective is to convey to the person or authority for whom a communication is intended the demand of the group so demonstrating”.³ Additionally, it is also defined as actions of persons who needed to express to third parties issues that are accepted and agreed on by the demonstrators.⁴ Some others define it as gathering of people on one place.⁵ The Vince commission also defined it as ‘Intentional and temporary presence of a number of individuals in a public place for a common expressive purpose’.⁶ Thus, peaceful demonstration refers to a kind of assembly that involves the gathering of people in order to express their demand or grievance to the concerned body mostly to the government. The protection of peaceful demonstration or protest as a separate right did not exist in history.⁷ However, peaceful demonstration is protected in different international human right instruments, for instance ICCPR has recognized the right to freedom of assembly⁸ but HRC failed to provide General comment for freedom of assembly as it has done for rights and freedoms that are protected in the ICCPR

¹ Peaceful Protest: A Corn Stone of Democracy How to Address the Challenges? (2012); (<https://www.wiltonpark.org.uk/wp-content/uploads/wp1154-report.pdf>) p. 3, last visited on March 4, 2017 (hereinafter, Peaceful Protest)

² Charley Lewis, “Right of Assembly & Freedom of Association in the Information Age” (MIT Press, 2006), p. 2. (hereinafter Charley)

³ Aoife Daly, “Demonstrating Positive Obligations: Children’s Rights and Peaceful Protest in International Law”, Washington International Law Review, vol. 45 (2013), p. 4 (hereinafter Aoife). See also Nihal Jayawickrama, The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence 725 (2002).

⁴ David Kretzmer, “Demonstrations and the Law”, Israel Law Review, vol. 19 (1984), p. 50 (hereinafter David)

⁵ Nasholan Chetty and Arthur Shirichena, Protest Action: A blessing to citizens and a curse to governments? (2016, unpublished,), p. 2(hereinafter Nasholan)

⁶ Vince Commission, Guideline on Freedom of Assembly (2nd ed. 2010), p. 15.(hereinafter Vince Commission)

⁷ David Mead, The Right to Peaceful Protest under the European Convention on Human Rights - A Content Study of Strasbourg Case Law, v. 4 (2007) European Journal of Human Rights Law, p. 345, 347 .(hereinafter, David Mead)

⁸ International Covenant on Civil and Political Rights, (1966), Res. 2200A (XXI), entered into force on March 23, 1976. Art. 21, Ethiopia acceded to it on June 11, 1993 (hereinafter ICCPR)

that could help to observe the extent of protection.⁹ Even if such General Comment does not exist HRC decided a case that shows the protection of peaceful demonstration through the protection of freedom of assembly stating that ‘freedom of assembly protects demonstrations promoting ideas that may be regarded as annoying or offensive by others’.¹⁰ This decision firmly shows that protection of freedom of assembly is protection of peaceful demonstration. There is also resolution on peaceful demonstration that Ethiopia abstained to adopt even if it is not binding.¹¹ At the regional level ACHPR¹² does not seem to protect freedom of assembly that is peaceful, but peaceful assembly is the one which is protected as can be inferred from the second sentence of the same provision, that allows limitations to be based on law that protects national security, the safety, health, ethics and rights of others, the monitoring body i.e. African Commission of Human and People’s Right jurisprudence on freedom of assembly has not yet been fully developed and cases decided by the African Commission on this freedom are decided with poor reasoning.¹³ The ACHPR is influenced and inspired by traditional African values,¹⁴ in which we can find the restriction ground of ‘Ethics’ in the provision of protection of freedom of assembly. Even if the African commission does not have standardized and detailed regulation of limitation on freedom of assembly, it can draw inspiration from international law on human and peoples' rights.¹⁵

Freedom of assembly was recognized during Emperor Haile Slassie era¹⁶ and the Derg era¹⁷, i.e. the FDRE constitution is not the first one to recognize the right. Under the FDRE constitution

⁹ (http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11) last visited on March 4, 2017 (hereinafter, OHCHR)

¹⁰ Nikolai Alekseev v. Russian Federation, (Communication No CCPR/1873/2009, Human Rights Committee, November 5, 2013) par. 9.6 (hereinafter, Nikolai V. Russia)

¹¹ Resolution on the Promotion and Protection of Human Rights in the Context of Peaceful Protests (2014), Res. No. A/HRC/25/38. (hereinafter, Res. No. A/HRC/25/38)

¹² African Charter on Human and Peoples Right, (1981), Res, entered in to force in 1986. Art. 11, Ethiopia acceded to it on June 15, 1998 (hereinafter ACHPR)

¹³ Kolawole Olaniyan, Civil and Political Rights in the African Charter: Articles 8–14, in Malcolm Evans and Rachael Murray, *The System in Practice 1986-2006* (2nd ed. 2008), p. 230. (hereinafter Kolawole)

¹⁴ Gino J. Naldi, The African Union and The Regional Human Rights System, in Malcolm Evans and Rachel Murray, *The System in Practice 1986-2006* (2nd ed. 2008), p. 28.(hereinafter Gino)

¹⁵ ACHPR, cited above at note 12 Art. 61

¹⁶The 1955 Revised Constitution of Ethiopia, 1955, Art. 45, Proc. No. 149, Neg. Gaz. Year 15, no. 2 (hereinafter, Revised constitution)

¹⁷ The Constitution of the People's Democratic Republic of Ethiopia, 1987, Art 47, Proc. No. 1, Neg. Gaz. Year 47, no. 1.(hereinafter PDRE constitution)

peaceful demonstration is recognized with the right to assemble and petition,¹⁸ and allows limitation based on ‘public convenience’, ‘protection of democratic rights’, ‘public morality’ and ‘peace’ but in terms ‘public convenience’ and ‘democratic rights’ it is considered as different and unique from international instruments such as ICCPR that provides limitation based on ‘public order’ and ‘rights of others’, thus public convenience as public order and democratic rights as right of others can be interpreted as the FDRE Constitution depends on international treaties to interpret fundamental rights as per to article 13.¹⁹ On the other hand Solomon puts that the only limitation that is provided under FDRE constitution is the right cannot be used for purposes of defamation or violation of laws prohibiting any propaganda for war and any public expression of opinions intended to injure human dignity²⁰, but this is not the only limitation as can be observed from article 31 the FDRE constitution.

Peaceful demonstration as a single right is also protected by Proclamation to Establish the Procedure for Peaceful, Demonstration and Public Political Meetings No. 3/1991 (Proclamation No. 3/1991) that provides requirements of notification to be fulfilled before exercising the right to peaceful demonstration before 48 hours of the time planned²¹. The requirement of notification is for all kinds of demonstrations without differentiating between indoor and outdoor demonstration, but notification for such demonstrations defeat the reasons of notification and it will be a disproportionate, and such notification procedure for spontaneous demonstration takes away immediate nature and undermines their value.²² Even if it is agreed with this it is also undeniable, however such requirements may not necessarily violate the right to peaceful demonstration as per to HRC decision.²³ Proclamation No. 3/1991 under article 9 provides that peaceful demonstrations without prior notification are illegal. On the other hand it does not give special protection to vulnerable groups for instance children, specifically in the course of

¹⁸ The Constitution of Federal Democratic Republic of Ethiopia, 1995, Art.31, proc. No.1, Neg. Gaz. Year 1, no. 1

¹⁹ Tsega Andualem Gelaye, “Protection of the Right to Freedom of Assembly under Ethiopian Law: Gaps and the Way Forward”, *Mizan Law Review*, vol. 10 (2016), p. 304-305 (hereinafter Tsega)

²⁰ Solomon Tekle Abegaz, *The Right to Peaceful Protest in Ethiopia*, (<https://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2015/08/Chapter7.pdf>) last visited on January 28, 2018. (hereinafter Solomon)

²¹ Proclamation to Establish the Procedure for Peaceful, Demonstration and Public Political Meetings, 1991, Art.4, Proc. No. 3, Neg. Gaz. Year 50, no.4. (hereinafter, Proclamation No. 3/1991)

²² Tsega, cited above at note 19, p. 308, 312

²³ *Kivenmaa v. Finland*, (Communication No. 412/1990, UN Doc CCPR/C/50/D/412/1990, Human Rights Committee, 31 March 1994) par, 9.2 (hereinafter, *Kivenmaa v. Finland*)

peaceful demonstration as they need special protection and Ethiopia is a state party to CRC²⁴ that protects such vulnerable group. Thus the thesis is concerned with the laws of peaceful demonstration to explore gaps and problems for the improvement of the protection of the right to freedom of peaceful demonstration. In general when investigating the laws of peaceful demonstration it focuses on the compatibility of proclamation No 3 /1991 with the FDRE constitution, and the compatibility of the whole laws of Ethiopia on peaceful demonstration with that of international one in terms of substantive and procedural requirements.

This thesis focuses on peaceful demonstrations in the sense of peaceful protest against the government of Ethiopia. Demonstrations have occurred in Ethiopia at different times and places for instance, during the regime of Emperor Haile Slassie, students protest against the then government on different issues but most of all against the feudal system and the purpose of the demonstrators was to change the living condition of the tenants; in fact one of their slogans was “land to the tiller”.²⁵ Peaceful demonstrations are still taking place in Ethiopia. One of the early demonstration was in 2005 concerning the result of election which was claimed by the opposite party that the election was not fair that occurred in Addis Ababa against the current government²⁶ that resulted in the killing of demonstrators²⁷. Another instance is the recent ones where the Oromiya demonstrators protest against the current Ethiopian government²⁸ that resulted in the killing individuals and there were people who were wounded and arrested²⁹. On the other hand in Gondar city, Amhara region there was peaceful demonstration which started from 9:00 AM and last until noontime, whether the state government considered the peaceful demonstration as an unauthorized one which does not have legal base the participants were not criminally charged or arrested.³⁰ Reasons behind violating the right could be anything, thus, it looks in to the

²⁴ Convention on the Rights of the Child (1989) Res, 44/25, entered in to force on September 2, 1990. Art.13, 15, Ethiopia acceded to it on October 2, 1991. (hereinafter CRC)

²⁵ Seyoum A. Haregot, The Bureaucratic Empire: Serving Emperor Haile Selassie, (The Red Sea Press, 1st ed. 2013) p. 99

²⁶ Leonardo R. Arriola, Suppressing Protest during Electoral Crises: The Geographic Logic of Mass Arrests in Ethiopia, (2013), p. 8(hereinafter, Leonardo) (Draft)

²⁷ Ethiopian Protesters ‘Massacred’, (<http://news.bbc.co.uk/2/hi/world/africa/6064638.stm>) last visited on October 27, 20017. (hereinafter, Ethiopian Protesters ‘Massacred’)

²⁸ Human Rights Watch, Such a Brutal Crack Down: Killings and Arrests in Response to the Ethiopia's Oromo Protesters, (2016) No. ISBN 978-1-6231-33665, p. 2 (hereinafter, Human Rights Watch)

²⁹ Ethiopia Pledges Probe into Killing of Protestors, (<https://www.aljazeera.com/news/2016/08/ethiopia-pledges-probe-killing-protesters-160820150733705.html>) last visited on October 28, 2017(hereinafter, Ethiopia)

³⁰ Daniel Berhane, Ethiopia: Massive Protest Held in Gondar City, (<http://hornaffairs.com/2016/07/31/ethiopia-massive-protest-gondar/>) last visited on October 28, 2017. (hereinafter, Daniel Berhane)

implementation of the right to peaceful demonstration as required by the law and international instruments of human rights.

For the protection of rights FDRE constitution article 37 provides the right to take any matters to courts. Secondly, based on the Proclamation Establishing Federal Courts in Ethiopia provides that federal courts have power to entertain cases that arise from national and international laws including the Constitution.³¹ Even if courts have the power to entertain, proclamation 3/1991 should have provided right to appeal of organizers of an assembly as it does not provide so.³² However, such gap does not have negative effect and does not imply that such right is disallowed.

However, courts in Ethiopia avoid entertaining cases that arise from FDRE constitution and refer it to Council of Constitutional Inquiry, for instance, on the right to assembly there was a claim based on Proclamation 3/1991 by political party called Coalition for Unity and Democracy (CUD), where the right to demonstration was banned by the late Prime Minister of Ethiopia for one month in Addis Ababa in 2005.³³ The court referred the case to Council of Constitutional Inquiry (CCI) for interpretation by framing an issue without considering the proclamation, in which the CCI affirmed that the directive issued was constitutional.³⁴ But the court could have put the case in other way by considering the claim based on Proclamation 3/1991 which provides for the right to demonstration and declares any directive which is in violation of this right null and void.³⁵ Additionally, it could have evaluated the contested directive of the Prime Minister against these provisions and decide the case by itself.³⁶

Not only ordinary courts but also Ethiopian Human Rights Commission (EHRC) and the Ethiopian Institution of Ombudsman (EIO) should take provide an additional oversight over discretionary administrative decisions pertaining to the right to freedom of assembly since they

³¹ Federal Courts Proclamation, 1996, Art.3 (1), Proc. No. 25, Neg. Gaz. Year 2, no.13. (Hereinafter Proclamation No. 25/1996)

³²Tsega, cited above at note 19, p. 334

³³ Coalition for Unity and Democracy v Prime Minister Meles Zenawi Asres, (File No. 54024, Federal First Instance Court, 3 June 2005).(CUD v. Prime Minister Meles Zenawi)

³⁴ Ibid

³⁵ Sisay Alemahu Yeshanew, “The Justiciability of Human Rights in the Federal Democratic Republic of Ethiopia” African Human Rights Law Journal, vol. 8, (2008), p. 7-10. (hereinafter Sisay)

³⁶ Ibid

have the constitutional duty to ensure protection to the right to freedom of assembly.³⁷ However, EHRC is criticized for not involving issues that involve human rights in connection with politics. Even if it investigate some cases by dispatching ad hoc committees, it failed to examine cases of human rights that clutched the attention of the media, opposition parties, human rights NGOs, both national and international, and the public in general and gave up the power handle them.³⁸

Thus, this this thesis is about peaceful demonstrations against the government and after investigating the laws and the implementations based on different international human right instruments, lastly it will conclude on the outcome of the level of protection accorded to the right to peaceful demonstration and gives recommendations that the writer believes to be appropriate.

1.2. Statement of Problem

Developing states are faced with different obstacles, such as economic instability, political crisis, and other problems that lead to mistrust between the government and the people that trigger demonstrations.³⁹ The protection of such right by the government or the reaction of the government to the exercise of such right shows whether a state is democratic one or not.⁴⁰ Peaceful demonstrations have genuine connections with different rights such as freedom of association; freedom of speech; and freedom of opinion and expression, in fact HRC has stated that freedom of expression serves as a basis for freedom of assembly.⁴¹ FDRE constitution is proclaimed after proclamation No 3/1991 that protects peaceful demonstration and the proclamation is proclaimed based on transitional charter as per to preamble 1. This forces us to question whether proclamation No 3/1991 is compatible with the FDRE constitution in terms of protection of fundamental rights. The proclamation is still in force since it has not been repealed. There is not even one amendment to a single provision of proclamation No3/1991. Although, it

³⁷ Proclamation to Provide for the Establishment of the Human Right Commission, 2000, Proc. No. 210, Neg. Gaz. Year 6, no. 40; Proclamation to Provide for the Establishment of the Institution of the Ombudsman Proclamation, 2000, Proc. No. 211, Neg. Gaz. Year 6, no 41.(hereinafter Proclamation No. 210/2000)

³⁸ Mohammed Abdo, The Ethiopian Human Rights Commission and its Contribution in the Protection of Human Rights and Building of Good Governance: Challenges and Prospects, (<https://biblio.ugent.be/publication/5855951/file/5876631>) last visited on September 8, 2017. P. 17 (hereinafter, Mohammed)

³⁹ Isabela Ortez, Sara Burke., Mahamed Berrada, and Hernain Cortes, World Protest 2006-2013, (2013) p. 14. (hereinafter Isabela)

⁴⁰ Freedoms of association and assembly cornerstones of democracy and security. (<https://www.osce.org/odihr/151421>) last visited on March 26, 2017.

⁴¹ General comment, Article 19: Freedom of Opinion and expression, 2011, CCPR/C/GC/34, par. 4

contains provisions that is not compatible with international standard i.e. it considers as illegal when demonstrations are held without giving notification as per article 9 failing to be compatible; it failed to protect vulnerable groups; and it failed to provide a way for enactment of regulation that could have eased the process of exercising the right. Additionally, the contents, the requirement i.e. notification, and the power of organizers as holder of the right to choose the place and time of demonstration to be held are not being implemented as the law contains.

Generally, the thesis tries to show that how Proclamation No. 3/1991 failed to adequately protect the right in terms of content and in terms of implementation. On the other hand Ethiopia did not adopt the resolution on human right in the context of peaceful demonstration or protest even if it not binding but could help to improve the protection of the right.

1.3. Research Questions

The main focus of the research question is to investigate elements of Ethiopian law on peaceful demonstration in order to differentiate and take out the backwardness of it in terms of international standards and to examine the implementation based on different reasons behind the failure to implement and from different people rights and obligations perspective as provided. Additionally, it is also to see the obligation and practice of judicial organs in terms of right to peaceful demonstration. Thus the research questions are as follows

1. What is the responsibility of Ethiopian government on the right to peaceful demonstration internationally and based on Ethiopian law? Are all the obligations to protect, respect, and fulfill or one of the three is the government obliged to do?
2. Is proclamation No 3/1991 adequate enough based on the FDRE Constitution and international human right obligation?
3. What are the issues that are not covered by proclamation No. 3/1991?
4. Is there proper implementation of the concerned law on the ground?
5. Are there alternative ways that can improve the laws of peaceful demonstration to be interpreted based on different international human right instruments in order to implement the laws properly?

1.4. Objective of the Study

1.4.1. General Objective

The general objective of this study is to investigate the overall law of peaceful demonstration of Ethiopia that is concerned on peaceful demonstration. The reasons behind the investigation are to clearly understand the responsibility of the government towards the right; to find a way that the law can be applicable with the same meaning of international instruments; and to gauge the disparity between laws and practice. It is also for the purpose of studying the compatibility of Ethiopian law of peaceful demonstration and with international one.

1.4.2. Specific Objective

- To examine the laws on peaceful demonstration in Ethiopia in terms of international standard.
- To identify the difference between Proclamation No 3/1991 and the FDRE Constitution and international instruments.
- To identify alternative ways of interpretation of the laws in order to apply the law in the same way as international instruments.
- To clarify the gap between the Ethiopian law on peaceful demonstration and the international one.
- To investigate whether the laws on peaceful demonstration are implemented properly and also to explore the reasons behind non implementations of the proclamation by the administrative officials.

1.5. Significance of the Study

The upcoming study will have different importance for organizers of peaceful demonstration and government officials that are concerned with demonstration. As it will be about the law it will be important for law makers and administrative organs in order to help them to implement properly. The reason is that it will look in to the left out elements of peaceful demonstration if there is one. Added elements whether they are substantive or procedural, that are not important or which are not compatible with the right as recognized internationally will be dealt with if they exist. It will have significant issues that help the law making organ. Additionally, it has the importance of giving knowledge and base for future demonstrators.

1.6. Scope of the Study

The scope of the study will focus on the Ethiopian law and its implementation in general. It covers the validity of the proclamation No 3/1993 based on the FDRE constitution. The protection accorded to this right in the international level, and regional level. In addition to this it also focuses on the obligation of government officials and peaceful demonstrators.

1.7. Limitation of the Study

The main limitation is that shortage of written literatures. There are different written materials but the ones that are about peaceful demonstration in Ethiopia are not that much available to evaluate and differentiate the thesis.

1.8. Research Methodology

The thesis focuses on primary resources such as the FDRE constitution and Proclamation No 3/1991. Cases that are entertained in the international, regional and national level referred based on purposive or random selection for exemplary purpose. It also uses secondary resources that are written based on primary resources. By selecting randomly recent peaceful demonstrations it explores whether the laws are implemented as per to the law. There will be interview with random and purposive selection with Political Meeting and Peaceful Demonstration Notification Office Administrator of Addis Ababa City Administration Public Affairs Relations Administrator of Blue Party, and Senior Investigator of Ethiopian Human Rights Commission. Thus my research is a combined approaches it contains the character of empirical and doctrinal approaches.

1.9. Structure of the Study

The first chapter is about the general overview of the theses which includes background of the study, statement of the problem, literature review, research question, objective of the study, scope and limitation of the study, and methodology of the study. Chapter two is concerned with the protection of peaceful demonstration in the international and regional level. The third chapter focuses on the FDRE constitution on the protection of peaceful demonstration, proclamation No 3/1991, and Criminal Code of Ethiopia. Chapter four focuses on the practice of the laws of peaceful demonstration of Ethiopia and the role of courts and Ethiopian human right commission of Ethiopia. The last chapter is focused on conclusion and recommendation.

CHAPTER TWO

PROTECTION OF PEACEFUL DEMONSTRATION IN THE INTERNATIONAL AND REGIONAL HUMAN RIGHTS SYSTEM

2.1. Introduction

Assembly is defined as ‘an intentional and temporary gathering in a private or public space for a specific purpose. It includes demonstrations, inside meetings, strikes, processions, rallies or even sits-in’.⁴² The protection of peaceful demonstration or protest as a separate right did not exist in history.⁴³ If one can search he or she may not find the term right to peaceful demonstration in the major international human right instruments,⁴⁴ but it is recognized and protected as part of the right to peaceful assembly in different international and regional human right instruments that are ratified by Ethiopia.⁴⁵ In this chapter the content of right to freedom of assembly and its limitations and as protection of peaceful demonstration in the ICCPR, ECHR, and ACHPR; resolution on the Promotion and Protection of Human Rights in the Context of Peaceful Protests (Res, A/HRC/25/38); and application of such instruments by monitoring bodies will be discussed.

2.2. Protection of the Right to Peaceful Demonstration in the International Human Right System

Protest or demonstration in various forms plays an important role in political life in many countries, thus its protection is crucial. It is considered that right to freedom of peaceful assembly is the natural point of departure for determining states’ legal obligations with respect to peaceful demonstration against the government or anyone else.⁴⁶ Ethiopia acceded to ICCPR on June 11, 1993. Even if Ethiopia is party state to ICCPR there are some differences on the right to

⁴²Resolution on the Rights to Freedom of Peaceful Assembly and of Association (2012), Res, A/HRC/20/27, p 7, par. 24 (hereinafter Resolution A/HRC/20/27)

⁴³ David, cited above at note 7, p. 345, 347

⁴⁴ For instance in the Convention of Civil and Political Rights article 21 provides the protection of freedom of assembly but it does not put the term peaceful demonstration.

⁴⁵ICCPR, cited above at note 8; ACHPR, cited above at note 12; CRC, cited above at note 24; and Universal Declaration of Human Rights (1948) Res, A/217 (Hereinafter, UDHR)

⁴⁶ Geneva Academy, Facilitating Peaceful Protest (2014)(<https://www.geneva-academy.ch/joomlatools-files/docman-files/Facilitating%20Peaceful%20Protests%20.pdf>) last visited on January 28, 2017, p. 5 (hereinafter, Geneva)

freedom of assembly limitations provided between the ICCPR and FDRE constitution that provides protection for such right, which I will discuss it in chapter three. In this part the thesis focuses on protection of the right as per to ICCPR. To start with the contents of the right ICCPR under article 21 provides as follows:

‘The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others’.

Additionally, CRC under article 15 and UDHR under article 20 protect such right in the same formulation with zero difference. Even if the ICCPR limitation on this specific right is understandable, the abuse of applicable provisions allowing governments to limit certain rights resulted in the need for a closer examination of the conditions and grounds for permissible limitations in order to achieve an effective implementation of the rule of law and this led to the publication of Siracusa Principles.⁴⁷ Siracusa principles clearly interpret the limitations of ICCPR, to start with the first limitation i.e. limitation shall be based on the law in which the law shall be consistent with the ICCPR and should be in force.⁴⁸ Additionally it should not be arbitrary or unreasonable, and shall be clear and accessible to everyone while also providing safeguards and effective remedies against illegal or abusive application of limitations on human rights.⁴⁹ The second and further limitation necessary in a democratic society is to demonstrate that the limitations do not harm the democratic functioning of the society.⁵⁰ The third one is the limitation should be in the interest of national security or public safety, public order. Public order is the set of fundamental principles on which society is founded and respect for human rights.⁵¹ National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.⁵² On the other hand public safety means protection against

⁴⁷ Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (<https://www.icj.org/siracusa-principles-on-the-limitation-and-derogation-provisions-in-the-international-covenant-on-civil-and-political-rights/>) last visited on March 26, 2017.

⁴⁸ Siracusa Principles on Limitations and Derogation Provisions in the International Covenant on Civil and Political Rights (1985), Rule 1B (15) (hereinafter Siracusa)

⁴⁹ Id, Rule 1 B1 (16, 17, 18)

⁵⁰ Id, Rule 1 B 2 (19)

⁵¹ Id, Rule 1B 3 (22)

⁵² Id, Rule 1B 6 (29)

danger to the safety of persons, to their life or physical integrity, or serious damage to their property.⁵³ These last two cannot be used for imposing vague or arbitrary limitations and may only be invoked in the existence of adequate safeguards and effective remedies against abuse. The last one is the protection of the rights and freedoms of others, the scope of the rights and freedoms of others that may act as a limitation upon rights in the ICCPR extends beyond the rights and freedoms recognized in the Covenant and shall not be used to protect the state and its officials from public opinion or criticism.⁵⁴

Based on this right the HRC entertained and decided different cases. For instance on a particular case HRC decided that;

‘the Committee notes that freedom of assembly protects demonstrations promoting ideas that may be regarded as annoying or offensive by others and that, in such cases, States parties have a duty to protect the participants in such a demonstration in the exercise of their rights against violence by others. It also notes that an unspecified and general risk of a violent counterdemonstration or the mere possibility that the authorities would be unable to prevent or neutralize such violence is not sufficient to ban a demonstration.’⁵⁵

As we can see freedom of assembly protects demonstrations. It is not allowed to ban peaceful demonstrations without sufficient grounds that are recognized under the ICCPR. In addition to this it shows that when states have obligations to protect participants they are prohibited to ban peaceful demonstration while avoiding obligation to protect.

Other treaties such as UDHR and CRC also protect the right, especially CRC protect the right in the same formulation as ICCPR.⁵⁶ As we can see from the contents of the provisions the right is not an absolute one. Even if the right to peaceful demonstration is protected through the protection of freedom of assembly because of the growing recognition of the importance of protest as a human right, UNHRC established the U.N. Special Rapporteur on the rights to freedom of peaceful assembly and of association (Special Rapporteur) in 2010 and provided different resolutions.⁵⁷

⁵³ Id, rule 1 B 7(33)

⁵⁴ Id, Rule 1 B 8(35, 37)

⁵⁵ Nikolai Alekseev v. Russian Federation, cited above at note 10, par. 9.6

⁵⁶ UDHR, , cited above at note 43, and CRC, cited above at note 24, Art. 20 and 15

⁵⁷ UNHRC adopted resolutions of 15/21 on September 30, 2010, Resolution 21/16 on September 27, 2012, Resolution 24/5 on September 26, 2013, on the rights to freedom of peaceful assembly and of association, and

2.2.1. Resolutions on the Promotion and Protection of Human Rights in the Context of Peaceful Protests

It is generally agreed that the right to participate in demonstrations is the way in which different and many rights can be exercised and realized.⁵⁸ States have the responsibility, including in the context of peaceful protests, to promote and protect human rights and to prevent human rights violations, including extrajudicial, summary or arbitrary executions, arbitrary arrest and detention, enforced disappearances and torture and other cruel, inhuman or degrading treatment or punishment.⁵⁹ They also have the obligation to provide the environment which is adequate through legislative and procedural ways for the exercise of freedom of assembly, of expression and association that can ensure implementation, additionally it is expected from states to facilitate peaceful protest to protect protestors and providing public space and urges states to pay particular attention to vulnerable groups such as women and children in the course of peaceful protest which is also expressed in resolution A/HRC/22/28.⁶⁰

Only in the existence of absolute necessity states are allowed to use force, still states are prohibited to use excessive or indiscriminate use of force and additionally, it affirms that nothing can ever justify the indiscriminate use of lethal force against a crowd, which is unlawful under international human rights law.⁶¹ It obliges states to make sure that that there is accountability for human right violations and to provide remedy and redress in the context of protest.⁶²

Assemblies are presumed peaceful at the international level if its organizers and participants have peaceful intentions and do not use and advocate violence and the organizers should not be held liable for the violent act of others.⁶³ Some of the reasons are participants cannot be controlled by them and the organizers may not be aware about the actions of the participants,

Resolution 19/35 on March 23, 2012 and Resolution 22/10 on March 21, 2013, on the promotion and protection of human rights in the context of peaceful protests.

⁵⁸ Resolution on Effective Measures and Best Practices to Ensure the Promotion and Protection of Human Rights in the Context of Peaceful Protest (2013), Res, A/HRC/22/28, par. 3-4 (hereinafter Resolution A/HRC/22/28)

⁵⁹ Resolution A/HRC/25/38, cited above at note 11, par. 2

⁶⁰ Id, Art. 3, 4, 7, and 8

⁶¹ Id, Art. 9, 10, and 11

⁶² Id. Article 19

⁶³ Resolution A/HRC/22/28, cited above at note 56, par. 10

thus police are the one with the obligation and responsibility to remove violent individuals from the crowd.⁶⁴

Whenever organizers of demonstrations whether it is spontaneous one, need to organize peaceful demonstrations they should not adhere to get authorization, yet they should notify it to the appropriate authority.⁶⁵ The failure to get authorization must not be used to take criminal charges against the organizers.⁶⁶ The authorities must use the least intrusive way of restriction of the right to freedoms of peaceful assembly to succeed in reaching the legitimate aim. Complete ban on place and time should be used as a last resort to protect lives.⁶⁷

Police may react to peaceful demonstrations in different ways when there are unnecessary acts but dispersal of demonstration should only be used as a measure of last resort.⁶⁸ There should not be any act of threats or acts of violence, harassment, persecution, intimidation or reprisals for addressing human rights issues during peaceful demonstrations.⁶⁹

2.3. Protection of the Right to Peaceful Demonstration in Regional Human Right System

The right to freedom of assembly is recognized in the major regional human right instruments of three continents.⁷⁰ In the European human rights system the right to freedom of assembly is ‘fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society’ as per the European court of human rights.⁷¹ The way in which states react to protest or demonstration shows the level of the state maturity in democracy. The formulation of the right in the regional human right instruments is almost the same with some difference from ICCPR. To start with ECHR in article 11 ommites the requirement of

⁶⁴ Ibid

⁶⁵ Resolution A/HRC/22/28, cited above at note 56 par. 11

⁶⁶ Ibid

⁶⁷ Id. par.12

⁶⁸ Id. par. 13

⁶⁹ Id. par. 15

⁷⁰ European Convention on Human Rights article 11 (1950) (hereafter, ECHR); ACHPR cited above at note12, article 11; and American Convention on Human Rights (1969) article 15(hereafter, IACHR)

⁷¹ Djavit An v. Turkey, (Application No 20652/92, European Court of Human Rights, February 20, 2003) par. 56.

‘public order’ and replaces it with ‘prevention of disorder or crime’.⁷² This difference is considered as important to justify restrictions designed to enforce government policy.⁷³

The exercise of freedom of peaceful assembly should be enjoyed without regulation because a right which is not prohibited by law is presumed to be exercised thus demonstrators should not be required to get authorization.⁷⁴ Even if freedom of assembly is protected with limitations the requirement of notification is not provided in the ECHR, but cases entertained by ECtHR on freedom of assembly has shown that notification requirement does not normally affect the essence of that right by clearly putting⁷⁵

‘A prior notification requirement would not normally encroach upon the essence of that right. It is not contrary to the spirit of Article 11 [of the Convention] if, for reasons of public order and national security, a priori, a High Contracting Party requires that the holding of meetings be subject to authorization’

Further it is provided that absence of notification can never serve as a legitimate basis for assembly dispersal.⁷⁶ Restrictions provided in the international and regional human right instrument on exercise of freedom of assembly should not be interpreted and supplemented by additional grounds in domestic legislation.⁷⁷ As the international human right instruments restrictions grounds are the same with the European one.

In the IACHR the right is formulated as the ICCPR by clearly providing that the right that is protected is the one which without arm, showing that it only protects peaceful demonstrations.⁷⁸ The same with international and other regional human right instruments IACHR has put restrictions on the right to demonstrations.⁷⁹

In the ACHPR unlike ECHPR and ICCPR, this freedom is not confined to peaceful demonstrations which imply that demonstrations that are violent may be protected.⁸⁰ Yet, peaceful demonstration is the one which is protected as can be inferred from the second sentence

⁷² Robin Burnett, *The Right of Peaceful Protest in International Law*, (1986). p. 254(hereinafter Robin)

⁷³ Ibid

⁷⁴ Vince Commission, cited above at note 6, p. 15.

⁷⁵ *Éva Molnár v. Hungary* (Application No 10346/05, European Court of Human Rights, October 07, 2008) par. 35

⁷⁶ Id, par. 36

⁷⁷ Vince Commission, cited above at note 6, par. 339

⁷⁸ IACHR, cited above at note 68

⁷⁹ Ibid

⁸⁰ ACHPR, cited above at note 12, and Kolawole, cited above at note 13, p. 230.

of the same provision, that allows limitations to be based on law that protects national security, the safety, health, ethics and rights of others.⁸¹ The ACHPR is influenced and inspired by traditional African values,⁸² in which we can find the restriction ground of 'Ethics' in the provision of protection of freedom of assembly.⁸³ Thus, formulation of restriction shows some differences but still reflects those found in many of the provisions of the Charter.

The African Commission of Human and People's Right jurisprudence on freedom of assembly has not yet been fully developed and cases decided by the African Commission on this freedom are decided with poor reasoning.⁸⁴ The cases on freedom of assembly are concerned political participation and political parties which led to broad and expansive interpretation.⁸⁵ The African Commission has provided draft guideline on freedom of association and freedom of assembly which regulates what the limitations and requirements are on such freedoms.⁸⁶ This is one step ahead but the guideline has not been enacted. Even if the African commission does not have standardized and detailed regulation of limitation on freedom of assembly, it can draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the parties to the present Charter are members.⁸⁷ This shows that the African commission can refer to resolution of UNHRC resolution on peaceful demonstration or protest when cases concerning such issue appear before them.

Additionally, African Commission has provided resolution on the right to peaceful demonstration.⁸⁸ The resolution prohibits different violations of human rights on the

⁸¹ Ibid

⁸² Gino, cited above at note 14, p. 28.

⁸³ ACHPR, cited above at note 12

⁸⁴ Kolawole, cited above at note 13

⁸⁵ Ibid

⁸⁶ (http://www.achpr.org/files/news/2016/09/d235/draft_guidelines_eng.pdf) last visited on October 2, 2017

⁸⁷ ACHPR, cited above at note 12 Art. 60

⁸⁸ (<http://www.achpr.org/sessions/55th/resolutions/281/>) last visited on September 02, 2017

occurrences of peaceful demonstration⁸⁹. These are prohibition of arbitrary arrest; prohibition of disproportionate use of force on demonstrators based on international standard; to conduct impartial and independent investigation; to protect peaceful protesters; to abide by regional and international obligation to respect rights and freedoms; uphold fair trial and to put an end to the use of special courts.⁹⁰

The African Commission has entertained different cases base on the right to freedom of peaceful assembly in which one of them is between Kevin Mgwanga Gunme et al V. Cameroon. In this particular case the African Commission decided that

‘...It encourages individuals and organizations, when exercising their right to freedom of assembly, to operate within the national legal framework. This requirement does not absolve States Parties from their duty to guarantee the rights to freedom of assembly, while maintaining law and order.’⁹¹

Additionally, on the case between Lawyers of Human Rights V. Swaziland the African commission decided that

‘Admittedly, the Proclamation restricting the enjoyment of these rights was enacted prior to the coming into effect of the [African] Charter. However, the Respondent State had an obligation to ensure that the Proclamation conforms to the [African] Charter when it ratified the latter in 1995. By ratifying the [African] Charter without taking appropriate steps to bring its laws in line with the same, the African Commission is of the opinion that the State has not complied with its obligations under Article 1 of the [African] Charter and in failing to comply with the said duty, the prohibition on the establishment of political parties under the Proclamation remained effective and consequently restricted the enjoyment of the right to freedom of association and assembly of its citizens. The [African] Commission therefore finds the State to have violated these two articles by virtue of the 1973 Proclamation.’⁹²

⁸⁹ Ibid

⁹⁰ Ibid

⁹¹ Kevin Mgwanga Gunme et al V. Cameroon, (Application No. 266/03, African Commission on Human and Peoples’ Rights, May13-27, 2009) par. 138(hereinafter, Kevin Mgwanga Gunme et al V. Cameroon)

⁹² Lawyers of Human Rights V. Swaziland (Application No. 251/02, African Commission on Human and Peoples’ Rights, in 2005) par

As we can see from this the African Commission showed that violation of such right by state based on a claim to maintain peace and order. In other way states are not allowed to violate such right based on limitations and requirements. In addition to this states are allowed not to violate and prohibit such right based on a law that was enacted before acceding to ACHPR. Not just by laws that are enacted before ACHPR but also by any other law. All state parties are obliged to respect, and protect all the rights protected under ACHPR.

In conclusion the right to peaceful demonstration is a core one for the existence of democracy and is protected in different international and regional human rights conventions in the same articulation with some difference between regional one and international one. However such difference does not take away the protection of such right under any circumstances. Ethiopia being party state to ICCPR, UDHR, CRC, and ACHPR is obliged to respect and protect the right as enshrined in these treaties.

CHAPTER THREE

THE LAW OF PEACEFUL DEMONSTRATIONS IN ETHIOPIA

3.1. Introduction

Ethiopia had three constitutions before the coming of the Federal Democratic Republic of Ethiopia (FDRE) constitution⁹³ and a transitional charter. In this chapter how freedom of assembly incorporated and the difference between these constitutions will be highlighted. Mainly how the FDRE constitution, proclamation No 3/1991 dealt with the right to freedom of assembly, the gaps that the law has, and the remedies provided in the Ethiopian human right protection system will be assessed.

3.2. Freedom of Assembly and Demonstration in the Pre- FDRE Constitutions of Ethiopia

The FDRE constitution is not the first constitution that guaranteed the right to peaceful demonstration in Ethiopia. Even if the 1931 Ethiopian constitution does not have human right clause⁹⁴ and does not contain the right to peaceful demonstration, the revised one i.e. 1955 Revised Ethiopian constitution had recognized different rights including the right to assembly.⁹⁵ The 1955 Revised Ethiopian constitution had recognized that the subjects have the right to exercise the right to assemble peacefully.⁹⁶ The requirements to be fulfilled while exercising the right is participants must assemble peacefully and without arms.⁹⁷

Following the 1955 revised Ethiopian constitution; the 1987 Ethiopian constitution came up with a different set up from the previous ones, while recognizing different rights and freedoms it emphasized on economic, social and cultural rights as the regime was a socialist one.⁹⁸ One of the freedoms it recognized is the right to peaceful demonstration with freedom of speech and

⁹³ These are the 1931 Ethiopian constitution, the 1955 Revised Constitution of Ethiopia, the Constitution of the People's Democratic Republic of Ethiopia of 1987.

⁹⁴ Adem Kassie Abebe, "Human Rights under the Ethiopian Constitution: A Descriptive Overview", Mizan Law Review, vol. 5 (2011), p. 41(hereinafter, Adem)

⁹⁵ Ibid

⁹⁶ Revised constitution, cited above at note 16, Art, 45

⁹⁷ Ibid

⁹⁸ Adem, cited above at note 92 pp. 42

other rights.⁹⁹ What is different about this constitution is that it does not provide any requirements or limitations to the freedom. It does not provide the enactment of any kind of law to set conditions or procedure to exercise the freedom. The first main element on 1987 constitution on freedom of peaceful demonstration is that, it obliges the government to provide the necessary material and moral support to exercise the freedom.¹⁰⁰ This is not specific obligation but a general obligation that obliges the state to provide adequate environment to exercise freedom of peaceful demonstration.

After the fall of the Derg regime and before EPRDF took the position of government the transitional government was temporarily in position.¹⁰¹ The Transitional government administration was based on Transitional charter. Under this charter freedom of assembly is recognized,¹⁰² as a result of this proclamation to establish the procedure for peaceful demonstration and public political meeting on peaceful demonstration or Proclamation No 3/1991 was enacted.¹⁰³ The proclamation No 3/1991 is still active because it is not repealed by any law. This proclamation provides different limitations and requirements on the right to peaceful demonstration such as on notification procedure, on place and time, responsibilities of organizers and other relevant limitations.

3.3. Peaceful Demonstration in the FDRE Constitution

After the Transitional charter the FDRE constitution became the supreme law of the land.¹⁰⁴ The FDRE constitution recognizes different rights including the right to peaceful demonstration. Peaceful demonstration as a right is not without limitations under the FDRE constitution.

Article 30(1) of FDRE constitution provides that

‘Everyone has the right to assemble and to demonstrate together with others peaceably and unarmed, and to petition. Appropriate regulations may be made in the interest of public convenience relating to the location of open-air meetings and

⁹⁹ PDRE constitution, cited above at note 17, Art 47

¹⁰⁰ Ibid

¹⁰¹ Christophe Van der Beken, Ethiopia: From A centralized Monarchy to a Federal Republic (2007), vol. 20. p. 35 (hereinafter, Christophe)

¹⁰² Transitional Period Charter of Ethiopia, 1991, Art 1 (a), Proc. No.1, Neg. Gaz. Year 50, no 1(hereinafter, Transitional charter)

¹⁰³ Proclamation No. 3/1991, cited above at note 21

¹⁰⁴ FDRE constitution, cited above at note 18, Art, 9

the route of movement of demonstrators or, for the protection of democratic rights, public morality and peace during such a meeting or demonstration.’

Demonstration that is protected under the FDRE constitution is peaceful one, which can be inferred from the provision that provides the right to demonstrate to be peaceably and unarmed. Following this requirements it provides the grounds for limiting the right to peaceful demonstration which are ‘public convenience’, ‘protection of democratic rights’, ‘public morality’ and ‘peace’.¹⁰⁵ From this limitation grounds ‘public convenience’ and ‘democratic rights’ are different because they are not found in other jurisdictions and international human rights standards.¹⁰⁶ In International Convention on Civil and Public Rights (ICCPR) article 21 one of grounds of is ‘public order’¹⁰⁷ not ‘public convenience’ because the aim is to ensure the smooth functioning of society and in connection with this public convenience can have similar and adhere to this meaning of public order.¹⁰⁸ As per Siracusa principles ‘public order’ means the set of fundamental principles on which society is founded and respect for human rights.¹⁰⁹ Thus as per to article 13 of the FDRE constitution fundamental rights can be interpreted based on international human right instruments that Ethiopia has ratified which leads us to interpret the term ‘public convenience’ as ‘public order’ as provided in the ICCPR.¹¹⁰

The FDRE constitution article 10 differentiates between democratic rights and human rights which seem to imply that human rights are those that come from the nature of mankind, and democratic rights as those inherent in democracies.¹¹¹ Human rights under the FDRE constitutions are considered those rights that a person is entitled merely because he or she is a human being, and democratic rights are those conferred only on citizens,¹¹² which is inconsistent with international human rights instruments. As we have seen in the previous paragraph the exercise of peaceful demonstration is limited when it comes to ‘protection of democratic

¹⁰⁵ Id, Art. 30(2)

¹⁰⁶ Tsega, cited above at note 19, pp. 304

¹⁰⁷ ICCPR, cited above at note 8, Art 21

¹⁰⁸ Tsega, 19, p. 305

¹⁰⁹ Siracusa, cited above at note 46, Rule 1B 3 (15)

¹¹⁰ Tsega, cited above at note 19, p. 305, Ibid

¹¹¹ Tsega, cited above at note 19 pp. 57; SA Yeshanew ‘The justiciability of human rights in the Federal Democratic Republic of Ethiopia’ (2008) 8/2 African Human Rights Law Journal 275& 276

¹¹² Ibid; see also Minutes of the Discussion on the Draft Constitution at the Council of Representatives, May 1994, and T Regassa (2009) “Making Legal Sense of Human Rights: The Judicial Role in Protecting Human Rights in Ethiopia”, 3(2) Mizan Law Review 287, at 303

rights'.¹¹³ This leads to the conclusion that peaceful demonstration is susceptible to limitation only where democratic rights such as freedom of speech, association, assembly, right of women, and right to vote are threatened which does not make any sense.¹¹⁴ The ground for limitation of peaceful demonstration instead of democratic rights, it should be rights of others as it is provided in the ICCPR.¹¹⁵ Under the ICCPR the right cannot be exercised if it infringes the rights of others¹¹⁶ which are different from FDRE constitution.

The other limitation is that it is prohibited to use the right for purposes of defamation or violation of laws prohibiting any propaganda for war and any public expression of opinions intended to injure human dignity,¹¹⁷ which is considered as the only limitation that the right cannot be exercised.¹¹⁸ As we can observe from the FDRE constitution this is just one of the limitations not the only one. Additionally, FDRE constitution allows peaceful demonstration to be regulated by appropriate regulation.¹¹⁹ In the Ethiopian context there is no official statement or legislation or decision that describes what appropriate regulation means.¹²⁰ It is through interpretation with international human rights instruments ratified by Ethiopia that this limitation refers to suitability, necessity and proportionality.¹²¹

The status of international human right instruments in Ethiopia is a debated issue which people have different interpretation.¹²² One of the doctrines i.e. Monist doctrine does not allow a room for contradiction between domestic and international law and if there is conflict between the two legal interpretation and application must give precedence to international law.¹²³ Accordingly there are who argue that there is monist mode argue based on article 9(4) of the FDRE Constitution that provides that international instruments are 'an integral part of the law of the

¹¹³ FDRE, cited above at note 18, Art 30

¹¹⁴ Tsega, cited above at note 19, p. 305

¹¹⁵ Ibid, and ICCPR, cited above at note 8, Art 21

¹¹⁶ ICCPR, cited above at note 8, Art 21

¹¹⁷ FDRE, cited above at note 18, Art. 30(2)

¹¹⁸ Solomon, cited above at note 20

¹¹⁹ FDRE, cited above at note 18, Art. 30(2)

¹²⁰ Tsega, cited above at note 19, p. 305

¹²¹ Id, pp. 306

¹²² Henok Tesfaye, Status and Application of Juvenile Related International Framework in Ethiopia, (<https://www.abysinnialaw.com/blog-posts/item/1702-status-and-application-of-juvenile-related-international-frameworks-in-ethiopia>) last visited on September 30, 2017 (hereinafter, Henok)

¹²³ Dr. Takele S. Bulto, "The Monist-Dualist Divide and Supremacy clause: Revisiting the Status of Human Rights Treaties in Ethiopia", Journal of Ethiopian Law, vol. 23 (year) pp.135 (hereinafter, Takele S.)

land'.¹²⁴ This is wrong as it does not consider the essential difference between domestic and international law and concentrates on the sources. Main difference between the two laws emerges from the inherent nature and principle the laws drive their binding force. When we come to the second doctrine i.e. Dualist doctrine which argues that domestic and international laws regulate different subjects and do not conflict and if they conflict domestic law prevails over international law in matters of domestic nature.¹²⁵ Accordingly, there are who argue that as that the Federal Negarit Gazzeta Establishment Proclamation requires publication of laws including ratified treaties otherwise it leads to the conclusion that publicized laws prevail over unpublicized treaties.¹²⁶

Lastly there is a third way of argument on the status of international treaties. The third one argue that Vienna Convention on the Law of Treaties (Vienna Convention) has provided that any domestic law should adhere to international treaties that the state has ratified, which means if a national law cannot have a status level above any international law¹²⁷ and this has been stated as per to article 13(2) of the FDRE constitution international treaties are source of interpretation for ambiguous provisions of the FDRE constitution, as this provision orders the FDRE constitution to follow treaties it leads to conclude that FDRE constitution is either below or on par with ratified treaties by Doctor Takele which I agree.¹²⁸ In other word any domestic law which comes in conflict with treaties are below international treaties which Ethiopia has ratified Hence, the limitation that is provided for peaceful demonstration cannot be against or different from international standard if it does it will not be acceptable which I argue with. Thus there are two ways in which the FDRE constitution goes with the ICCPR on limiting peaceful demonstration based on 'democratic rights' and 'public order'. The first one is based on Vienna convention recognizing that ICCPR is above any national law. Specifically, taking limitations of FDRE constitution on peaceful demonstration, i.e. 'democratic rights' and 'public convenience' as 'rights of others' and 'public order' as is found in the ICCPR solves the problem respectively. Thus the limitation provided in the ICCPR is the one which prevails based on the Vienna Convention. Secondly, whatever the status of international instrument is understood in Ethiopia,

¹²⁴ Henok cited above at note 120

¹²⁵ Takele S. cited above at note 121

¹²⁶ Ibid and; Negarit Gazzeta Establishment Proclamation, No. 3/1995, contrary reading of Article 2(3) (hereinafter, Proclamation No. 3/1995)

¹²⁷ Vienna Convention on the Laws of Treaties, 27 January 1980. Article 27 (hereinafter, Vienna Convention)

¹²⁸ Takele S. cited above at note 121

the FDRE constitution has clearly provided that in case where interpretation is needed resort should be made to international human right instruments to interpret it.¹²⁹ This leads us to conclude that FDRE constitution limitation on this right is can be interpreted with international standard through interpretation. Even if such limitations based on ‘democratic rights’ and ‘public order’ does not seem to be compatible they are fixable.

Ethiopia is party state to African charter on Human and People Right (ACHPR) which has a little bit difference in the limitation requirement of right to freedom of assembly. In the ACHPR it is allowed to restrict freedom of assembly based on ‘Ethics’ among other restriction elements which is influenced by African traditions.¹³⁰ The FDRE constitution has not incorporated in the limitation part to restrict the right based on ethics as the same as the ACHPR The meaning of ethics can lead us to different interpretation with controversies can give broad power to the government to restrict freedom of assembly if Ethiopia incorporates it. The reason can be that the government can manipulate its power to restrict the peaceful demonstration as it wants based on this limitation. The choice of FDRE constitution not to incorporated the element of ‘Ethics’ in the limitation part should be appreciated.

3.4. Peaceful Demonstration under Proclamation No 3/1991

In 1991 based on article 1 of Transitional Charter which protects freedom of assembly, proclamation was enacted on peaceful demonstrations and political meeting.¹³¹ Even if FDRE constitution is late comer, the requirement that limitation should be based on regulation is fulfilled as per to article 30(2). Not just the existence of the law but also as per to rule 1 B 17 Siracusa principles clearly interpret the limitations of ICCPR, i.e. limitation to be based on the law consists different contents such as the law shall be consistent with the ICCPR and should be in force, additionally it should be clear and accessible to everyone. However, Proclamation No 3/1991 is not accessible it is very difficult to find it for such kind of study let alone to be available for the public.

Proclamation No 3/1991 deals with different issues that are crucial to the right to peaceful demonstration. It provides how the right should be exercised, the prohibited time and place and

¹²⁹ FDRE, cited above at note 18, Art. 13(2)

¹³⁰ ACHPR, cited above at note 12; and Gino cited above at note 14, p. 28

¹³¹ Proclamation No. 3/1991, cited above at note 21

the prohibited actions during the conduct of peaceful demonstrations. The proclamation provides that

‘Any individual has the right to organize and participate in peaceful demonstration...’¹³²

While affirming the protection of the right the first limitation provided is that when individuals exercise the right they should not interfere with the lawful rights of others.¹³³ This limitation is different from the FDRE constitution as it does not allow the infringement of the lawful right of others as the Amharic version provides that is the same with the ICCPR that limits the right for the protection of the rights and freedoms of others’. . As we have seen in the previous page the FDRE constitution protects ‘democratic rights’ not the right of others. The proclamation uses a more appropriate term than the FDRE constitution however, we can depend on interpretation provision from the ICCPR which provides ‘rights of others’.

Ethiopia has been reported as a state which requires authorization by organizers of demonstration in proclamation 3/1991;¹³⁴ which is not correct. The law does not require authorization at all it only requires the organizers to notify to city administration before 48 hours of the conduct demonstration.¹³⁵ Notification requirement is in line with international standard. The FDRE constitution allows the right to peaceful demonstration to be determined by appropriate regulation, which can be interpreted as law that limit the right proportionally and properly. As provided in the report of United Nations Special Rapporteur (UNSR) states are allowed to require notification but are not allowed to require authorization.¹³⁶ Thus requirement of notification is compatible with international standard.

But the fact that the proclamation does not differentiate between indoor and outdoor peaceful demonstrations is considered as the failure of the law for requiring notification.¹³⁷ Reason for giving notification is to allow the government to facilitate the exercise of the right and to take appropriate measures to protect public safety and order and the rights and freedoms of

¹³² Id, Art, 3(1)

¹³³ Id, Art, 3(2)

¹³⁴ African Commission on Human and Peoples Right, Report of the Study Group on Freedom of Association and Assembly in Africa (2014) p. 60

¹³⁵ Proclamation No. 3/1991, cited above at note 21 Art, 4 (1)

¹³⁶ Resolution A/HRC/22/28, cited above at note 56

¹³⁷ Tsega, cited above at note 19, p. 308

demonstrators and other individuals affected by the protests.¹³⁸ As we can observe from this notification serves to address the demand of the protesters so that they can get answers for it especially when the demand is from the government. This can be inferred from the power of the government to take actions on the rights and freedoms of demonstrators. Thus the fact that the proclamation does not differentiate notification requirement for indoor and outdoor demonstration does not have negative effect on demonstrators. In fact the requirement of notification for both kind of demonstration makes it easy to address the demand of demonstrators.

Demonstration may have small number of participants or a lot of participants. The number of participants or the size of the demonstration is not considered when requiring notification in which small size demonstrations should not be required even if it is not assured what small size meant.¹³⁹ Small size demonstrations may not involve violence but still the participants have demands that must be answered thus the requirement of notification is useful. According to the law notification should be given to the appropriate authorities before 48 hours of the demonstration.¹⁴⁰ The law provides this for all kinds of peaceful demonstrations. It is suggested that for spontaneous demonstrations must be required the same, i.e. to have the same procedure with no time difference.¹⁴¹ On the other hand it is suggested that spontaneous demonstrations to be treated with special procedure¹⁴² which is also supported by other writer that shows the silence of the law on such demonstrations, additionally, he argues that such requirement should not be required for spontaneous demonstration.¹⁴³ Even if the requirement to submit the notification before 48 hours is appreciated as appropriate time gap sometimes shorter time may be needed, for instance, spontaneous demonstrations may need shorter time for example between 12 and 6 hours before the conduct of the demonstration. This will allow the authorities to safeguard public safety and order, while the demonstrators exercise their right. The main point here is not that the law should not require notification but the requirement to be flexible case by case.

¹³⁸ Resolution A/HRC/22/28, cited above at note 56, par. 11

¹³⁹ Tsega, cited above at note 19, p. 308

¹⁴⁰ Proclamation No. 3/1991, cited above at note 128 Art, 4 (1)

¹⁴¹ Resolution A/HRC/22/28, cited above at note 56, par. 11

¹⁴² Vince Commission cited above at note 6, p. 15

¹⁴³ Tsega, cited above at note 19, p. 313

The other problem raised on notification requirement is the fact that the law is silent on the possibility of making modification of notification basing on Armenian Law which provides so¹⁴⁴ and on the issue of how to respond to notification content requirement.¹⁴⁵ The main reason for enactment of proclamation is to make detailed laws so that it will be easy for application. Modification of notification may be needed for errors of content, but the proclamation is silent, and also such kind of provision does not exist in the international or regional standard. If the law has included such way, it would have eased the process of notification requirement.

Additionally it does not regulate demonstrations that are conducted without prior notification but considered as illegal act which is contrary to international standard as provided on article 9.¹⁴⁶ According to special rapporteur if demonstrators exercise the right to peaceful demonstration without giving notification it should not be considered as illegal.¹⁴⁷ The proclamation indirectly shows the fate of demonstrations that will be conducted without notification.¹⁴⁸ In connection with this if demonstrations took place it will be a crime as per to Criminal Code of Ethiopia and the organizers will receive more severe punishment than participants.¹⁴⁹ Not just on failure to notify but as per to article 8 of proclamation No 3/1991 demonstrations that reflect or aim at discrimination based on race, religion, gender, nations and nationalities will also have the consequence of criminal charge. Ethiopia has ratified international human right that prohibit discrimination based on the above lists of categorization for instance article 2 of the UDHR provide that principle of nondiscrimination, thus such provision is compatible with international obligation.

After the notification is given the obligation of the authorities to provide necessary acts and to provide comfortable environment so that daily life should not be disrupted.¹⁵⁰ Such obligation does not mean that the demonstration can be banned by the authorities. During the peaceful

¹⁴⁴ Id, p. 308

¹⁴⁵ Ibid

¹⁴⁶ Tsega, cited above at note 19, p. 309; and, Proclamation No. 3/1991, cited above at note 21, Art, 9

¹⁴⁷ Resolution A/HRC/22/28, cited above at note 56, par. 11

¹⁴⁸ Tsega, cited above at note 19, p. 314

¹⁴⁹ Ibid; House of Peoples' Representative, Criminal Code of Federal Democratic Republic of Ethiopia (2003) Article 482 (1)(a) provides that whoever knowingly takes part in a society, band, meeting or assembly forbidden, either generally or from time to time by law, by government or by the competent authority; or..... will be punished with fine. Sub article two provides that ringleaders, organizers or commanders of the crime are punishable with simple imprisonment not exceeding one year.

¹⁵⁰ Proclamation No. 3/1991, cited above at note 21, Art, 6(1)

demonstration the authorities have the duty to keep the peacefulness of daily life. The same provision on sub article 2 has provided that the only power the authorities have is to give recommendation with reasons when the place notified is not appropriate as to them. Banning of peaceful demonstration is not allowed at any time and place which is compatible with international standard as the UNHRC resolution on protection of human rights in the course of peaceful protest i.e. Resolution A/HRC/22/28, disallow complete ban place and time unless as a last resort to save lives as per to paragraph 12. As can be observed the law limited the power of authorities and is compatible with resolution A/HRC/22/28.

The Proclamation No 3/1991 is criticized for not clearly ordering the authorities to accept any notification that meets the formality requirement¹⁵¹ and it has not provide the system of verifying whether the authorities have received notification.¹⁵² As can be observed from the law organizers of demonstrations have the obligation to give notice to the authorities this means the authorities are obliged to receive the notification. The proclamation fails to provide a system to check whether the authorities received notification. Even if it does not provide at least it must have allowed administrative authorities to provide such system based on a directive. But the proclamation does not provide there to be a directive.

It is prohibited to demonstrate within 100 meters of embassies, international organizations, hospitals, graveyards, churches, mosques, prayer houses, electric power houses, dams and ‘unsuitable’ market places on market days; and within 500 meter radius of detention centers, offices belonging to the military, or security personnel.¹⁵³ These limitations are considered as improper as per to Special Rapporteur and they are very wide that must be applied based on proportionality.¹⁵⁴ Thus place limitations provided are improper and are not proportional. The time limitation is also criticized for giving broad power to seek postponement of time or relocation of place by citing concerns of peace, security and ensuring the continuation of people’s ‘daily life’ without any ‘disruption’.¹⁵⁵

¹⁵¹ Tsega, cited above at note 19, p. 310

¹⁵² Ibid

¹⁵³ Proclamation No. 3/1991, cited above at note 21, Art, 7(1) (2)

¹⁵⁴ Tsega, cited above at note 19, p. 320; Resolution A/HRC/22/28, cited above at note 16, par. 11

¹⁵⁵ Ibid

Different people participate in peaceful demonstration such as children, women or disabled persons and such people are considered as vulnerable groups who need special protection.¹⁵⁶ All these groups need special protection in the course of peaceful demonstration; the reason behind this is that for example women will suffer from gender based violence.¹⁵⁷ Such special protection must be provided in the law, but proclamation No 3/1991 does not guarantee such special protection. Such protections also must have been provided for children and disabled persons. Ethiopia is a party state to CRC, which allows freedom of assembly for children under article 15 and, CEDAW and CDP that guarantee special protection for women and disabled persons respectively. Ethiopia failed to give special protection for them based on the law. UNHRC resolution A/HRC/Res/25/38 under provision 7 and 8 urges states to pay particular attention to vulnerable groups such as women and children. Even if Ethiopia has not adopted it shows the failure of the state in this particular obligation.

3.5. Right to Remedy for Peaceful Demonstration

Every right put obligation on the government to respect by respecting, protect from the actions of others and fulfill necessary materials.¹⁵⁸ If one of or all of such duties is/are failed to be fulfilled there must be a way of remedying. Remedies for gross violations of international human rights law include the victim's right to equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.¹⁵⁹ Thus right to remedy means a right that gives the victims of violation of other rights to receive justice through different mechanisms in court of law or tribunals. Proclamation No. 3/1991 of peaceful demonstration is also criticized for not providing administrative or judicial mechanism to review the decision of authorities when organizers have claim against, which led some people to think that the decision is final as per to the coverage of the proclamation No 3/1991.¹⁶⁰ Not just the existence of the law but also as per to rule 1 B 18 Siracusa principles clearly interpret the limitations of ICCPR, i.e. limitation to be based on the

¹⁵⁶(<http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/the-human-rights-protection-of-vulnerable-groups>) last visited on September 30, 2017

¹⁵⁷ Resolution A/HRC/22/28, cited above at note 56, par. 15

¹⁵⁸ For instance, ICCPR, cited above at note 8, article 2

¹⁵⁹ Basic principle and Guideline on the Right to Remedy and Reparation for Victims of Gross Violation of International Human Rights Law and Serious Violation International Humanitarian Law, (2005), Res. 60/140, December 16, 2005

¹⁶⁰ Tsega, cited above at note 19, p. 332

law must provide safeguards and effective remedies against illegal or abusive application of limitations on human rights. Proclamation No 3/1991 does not mention such remedy but this does not mean that infringement of the right cannot be remedied and the law of peaceful demonstration does not say that the decision of the authorities is final. To start with the proclamation itself, it does not prohibit to take a claim against government based on one of the provisions in court of law. Secondly, the FDRE constitution on article 13(1) orders all government organs i.e. federal and state legislative, executive and judicial organs to respect and enforce fundamental rights and freedoms.¹⁶¹ This shows the justiciability of fundamental rights¹⁶² including right to demonstration. Additionally, everyone has the right to bring justiciable matter to court of law as per to article 37(1) of the FDRE constitution.¹⁶³ When we read these two provisions they led us to conclude that the right to peaceful demonstration is a fundamental right that is justiciable and that can be taken to courts when there is a claim.¹⁶⁴

Federal courts have the power to entertain cases that arise from the FDRE constitution and laws of federal government.¹⁶⁵ The time when the proclamation was proclaimed is during the transitional period.¹⁶⁶ The right is protected in the FDRE constitution and on the proclamation which is a federal law because of the fact that it was enacted before the FDRE constitution proclaimed. Thus federal courts have material jurisdiction and state courts by delegation have jurisdiction on issues of right to peaceful demonstration.¹⁶⁷ In addition to this the law is criticized for not incorporating the right to appeal does not mean it is not allowed.¹⁶⁸ The law does not prohibit the right to appeal.¹⁶⁹ Everyone has the right to take an appeal to higher courts when the individual believes that the decision of administrative bodies or lower courts are arbitrary based on the law.

¹⁶¹ Sisay, cited above at note 35, p. 6

¹⁶² Ibid

¹⁶³ Ibid

¹⁶⁴ Ibid

¹⁶⁵ Federal Courts Proclamation, 1996, Art 3(1), Proc. No. 25, Neg. Gaz. Year 2, no 13(hereinafter, Proclamation, 25/1996)

¹⁶⁶ In 1991 the governing organ was transitional government with transitional charter as it is after the fall of the Derg Regime

¹⁶⁷ Tsega, cited above at note, 19, p. 334

¹⁶⁸ Ibid

¹⁶⁹ FDRE, cited above at note 18, Art. 20(6)

The fact that the law is silent it does not mean that individuals cannot claim their right in the court of law. As per to ICCPR everyone has the right to effective remedy when there is a violation of fundamental rights.¹⁷⁰ In connection with this the state parties including Ethiopia have obligation to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; and to ensure that the competent authorities shall enforce such remedies when granted.¹⁷¹ FDRE constitution is in line with these international obligations of Ethiopia as it recognizes the justiciability of fundamental rights including right to freedom of assembly and peaceful demonstration. Even if proclamation failed to mention the right to remedy, it does not prohibit. On this issue we cannot conclude that the proclamation on peaceful demonstration is incompatible with FDRE constitution as it does not prohibit the right to remedy.

3.6. National Human Rights Institutions of Ethiopia

Ethiopian human right institutions are established by House of People's Representative or the legislative organ of the federal government for the protection of human rights and determine and the power and functions of the human right institutions.¹⁷² As per to the establishment proclamation of the Human Right Commission of Ethiopia, the commission has the power to investigate human right violation based on complaint or by its own initiation.¹⁷³ The power of the commission goes beyond investigation; it has the power to give notification, in writing, the findings of its investigation, and its opinion thereon, to the superior head of the concerned organ and to the complainant.¹⁷⁴ Such power of opinion or recommendation is not binding.¹⁷⁵ The remedy shall expressly state that the act having caused the grievance be discontinued, that the directive having caused the grievance be rendered inapplicable and that the injustice committed be redressed or that any other appropriate 'measure be taken.¹⁷⁶ The institution of ombudsman

¹⁷⁰ ICCPR, cited above at note 8, Art. 3(a)

¹⁷¹ Proclamation No. 3/1991, cited above at note 21, Art, 3(b) (c).

¹⁷² FDRE, cited above at note 18, Art, 55 (14) (15).

¹⁷³ Proclamation No. 210/2000 , cited above at note 37, Art 24

¹⁷⁴ Id, Art 26(2)

¹⁷⁵ Mohammed, cited above at note 36, p. 17

¹⁷⁶ Proclamation No. 210/2000 , cited above at note 37, Art 26(3)

of Ethiopia has the same power as the commission which to investigate on its own initiation and by complaint and based on its findings it can give opinion.¹⁷⁷

In addition to the fact that the commission cannot give binding decision, it is not clearly provided that the commission has the power to take a case to the court either by its own initiation or on behalf of an aggrieved party.¹⁷⁸ However, by construction of the open-ended clause of article 6 that gives power to the Commission to ensure that the human rights and freedoms provided under the Constitution of the Federal Democratic Republic of Ethiopia are respected by all citizens, organs of state, political organizations and other associations as well as by their respective officials we can conclude that it has the power to do so as the court is one organ of state.¹⁷⁹ Thus, even if the commission cannot give binding decision on, it can take its complaint to ordinary courts which we can conclude that aggrieved persons whose right to demonstrations can take their case to the EHRC.

In conclusion in the FDRE constitution peaceful demonstration is recognized with limitations. But some grounds of limitations are different from the ICCPR such as the FDRE constitution provides 'public convenience' and 'democratic rights' as grounds of limitations that is different from the ICCPR that provides 'public order' and 'rights of others'. Yet this can be resolved through interpretation based on international instruments as per to article 13 of FDRE constitution. When we come to Proclamation No 3/1991 on the grounds of limitation provides rights of others as the ICCPR when we see the Amharic version. One of the requirements of in the case of the right to peaceful demonstration is making notification which is deliberately taken as authorization by administrative officials and the police, the law when requiring notification did not differentiate between planned demonstrations and spontaneous, and because such difference needed to in order to facilitate and to make the demonstration effective by reducing the time gap for the spontaneous one. Another obstacle on the notification problem is that peaceful demonstration held without notification is unlawful act that results in criminal charge this is not compatible with international standard.

¹⁷⁷ Proclamation to Provide for the Establishment of the Institution of the Ombudsman Proclamation, 2000, Art 23 and 24, Proc. No. 211, Neg. Gaz. Year 6, no 41. (hereinafter, proclamation No. 211/2000)

¹⁷⁸ Ibid

¹⁷⁹ Ibid and see footnote 32 and 33 Interview with Terefe Wondimu, Senior Investigator, Investigation Directorate, Human Rights Commission of Ethiopia, 15 September 2011, Addis Ababa

Proclamation No 3/1991 only allows administrative authorities to give recommendation on change of place and time, authorities do not have the power to give decisions. This proclamation No. 3/1991 doesn't provide the way to enact directive in order to facilitate administrative acts. In addition to this it failed to regulate acts of security forces during peaceful demonstrations, which departs Ethiopia from international accepted standards. Proclamation No 3/1991 failed to incorporate the protection of vulnerable groups such as children, women and others; even if Ethiopia is party state to CRC, CEDAW and CDP. More protection is needed for such vulnerable groups as Ethiopia is obliged to do so. Not just on the contents of requirements, the proclamation No. 3/1991 does not fulfill all interpretive requirements that are required based on Siracusa principles i.e. the first one is the law is not accessible, and the second one is it does not have a remedy clause but it does not mean that the right cannot be remedied.

CHAPTER FOUR

IMPLEMENTATION OF THE LAW OF PEACEFUL DEMONSTRATION IN ETHIOPIA

4.1. Introduction

There are major demands of protests in the world, and these are economic justice; failure of political representation; global justice; and rights of people.¹⁸⁰ Protests have risen each year in number from 2006 up to 2013.¹⁸¹ From all of these protests the majority of violent protests and riots occurred in the region of Sub-Saharan Africa and in the low-income group of countries.¹⁸² In Ethiopia, peaceful demonstration or protest become more and more frequent since 2013 up to 2017.¹⁸³ Under this chapter with purposive selection of peaceful demonstration occurred in Ethiopia since 2013, the focus will be on the implementation of notification requirement; place and time limitation; and the role of ordinary courts and ENHRI's.

4.2. Peaceful Demonstrations in Action during Emperor Haile Slassie in Ethiopia

In the early 1960s, a push began for political and social change in 1964 and 1965 students from Addis Ababa University held demonstrations under the slogan 'Land to the Tiller!' that aimed at for redistribution of land.¹⁸⁴ Additionally, students conducted demonstration against the imprisonment of beggars in camps outside Addis Ababa in 1966, which led improvement to camps' facilities and treatment of the incarcerated.¹⁸⁵ Through time the unions became in to University Students Union of Addis Ababa (USUAA); and focused on taking down the government and against western influence. The government dispersed demonstrations and movements violently that were held between 1969 and 1974.¹⁸⁶ These movements and

¹⁸⁰ Isabela, cited above at note 39, p.14

¹⁸¹ Ibid

¹⁸² Id, pp. 12

¹⁸³ Ethiopia 2017/2018, (<https://www.amnesty.org/en/countries/africa/ethiopia/report-ethiopia/>) last visited on March, 26, 20018.

¹⁸⁴ Seyoum A. cited above at note 24, p. 100

¹⁸⁵ Ethiopian Students Protest against Emperor Selaisse's, (<https://nvdatabase.swarthmore.edu/content/ethiopian-students-protest-against-emperor-selaisse-regime-1967-1974>) last visited on October 12, 2017.

¹⁸⁶ Ibid

demonstrations weaken the power of the government created a general era of political unrest that led to the overthrowing of the emperor Haile Selassie's Regime.¹⁸⁷

4.3. Peaceful Demonstrations under the Current Regime

Under the current administration different demonstrations were held against the FDRE government. To start with the old ones, after the election of 2005, in which the result the election in which EPRDF won, that was not accepted by different political parties and the youth especially those are resident in the capital city Addis Ababa, held peaceful demonstration against the result of the election and the FDRE itself.¹⁸⁸ But the demonstration was cracked down by the police resulting on several deaths.¹⁸⁹ After authorities are notified they have obligation to provide necessary acts and to provide comfortable environment so that daily life should not be disrupted as per to article 6(1) of proclamation No. 3/1991. Such obligation does not mean that the demonstration can be banned by the authorities. During the peaceful demonstration the authorities have the duty to keep the peacefulness of daily life. Banning of peaceful demonstration is not allowed at any time and place which is compatible with international standard as the UNHRC resolution on protection of human rights in the course of peaceful protest i.e. Resolution A/HRC/22/28, disallow complete ban of place and time unless as a last resort to save lives as per to paragraph 12. However in this particular case the authorities failed to cop up with the law. As a result of this organizers and participants could not exercise the right to peaceful demonstration. Not just the right to peaceful demonstration but also the authorities failed to protect and deprived the right to life that is protected under FDRE constitution article 30 and 15, respectively.

Before 2014, some demonstrations were concerned with food security and failure of political representations.¹⁹⁰ In 2013 one of the opposition party i.e. the Blue Party organized peaceful demonstration.¹⁹¹ However, member of the party claimed that before the demonstration was held on August 31 while preparing for the peaceful demonstration police officers forcefully entered their office in Ginfle, in Addis Ababa and arrested between 60 and 90 numbers of

¹⁸⁷ Ibid

¹⁸⁸ Ethiopian Protesters 'Massacred', cited above at note 27

¹⁸⁹ Ibid

¹⁹⁰ Isabela, cited above at note 39, p. 20 and 22

¹⁹¹ Blue Party Peaceful Demonstration Call, (<http://www.semayawiparty.com/blue-party-peacefull-demonstration-call/>) last visited on October 28, 2017.

people.¹⁹² Later on the ones who were arrested were set free without charge after several hours and alleged that they were beaten while they were detained.¹⁹³ This is against the right to liberty under article 17(2) i.e. no person may be subjected to arbitrary arrest, and no person may be detained without a charge or conviction against him, and the right to protection against bodily harm against as per to article 16. Violating the right to peaceful demonstration leads to violation of other rights. It was also claimed that the property of the Blue Party at that time were confiscated, and the police considered the planed peaceful demonstration as illegal as authorization was not given to them even if the Blue Party members said that they have notified and did not get written reply from the authority.¹⁹⁴

The law does not require authorization at all it only requires the organizers to notify to city administration before 48 hours of the conduct demonstration as per to article 4(1) of proclamation No. 3/1991. Considering that authorization must be given is against the law itself and international standard. The obligation of the organizers is to notify not to get authorization. Although the government officials are obliged to reply to notification within 12 hours after receiving it, they failed to do so as confirmed by government official.¹⁹⁵ The reason given by the administrative officials is that the failure depends on the reply of Addis Ababa city police department when they are asked to prepare for such demonstration.¹⁹⁶ The police do not comply with the given time. Additionally, the reply could be unreasonable one for the organizers prioritizing other duty than securing peaceful demonstration. There is no doubt that such actions of the government is against the law. This is unlawful action. In addition to this the law does not restrict the power of administrative bodies when it comes to change of place and time and taking advantage of this gap administrative bodies change time and place as appropriate for them.¹⁹⁷ As claimed by the Blue party administrative bodies they do not consider the reasons of our choice of place and time, they only prioritize other things than others such as traffic jam or other activities

¹⁹² Ethiopia: End stifling of Peaceful Protests,

(<https://www.amnesty.org/download/Documents/8000/afr250032013en.pdf>) last visited on September 8, 2017. P. 1

¹⁹³ Ibid

¹⁹⁴ Ibid

¹⁹⁵ Interview with Tesfa Wakjjira, Political Meeting and Peaceful Demonstration Notification Office Administrator of Addis Ababa City Administration, on 8 February, 2018

¹⁹⁶ Ibid

¹⁹⁷ Interview with Abebe Akale, People's Affairs Relations Administrator of Blue Party, on 8 February, 2018 (hereinafter, Abebe)

that are planned by other government bodies after we make notification.¹⁹⁸ This is against international standard, if Ethiopia wants to participate in different tasks of UNHRC as claimed the country should adhere to their norms. Proclamation No 3/1991 does not provide for there to be directive which can help for the appropriate application of the law detailing every issue of peaceful demonstration. At least for the government bodies which have responsibility with the issue of peaceful demonstration will do their duty and makes it easy for the organizers who to make responsible the exact government body for the unlawful actions of government bodies. The fact that such directive is not proclaimed it made it difficult for the exercise of such right.

In Gondar city, Amhara region there was peaceful demonstration which started from 9:00 AM and last until noontime; while claiming the restoration of historic border, the demonstrators also chanted that “Wolqait is Amhara”, “Qimant and Amhara are one” “Respect for Amhara-ness”, “Amhara is not terrorist”, “Stop mass killing Amhara people”, “Return the land given to Sudan” and showed solidarity with Oromo Protests, demanded the release of the committees that challenge Wolqait to be as Amhara’s and detained Muslim activists and protesting other actions of the Ethiopian current government.¹⁹⁹ They also demanded that an end to alleged TPLF dominance in the region. In order to control the peaceful demonstration federal police and army detachment were deployed but the demonstration was not dispersed and no major incident was reported.²⁰⁰ Organizers of this demonstration were not clearly known. The regional government had confirmed on radio interview but claimed that it was not authorized.²⁰¹ Even if the regional government claimed that it was not authorized the reaction from them was what we can appreciate. Whether the state government considered the peaceful demonstration as an unauthorized one which does not have legal base the participants were not criminally charged or arrested. Such action of government is a rare situation. As can be observed the organizers were not known and there wasn’t notification given to the authorities, this shows that not just the authorities but also the participants fail to follow the rules. Demonstrations that are conducted without prior notification considered as illegal act which is contrary to international standard as provided on article 9 of proclamation No. 3/1991. According to special rapporteur if

¹⁹⁸ Ibid

¹⁹⁹ Daniel Berhane, Ethiopia: Massive Protest Held in Gondar City, (<http://hornaffairs.com/2016/07/31/ethiopia-massive-protest-gondar/>) last visited on October 28, 2017

²⁰⁰ Ibid

²⁰¹ (<https://www.eastafro.com/2016/08/01/voa-tigrigna-ethiopia-gonder-protest-audio-interview-august-1-2016/>) last visited on October 28, 2017

demonstrators exercise the right to peaceful demonstration without giving notification it should not be considered as illegal resolution A/HRC/22/28 paragraph 11. Even if the law is not compatible with international standard the hidden organizers should have respected the law.

On July 13, 2016 in Addis Ababa, Ethiopia the Oromo's demonstrated peacefully, but the police responded harshly and cracked down the demonstration.²⁰² The federal police had beaten the participants and arrested some of them and government spokesperson, Getachew Reda gave statement that the officials who acted contrary to the law will be responsible which was not done at least not publicly as claimed by Al Jazeera.²⁰³ This is completely against the law and international human right protection. To start with proclamation No 3/1991 article 10 it oblige the police to protect the rights of the participants and to protect them from physical harm. Instead of fulfilling their obligation they are the ones who harmed the participants violating their right that is protected under the FDRE constitution such as the right to liberty, the right to freedom of demonstration, freedom of thought, opinion and expression, and right of security of persons.²⁰⁴ The fact that proclamation No 3/1991 does not regulate the actions that must be taken when needed by the security force contributed for their failure to respect and protect the rights of others.

In addition to this, in Oromiya region on different occasions peaceful demonstrations were held, and in these different demonstrations held in Oromiya region is reported that several people have been killed and arrested.²⁰⁵ The right to life is protected and cannot be deprived unless the person sentenced or punished for a serious criminal offence determined by law.²⁰⁶ Exercising the right to freedom of demonstration is not a criminal act. The security force ones again failed to protect and respect the right that is protected under the FDRE constitution and international human right instrument that Ethiopia is party state such as ICCPR.

4.4. The Role of Ordinary Courts in the Protection of the Right to Peaceful Demonstration

²⁰² Ethiopia Pledges Probe into Killing of Protestors, (<https://www.aljazeera.com/news/2016/08/ethiopia-pledges-probe-killing-protesters-160820150733705.html>) last visited on October 28, 2017(hereinafter, Ethiopia)

²⁰³ Ibid

²⁰⁴ FDRE constitution, cited above at note 18, Art 9(1)

²⁰⁵ Ethiopia 2017/2018, cited above at note 181

²⁰⁶ FDRE constitution, cited above at note 18, Art. 15

Under chapter three it is concluded that federal courts have the power to entertain cases that arise from the FDRE constitution including the right to freedom of peaceful demonstration. Generally in Ethiopia ordinary courts are criticized for avoiding entertaining cases that arise from FDRE constitution and refer it to Council of Constitutional Inquiry.²⁰⁷ For instance Coalition for Unity and Democracy (CUD) claimed the violation of the right to peaceful demonstration based on proclamation 3/1991 which was banned by the late Prime Minister of Ethiopia for one month in Addis Ababa in 2005.²⁰⁸ The court avoided the case and referred it to Council of Constitutional Inquiry (CCI) for interpretation by framing an issue without considering the proclamation, in which the CCI affirmed that the directive issued was constitutional.²⁰⁹ But the court could have avoided referring the case and entertain it as it is a matter of ordinary law based on Proclamation 3/1991 which provides for the right to demonstration and declare any directive which is in violation of this right null and void, but the court could have evaluated the contested directive of the Prime Minister against these provisions and decide the case by itself.²¹⁰ This shows the failure of ordinary courts to entertain cases that have political issues. Not just the court but organizers themselves failed to take their cases to courts.²¹¹ However, they should take their case to courts and challenge the violation of rights as it might push the government to obey its obligation.

4.5. The Role of Ethiopian Human Right Commission in the Protection of the Right to Peaceful Demonstration

As we it is seen in chapter three EHRC cannot give binding decision but it can take its complaint to ordinary courts thus, aggrieved persons who claim that the right to peaceful demonstrations is violated can take their case to the EHRC. Like the ordinary courts EHRC is also criticized. It is criticized for not involving issues that involve human rights that have connection with politics.²¹² Even if it investigate some cases by dispatching ad hoc committees, it failed to examine cases of human rights that has the attention of the media, opposition parties, human rights NGOs, both national and international, and the public in general.

²⁰⁷ Sisay, cited above at note 35 p. 7-10

²⁰⁸ CUD v. Prime Minister Meles Zenawi cited above at note 33

²⁰⁹ Ibid

²¹⁰ Sisay, cited above at note 35 p. 7-10

²¹¹ Abebe A. cited above at note 195

²¹² Mohammed, cited above at note 38

To the EHRC, there is no complaint that is complained based on the right to freedom of peaceful demonstration until recently.²¹³ The reasons could be that the people do not have thrust on the EHRC as it is criticized for not involving itself issues that involve politics or it may be that the EHRC does not give binding decision.

In conclusion, in Ethiopia, peaceful demonstration or protest become more and more frequent since 2013 up to 2017. After the election of 2005, in which the result the election in which EPRDF won, that was not accepted by different political parties and the youth especially those are resident in the capital city Addis Ababa, held peaceful demonstration against the result of the election and the FDRE itself that was cracked down by the police resulting on several deaths. On other occasion, in 2013 one of the opposition party i.e. the Blue Party organized peaceful demonstration that resulted arresting members of the parties.

Additionally, in Oromiya region on different occasions peaceful demonstrations were held, and in these different demonstrations held in Oromiya region it is reported that several people have been killed and arrested. These peaceful demonstrations and how the government reacted to them shows not just the violation of the right to peaceful demonstration and also freedom of expression and speech; the right to life; the right to liberty and other rights that are protected in the FDRE constitution. Not just violation of rights it shows how the government officials interpreted and applied proclamation No. 3/1991. As we have seen the law does not require authorization at all it only requires the organizers to notify to city administration before 48 hours of the conduct demonstration as per to article 4(1) of proclamation No. 3/1991. Although the government officials are obliged to reply to notification within 12 hours after receiving it, they failed to do so as confirmed by government official. The reason given by the administrative officials is that the failure depends on the reply of Addis Ababa city police department when they are asked to prepare for such demonstration. Additionally, the reply could be unreasonable one for the organizers prioritizing other duty than securing peaceful demonstration. There is no doubt that such actions of the government is against the law. There was also peaceful demonstration that the police force did not crack down and dispersed participants in Gondar city even if the

²¹³ Interview with Zewudnesh Zegeye, Senior Investigator of Ethiopian Human Rights Commission, on March 18, 2018.

government claimed that the peaceful demonstration was not authorized which was not expected to be done by organizers according to the law.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATION

5.1. Conclusion

Generally peaceful demonstration refers to the gathering of people in order to express their opinion or need on an issue to the concerned body mostly to the government. In different parts of the world especially developing states are faced with different obstacles, such as economic instability, political crisis, and other problems that lead to mistrust between the government and the people and Ethiopia is no exception. As a matter of fact demonstrations have occurred in Ethiopia in different times and places.

Internationally the right is recognized in different instruments in which Ethiopia is party state for instance ICCPR but has not adopted Resolution No A/HRC/RES/25/38 that details the issues of peaceful demonstration. Recognizing the right the FDRE constitution has provided different limitations. But some grounds of limitations are different from the ICCPR such as the FDRE constitution provides ‘public convenience’ and ‘democratic rights’ as grounds of limitations that is different from the ICCPR that provides ‘public order’ and ‘rights of others’. Even if this is a problem it can be resolved through interpretation based on international instruments as per to article 13 of FDRE constitution.

On the other hand Proclamation No 3/1991 on the grounds of limitation provides rights of others as the ICCPR when we see the Amharic version. One of the requirements of in the case of the right to peaceful demonstration is making notification which is deliberately changed with getting authorization by administrative officials and the police, the law when requiring notification did not differentiate between planned demonstrations and spontaneous because such difference needed to in order to facilitate and to make the demonstration effective by reducing the time gap for the spontaneous one. Another obstacle on the notification problem is that peaceful demonstrations held without notification is unlawful act that results in criminal charge.

Proclamation No 3/1991 only allows administrative authorities to give recommendation on change of place and time, authorities do not have the power to give decisions. Yet on the other hand it failed to order authorities to accept notifications and does not contain verification system.

In connection with this proclamation No. 3/1991 doesn't provide the way to enact directive in order to facilitate administrative acts. In addition to this it failed to regulate acts of security forces during peaceful demonstrations, which departs Ethiopia from international accepted standards. Proclamation No 3/1991 failed to incorporate the protection of vulnerable groups such as children, women and others; even if Ethiopia is party state to CRC, CEDAW and CDP. More protection is needed for such vulnerable groups as Ethiopia is obliged to do so.

Even if the proclamation No. 3/1991 exists as required it does not fulfill all interpretive requirements that are required based on Siracusa principles of the ICCPR. The first one is the law is not accessible and the second one is it does not have a remedy clause but it does not mean that the right cannot be remedied. Not just the failure of the law but also the failure of government officials and police force to implement proclamation No 3/1991 and violated the rights protected by the FDRE constitution. In 2013 one of the opposition party i.e. the Blue Party organized peaceful demonstration that resulted arresting members of the parties. Additionally, in Oromiya region on different occasions peaceful demonstrations were held, and in these different demonstrations held in Oromiya region it is reported that several people have been killed and arrested. These peaceful demonstrations and how the government reacted to them shows not just the violation of the right to peaceful demonstration and also freedom of expression and speech; the right to life; the right to liberty and other rights that are protected in the FDRE constitution. Not just violation of rights it shows how the government officials interpreted and applied proclamation No. 3/1991. As we have seen the law does not require authorization at all it only requires the organizers to notify to city administration before 48 hours of the conduct demonstration as per to article 4(1) of proclamation No. 3/1991. Although the government officials are obliged to reply to notification within 12 hours after receiving it, they failed to do so as confirmed by government official. The reason given by the administrative officials is that the failure depends on the reply of Addis Ababa city police department when they are asked to prepare for such demonstration. Additionally, the reply could be unreasonable one for the organizers prioritizing other duty than securing peaceful demonstration. There is no doubt that such actions of the government is against the law. There was also peaceful demonstration that the police force did not crack down and dispersed participants in Gondar city even if the government claimed that the peaceful demonstration was not authorized which was not expected to be done by organizers according to the law.

As per to article 37 of the FDRE constitution it can be remedied. Thus not just in ordinary courts but also Ethiopian human right commission can make investigation when there is a claim. But both of these institutions are criticized for not involving themselves with cases that connects with politics. Additionally almost all compliant to these institutions is nonexistence.

In general in Ethiopia the right to peaceful demonstrations faces different challenges from the law itself and also in the implementation process. Moreover such failure on this right shows the level of democracy that is practiced in Ethiopia because the more this right is protected the more the democracy of Ethiopia is real.

5.2. Recommendation

Despite the fact that the FDRE constitution and Proclamation No 3/1991 protect the right to peaceful demonstration as described above there are different loopholes and differences from the international standard. There is also problem in the implementation. Thus, in order to bridge such gap and enhance the protection of such right in Ethiopia, the writer, recommends the following

Ethiopia is party state to different international human right instruments that protects the right to freedom of assembly but abstained to adopt Resolution on the Promotion and Protection of Human Rights in the Context of Peaceful Protests (Resolution No. A/HRC/25/38No) Thus the state should adopt the resolution in order to protect the right more and make a progress its place in the international level.

- Proclamation No 3/1991 enacted based on transitional charter, it contains elements that are not compatible with international standard thus some amendments to the proclamation are needed for better protection of the right. These are;
 - The protection of vulnerable groups should be incorporated as they need special protection and it also helps the state to work on its obligation internationally.
 - The time gap for spontaneous demonstration should be reduced in order the demonstration to be exercised without losing its character and to reach its aim.
 - Demonstrations held without notification should not be considered as unlawful and is incompatible with international standard. Thus the provision that makes such peaceful demonstration should be taken out.
 - How and when the security forces in the course of peaceful demonstration should use force must be regulated.
 - A directive that can ease administrative process between government bodies should be provided through the proclamation and should be enacted.
- The proclamation should be available to the public so that the people know their right and obligation that can help them to fulfill requirements in order to exercise their right.

- Ethiopian government should work on security forces such as making awareness of the law and protection of human rights in general to respect and protect the rights of peaceful demonstration of participants and organizers in the course of peaceful demonstration.

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