ADDIS ABABA UNIVERSITY

SCHOOL OF GRADUATE STUDIES

AN APPRAISAL OF THE ENFORCEMENT OF INTERNATIONAL AND REGIONAL HUMAN RIGHTS OBLIGATIONS IN ETHIOPIA

BY

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COLLEGE OF SOCIAL SCIENCES

DEPARTMENT OF POLITICAL SCIENCE AND INTERNATIONAL RELATIONS

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Acronyms

ACHPR	African Charter on Human and Peoples' Rights
ACtHPR	African Court of Human and Peoples' Rights
AI	Amnesty International
AU	African Union
CCI	Council of Constitutional Inquiry
CUD	Coalition for Unity and Democracy
EHRC	Ethiopian Human Rights Commission
EHRCO	Ethiopian Human Rights Council

EPRDF	Ethiopian People's Revolutionary Democratic Front
FDRE	Federal Democratic Republic of Ethiopia
FIDH	International Federation for Human Rights
HoF	House of Federation
HPR	House of People's Representatives
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
NGOs	Non-Governmental Organizations
NHRIs	National Human Rights Institutions
OLF	Oromo Liberation Front
ONLF	Ogaden National Liberation Front
UDHR	Universal Declaration of Human Rights
UN	United Nations
U.S.-DoS	United State's Department of State
USSR	Union of Soviet Socialist Republics

Abstract

The implementation of international human rights standards at a domestic level is well recognized as crucial for protecting human rights. Enforcing human rights is basically a responsibility of individual states. States must ensure an effective protection of human rights at the domestic level through various means, which may include enactment of the necessary laws and to abide by the principles and standards of the several international instruments on human rights.

Human rights have recently become a sensitive issue in Ethiopia, a major field of debates between the government and different opposition groups; and between the Government and

national and international human rights organizations. This research is an attempt to an appraisal of national efforts to promote and protect human rights given the fact that Ethiopia is part of the international human rights system. The appraisal is based on the legal and institutional frameworks in the country which are important for the enforcement of treaty-based obligations concerning human rights. The research has found out that violations of human rights have been and continue to be committed in the country by state and non-state actors. Numerous accounts of human rights abuses in different corners of the country have been observed and reported by international and national bodies concerned with the issue. These facts call for due regard from the Government as well as individuals acting in their official and individual capacity.

Generally, the appraisal of the enforcement of the fundamental rights and freedoms enshrined in the Constitution in line with the treaty obligations that the country has entered to observe those rights and freedoms is the ultimate concern of this research paper.

***Key Words**: - Appraisal, Enforcement, Human Rights, International Human Rights System, Human Rights Protection, Human Rights Violation*

INTRODUCTION

1 Background to the Study

The greatest value of human life is best represented in the recognition of fundamental rights, and in fully enabling people to enjoy and exercise these rights to the extent that respects and preserves their humanity. While there are many definitions, it is frequently said that human rights are those rights to which human beings are entitled to simply because they are human. The international community has established an ideal standard of human rights protection that is

widely accepted-at least in principle-by states, formally set in the international human rights laws (instruments). However, the idea of human rights emerged stronger after World War II. Specifically, with the establishment of the United Nations, after the end of Second World War, it has been possible for states eventually to agree on an international human rights regime. This regime is based on international conventions on human rights which the states parties to them are obliged to seek their enforcement at the domestic level.

The major norms of the international human rights regime are found within the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. Especially the period since 1948, when the Universal Declaration of Human Rights was proclaimed, has shown steady growth of international human rights treaties and organizations to the extent of being among the most top agendas of international politics. They have been, inter alia, a point of concurrence among individual, national and international interests.

However, despite the growth and proliferation of legal instruments for the protection of human rights, there is a continuing disparity between official proclamations and actual implementation of these rights. In light of these facts, protection of human rights at the domestic level, which is associated with the creation of the necessary institutional and legal arrangements for the prevention and aversion of their violation, has become crucial.

Ethiopia is part of the international human rights system; which means that it has an obligation imposed upon it by the international body given the fact that the country has made itself part of internationally agreed human rights norms. The FDRE Constitution makes all international human rights instruments ratified by Ethiopia an integral part of the law of the land. It further recognizes that human rights and freedoms, emanating from the nature of mankind, are inviolable and inalienable and thus shall be respected. It further provides that the fundamental rights and freedoms specified in the Constitution shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights; International Covenants on human rights and international instruments adopted by Ethiopia.

In this research project, a modest attempt is made to examine the current practices of human rights protection in Ethiopia in light of such provisions enshrined in the Universal Declaration,

the two international Covenants as well as the African Charter on Human and People's Rights, which Ethiopia is a party to. For this purpose, it will assess efforts by the legislative, executive and judicial branches of the Government to respect, protect, promote and fulfill fundamental rights and freedoms. It also looks how national human rights institutions, particularly the Ethiopian Human Rights Commission which is critical element for the implementation of international human rights norms at the domestic level, are successful in carrying out their mandate to promote human rights and protect the rights of citizens. Based on findings, it includes practical recommendations for strengthening human rights promotion and protection in the country. Therefore, this research will significantly be part of the literature so far have made in the area.

2 Statement of the Problem

The prominence given to human rights in all parts of the world is one of the most remarkable developments to have occurred in the last few decades. The international human rights system, in which Ethiopia is a party, has come to occupy significant place in the contemporary national and international politics. As international human rights laws, the implementation of human rights is a responsibility of individual states as well as of national and international institutions. It is believed that the real work of implementing and enforcing human rights takes place at the national level. This suggests the need to harmonize international human rights instruments with the national laws. Thus, the discussion and evaluation of national human rights practices takes place within such context.

Ethiopia has been a member to different international and regional human rights treaties or Conventions in different times. The major Conventions to which Ethiopia is a member include, the International Covenant on Civil and Political Rights, International Covenant on Economic Social and Cultural Rights, Convention on the Prevention and Punishment of the Crime against Genocide; and the African Charter on Human and Peoples' Rights. However, the mere ratification of these conventions do not justify that the country is effective with regard to human rights protection. The effectiveness of the national performance with regards to human rights promotion and protection should be assessed in terms of reasonable amount of enforcement of human rights and fundamental freedoms enshrined in those treaties, the Constitution and other

basic national laws. In-depth study has to be conducted in order to appreciate and/improve the country's record of human rights protection and promotion. This research is, thus, part of such an endeavour to light on the issue.

3 The Research Questions

The research ultimately attempts to give answers to some basic questions:

1. How much human rights, especially the civil and political rights, are promoted and protected in line with international standards?
2. What are the national legal and institutional provisions and frameworks to promote and protect human rights?
3. How far have the legislative, executive and judicial branches of the Government succeeded in enforcing human rights and in redressing their violations?
4. How are national human rights institutions and civil society actors contributing to enforce human rights in the country?

4 Scope of the Study

Theoretically, this research is mainly about an appraisal of human rights performance of Ethiopia with special reference to available legal, institutional and procedural frameworks at both international and national levels. In effect, the research focuses, though not exhaustively, on what are often categorized as "civil and political rights" which the FDRE Constitution also guarantees. Though it will be relevant to include all the rights and freedoms enshrined in the national Constitution as well as international and regional human rights instruments, due to various constraints, the research takes only the right to life, the security of person and liberty; the right to protection against cruel, inhuman or degrading treatment or punishment; procedural rights such as the right of arrested, accused and convicted persons; and the right to privacy, in order to address the research questions in part.

5 Methodology and Methods of Data Collection

The approach adopted to undertake this research is a qualitative one. This will enable the researcher to provide interpretive/analytical tools to evaluate the level of the enforcement of human rights in the country. Thus, in order to accomplish the purposes of the research, the following methods of data collection have been used.

1. Reviewed relevant literature to compile in a form of an overview of what is currently known about human rights in general, and to critically assess the practices experienced to date at the international level.

2. Document analysis has been applied to draw together existing data on the enforceability of human rights in Ethiopia and the problems related to such performances.

3. Conducted a semi-structured interview with officials from Ethiopian Human Rights Commission and Federal Prisons Administration to clarify and provide insight into the Ethiopian experience in areas of handling cases related to violations of human rights.

4. Analysed some cases dealing either directly or indirectly with issues of human rights situations or standards in Ethiopia.

6 Limitations of the Research

Among others, shortage of time has been the prime limitation as opposed to the required time ideal for an in-depth study. Therefore, due to limitation of time the research could not be conducted relatively over a longer period of time as to allow a thorough identification of relevant cases, especially court decisions related to human rights. The scope of the research is also general because of it was not possible to identify and elaborate on each and every legislative, executive and judicial applications of human rights instruments. However, illustrative indications were made, though not exhaustive, to legal and institutional contexts that required in-depth analysis and revision pursuant to international and regional human rights standards. There have also been aspects of personal or organisational handicaps that revealed during fieldwork, such as lack of will to give information in the form of interview.

7 Organization of the Research

The organization of this research paper is as follows;

- Chapter 1 introduces the subject and discusses some preliminary questions, including a brief survey of the development of the concept of human rights, major international and regional human rights instruments to help the reader understand references to them in the thematic discussion.
- Chapter 2 discusses some of the more important historical and factual information about legal and institutional benchmarks in Ethiopia in relation to international human rights law; including the status of international human rights law in the Ethiopian legal system, constitutional guarantees to human rights and fundamental freedoms as well as the availability of institutional protection of them.
- Chapter 3 explores some of the facts related to human rights situations in Ethiopia; with emphasis given to some of the human rights recognized under the FDRE Constitution in line with international and regional human rights instruments which Ethiopia has acceded to.
- Chapter 4 deals with the analysis drawn from the data found from interview and written documents, particularly from the facts mentioned in the third chapter. The analysis focuses on the legislative, executive and judicial endeavours to enforce human rights in the country.
- Finally, a conclusion and recommendation chapter attempts to draw some conclusions followed by some of recommendations addressed to government, and to anybody who may be concerned.

CHAPTER ONE

REVIEWING THE INTERNATIONAL HUMAN RIGHTS SYSTEM

1 Theoretical Foundations of International Human Rights System

1 Basic Definitions and Characteristics of Human Rights

Although the use of the term is a recent phenomenon, the concept of human rights has a long history of its own, manifested in various forms, in the course of the developments of the history of humankind. Various progresses which have occurred as a consequence of all forms of changes in the social, political, economic and cultural settings admittedly have had their own impact on the theories regarding human rights. Vincent argues "[t]he contemporary use of the term 'human rights' implies a wide variety of values and capabilities reflecting the diversity of human circumstances and history" (Vincent, 1995:7). Besides, "[t]he history of human rights theory refers the moments in world history that helped to shape the present conception of human rights" (Poole, 1999:4). Those moments, obviously, signify different conditions of mankind, which is dynamic, "defining the intrinsic value of man and his inherent dignity" (Moskowitz, 1974:3).

On the other hand, the term "international human rights" has been contested when used by politicians and human rights activists and/or analysts. According to Pierre and Burns, the term could mean a variety of things, as a "code language for a number of different-ever changing, ever accelerating-initiatives" (Pierre and Burns, 1992:3). However, the contemporary use of the term "human rights" has become significant after World War II. The phrase "natural rights" had been in use for centuries until it has been later on replaced by "human rights". The advocacy for the natural rights of man was based on the theories of 'natural law', which has been associated with the Greco-Roman concept of law (Newman and David, 1990).

Historically, the Greeks, particularly the Stoics, were known to be the first in advancing thoughts concerning the natural rights based on the existence of natural law. This view has eventually affected modern notions of human rights, as Poole (1999) argues. From the Greek Stoics' point of view, the natural rights are rights which "every human being is entitled, everywhere and at all times, by virtue of being human"(Poole, 4). The Stoics underline that human beings must live consistent with the laws of nature.

In addition to the Greeks, the Romans, through their law, have made more or less the same contribution to the development of modern concept of human rights. Many writers recognized

that, in addition to advancing the concept of natural law, the Roman law introduced a belief in universal rights for all.

Similarly, the idea of natural rights was propounded by the Judeo-Christian tradition, which also has significant place in the contemporary conception of human rights. This is owing to its teachings that consider "every person has innate value, worthy of respect, simply by virtue of being human" (Poole, 4), which is fundamental to the idea that human rights are inherent.

Regarding the inherent nature of rights, it is important to refer to Locke's theory of natural rights. John Locke, who is one of the most important early modern natural rights theorists, believed in the existence of such inalienable rights as the rights to life, liberty and property pertinent to individuals as human beings. For Locke, these rights are not bestowed by rulers on the ruled; rather they are inherent to the nature of mankind (Wacks, 2006). Moreover, Thomas Hobbes, in Leviathan (1655), speaks of "rights of nature", which could be viewed as a precursor in the conception of natural rights.

Many authors argue that the idea of inherent rights has played a key role in late eighteenth and early nineteenth-century struggles against political absolutism. The conception of human rights at that time, it is argued, was closely related to the "social contract theory".

In addition to the concept of natural rights, there are also documents as precursors of many of today's human rights documents, such as the Magna Carta (1215), the English Bill of Rights (1689), the French Declaration on the Rights of Man and Citizen (1789), and the US Constitution and Bill of Rights (1791).Nonetheless, the present-day concept of human rights is drawn on the following definitions.

First of all, human rights are the rights a person has simply because he or she is a human being.As Vincent (1995:13) proclaims, "human rights are grounded in an appeal to our human nature". This definition implies that human rights are held simply by virtue of being human. Accordingly, the basic qualification for holding human rights is to belong to the human race. This notion of human rights as inherent to the dignity of human persons explicitly noted in several documents on human rights, such as the International Human Rights Covenants.

Human rights may also refer to special entitlements of a person to a good or opportunity often

guaranteed by law, either national or international, or both (Howard and Jack, 1987). Donelly (1982) has strong belief in this kind of definition and says that;

> [h]aving a right places one in a protected position….To violate someone's rights is not merely to fail to do what is right but also to commit a special and important personal offense against the right-holder by failing to give him his due, that to which he is entitled (Donelly, 4).

Another definition for human rights is one which presents rights as those basic standards without which people cannot live in dignity. Henry Shue (1980) articulates this definition well and he argues that "to violate someone's human rights is to treat that person as though she or he were not a human being" (Shue, 5). Howard and Jack also affirm that, "people have human rights to those things required for a life of dignity, for the full development of their moral personality" (1987: 3).

Scholars are also concerned with the nature of human beings (or the source) that gives rise to human rights. The view which establishes the truth that the material and spiritual needs of human beings necessitate some rights (called human rights) which are basically important for the very existence of mankind is a widely shared view among many writers. The other important view is that "human rights reflect the minimum requirements for human dignity or moral personality" (Howard and Jack, 3). This view is connected with what is termed as "human excellence", that is, the rationality of human beings; the distinguishing feature of human beings, as a basis for a humane and dignified life, as opposed to a mere life of other living beings on the earth. But it should be noted that, according to Howard and Jack, this moral personality is viewed, in part, as a social creation.

Here in our discussion about human rights, one also needs to recall that, like any other types of rights, human rights have five main elements: a right holder (the subject of a right), the object of a right, exercising right, the bearer of the correlative duty, and the justification of a right. In addition to these main elements of a right, however, human rights particularly are recognized to have certain basic characteristics. Among others, the following could be mentioned as much important ones.

First of all, human rights are universal. This implies that every human being has these rights by the mere fact of being born human. The principle of universality of human rights, as Duner (2002) rightly argues, is the cornerstone of international human rights law. This principle is rooted in the inherent dignity of human beings. Human rights are inherent to all human beings, without distinctions as to nationality, sex, national or ethnic origin, color, religion, language, or any other status.

> A characteristic part of the claim that there are such things as human rights has been that they are universal and that they are not subject to change over time-since they express the essential nature of human beings (Vincent, 19).

Second, human rights are inalienable. This principle implies that human rights cannot be taken away by anyone, including the state. According to Charvet and Elisa (2008), no one can lose these rights any more than one can cease being a human being. These rights should not be taken away, except in specific situations and according to due process of law.

Third, human rights are indivisible. As Duner (2002) stresses, whether they are civil and political, or economic, social and cultural rights, all human rights are indivisible. This conclusion stems from the fact that human rights are interrelated and interdependent. Poole correctly states that "the improvement of one right facilitates advancement of the others whereas the deprivation of one right adversely affects the others" (Poole, 5). For him, all human rights are considered to be part of a complementary framework; and none of the rights is more important than any of the others.

Fourth, human rights are conceived of as fundamental or basic, referring to essential or basic human needs and as having special priority where they come into conflict with other rights. This idea is well captured in Henry Shue's "Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy" (1980). For Shue, human rights are categorized as basic rights

> [i]n so far as enjoyment of them is essential to the enjoyment of all other rights [and that] they are everyone's minimum reasonable demands…rational basis for justified demands the denial of which no self-respecting person can reasonably be expected to accept (Shue,19).

According to Shue, the implication of this understanding of human rights as "basic rights" is that human rights take priority over all other non-human rights.

2 Human Rights and the Debate on Universalism and Relativism

An important debate on human rights revolves around universalism and relativism. Some believe that human rights standards have to be applied relatively while others argue that human rights, for they emanate from human nature, are universal, and are independent of the will of the people and government; therefore, need to be implemented objectively. The discussion under this section is about these issues in a nutshell.

The claim to universalism is that "there are basic rights common to all humankind" Hill (1989:4). In this regard, there is the assertion that universal rights exist. This view takes the nature of human beings into account as a common ground in claiming the universality of human rights. Particularism, on the other hand, "concentrates on the need to deal with specific issues in space and time" (Hill, 4). This view is connected with the doctrine of cultural relativism which asserts that rules about morality vary from place to place; and that the way to understand this variety is to put it in its cultural context. Vincent elaborates the doctrine of cultural relativism by way of presenting the claim that:

> There is no universal morality, because the history of the world is the story of the plurality of cultures, and attempts to assert universality is a more or less well-disguised version of the imperial routine of trying to make the values of a particular culture general (Vincent, 1995:38).

It is argued that the claim to universalism is challenged by the Third World State "as the last breath of a cultural imperialism which tries to impose inappropriate Western forms of thinking on the rest of mankind" (Hill, 5). As Hill argues, the debate on universalism and relativism must also be examined within the context of East-West relations. For some scholars, human rights are Eurocentric by definition. For example, Cole mentions that;

> [i]n addition to the explicitly ideological tenor of the International Human Rights Conventions, some observers argue that the very idea of "human rights"- that individuals are endowed with universal, inherent, and inalienable rights simply because they are human- is firmly moored in Post-Enlightenment Western culture (Cole, 2005:473).

Similarly, Hollenbach argues that "contemporary human rights norms originated in West and are in some tension with the cultural practice of developing nations" (Hollenbach, 1998:305). But, as Vijapur and Kumar argue, human rights are universal "in the sense that they transcend the national boundaries or ideologies" (Vijapur and Kumar, 1999:15). For them, human rights are "deliberately designed to be culturally and ideologically neutral".

However, as Howard and Jack (1987:5) "[a]theory of human rights must recognize both the essential universality of human nature and the no less essential particularity arising from cultural and socioeconomic traditions and institutions." As Shaw argues, "it was the particular socio-economic system of a state that would determine the concrete expression of an international human rights provisions" [and] "the nature and context of those rights would vary from state to state, depending upon the social system of the state in question" (Shaw, 2008:268). For instance, Western world has tended to emphasize the basic civil and political rights of individuals in their human rights laws (Steiner, and Philip, 1997). However, at present time, "more attention has been given to various expressions of the concept of collective rights, although it is often difficult to maintain a strict differentiation between individual and collective rights" (Shaw, 280).

In sum, as many would argue, the universality of human rights has always been a cultural, philosophical, and moral issue. In today's world, unfortunately, it has become a political, economic, and development-related issue.

1.1.3 Categories of Human Rights

The present categories of human rights are viewed as the result of conflicting political traditions across centuries "which have elaborated different components of human rights or differed over which elements had priority" (Ishay, 2008:3). In the discussions of human rights, it has been conventional to divide human rights into two major classes, civil and political rights, and economic, social and cultural rights. Furthermore, differences of view concerning the relationship between economic, social, and cultural rights, on the one hand, and civil and political rights on the other also have influenced the codification of human rights (Charvet and Elisa, 2008). Gomez and Koende (2006) have written that the Communist states and the majority of developing countries consider economic and social rights supersede civil and political rights,

making the latter subsidiary to the former, whereas Western countries reverse the rank order.

The civil and political rights, "are those which concern individuals enjoying control over their own lives" (Poole, 1999:67). These rights are often understood to operate in a negative sense, in that they declare the right of an individual not to be prevented from doing something (e.g., joining an association) or not to be treated in a certain way (e.g., being held in slavery). The assumption is that, in order to protect negative rights, the state must refrain from interfering in the individual's life. On the other hand, the economic, social and cultural rights are "those which concern the welfare of individuals in the sense of how they can support and sustain themselves" (Poole, 67).

Charvet and Elisa (2008) stress that the civil and political rights can be seen as aimed at protecting the individual from an abuse of power by the state. Eide et al. (2001) also emphasize that much of the differences of the emphasis between civil and political rights and economic, social and cultural rights revolve around the perceived role of the state. They say "[t]he main emphasis in regard to economic, social and cultural rights is the claim on the state for protection and assistance whereas the emphasis in regard to civil and political rights is on freedom from state interference" (Eide et al., 9).

However, many scholars agree that the distinction between positive and negative rights is not straightforward. According to Poole (1999), although some civil and political rights require the state to refrain from doing certain things, many of these rights do require some form of positive action by the state. Similarly, he argues that, though the economic, social and cultural rights require the state to take positive action, some involve negative obligations, requiring the state not to interfere with individual choice.

The Civil and Political rights are referred to as first-generation rights as compared with second generation of rights of the economic, social and cultural rights type and the third generation rights which include the right to development and environmental rights.

Karel Vasak, French jurist, inspired by the three themes or slogans of the French Revolution advanced the "three generations of human rights" and Rene Cassin, one of the main drafters of the UDHR, outlined the central tenets of human rights drawing on the French Revolution. Cassin identified the four pillars of the document as "dignity, liberty, equality, and brotherhood"

(Howard and Jack, 1992). Accordingly, the articles of the Universal Declaration of Human Rights were divided among these pillars which enable to view the articles in terms of major historical milestones in the advance of human rights (Poole, 1999). Thus, the sequence of the articles corresponds to the historical appearance of changing visions of universal human rights.

Another significant way of categorizing human rights is as individual and collective/group rights. Such distinction has largely been attached to ideological differences along with differences in understanding the nature of human rights which is partly related to cultural perspectives and historical circumstances. The Western societies, for example, are known to focus on individual rights as opposed to Africans who emphasize on group rights. This kind of prioritization has resulted in disparities in the protection of human rights the countries.

2 An Overview of the Development of International Human System

Having sketched the conceptual benchmarks, let us look briefly the development of what is termed as "international human rights system", i.e. the international efforts to promote and protect human rights, focusing on the UN Charter, the Universal Declaration of Human Rights, the two International Covenants, and the African Charter for Human and Peoples' Rights.

The idea of human rights emerged stronger after World War II. The great atrocities caused by Nazi Germany over six million Jews horrified the world (Shaw, 2006). Since then, leaders of various nations keep on calling the attention of others to various acts of violations of human rights. The establishment of the United Nations is an impetuous to stop such violence on human rights and dignity, with the primary goal of bolstering international peace and preventing conflict (Howard and Jack, 1992). Moreover, "internationally defined human rights and the systems established for their implementation have come to occupy a central position in contemporary world affairs and in the field of international law in particular" (Pierre and Burns, 1992:2).

The calls, according to Newman and David (2002), came from across the globe for human rights standards to protect citizens from abuses by their governments, standards against which nations could be held accountable for the treatment of those living within their borders. These voices played a critical role in the San Francisco meeting that drafted the United Nations

Charter in 1945. The Charter was drawn up and signed by representatives of 50 countries on 26 June 1945.

3 The UN and Human Rights

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Although the idea of human rights has its roots far back in history, the international human rights order or regime that we speak of today dates back to the birth of the UN; which declares in its Preamble that member states are committed "to reaffirm faith in fundamental human rights".From the onset, it was strongly believed that providing the fundamental human rights was recognized as a prerequisite for international peace and friendly relations among nations and for creating a just order and conditions of stability and well-being of people. In fact, Duner (2002) argues, the concept that human rights are an appropriate subject for international regulation has emerged for the most part only since 1945. And, as also argued by Penngard (2001) and Wacks (2006), the signing of the UN Charter was a significant step in bringing human rights more firmly within the sphere of international law. Since its inception in 1945, the UN has been concerned with the universal respect for and observance of human rights.

The Charter of the UN establishes the promotion and protection of human rights as one of the main objectives of the Organization and calls on its member states to take joint and separate action to promote universal respect for and observance of human rights.The Charter of the Organization is assumed by many as the foundation upon which a large body of international human rights laws has been built. It is claimed that the global movement of human rights is founded and inspired by the UN Charter. (Moskowitz, 2001:3) states that;

> [t]he Charter's provisions on human rights create a setting for consistent and comprehensive development in all areas of human activity and provide a context of social, political, economic and cultural innovations which are full of opportunities for expansive thought and action.

Article 1 (3) of the Charter provided that one of the purposes of the Organization is the "promotion and encouragement of human rights and fundamental freedoms of all without distinction as to race, sex, language or religion". Though the Charter failed to define or catalogue

such rights and provide machinery for their implementation (Vijapur and Kumar, 1999), the inclusion of the human rights provisions is an event of the greatest significance; and what marked the emergence of the United Nations on the scene of history was its commitment to the proposition that "the eventual objective of all of its functions and activities is the well-being of individual men and women" (Moskowitz, 2002:1). Human rights in the Charter of the UN are referred to in the preamble and in the Articles 1, 13, 55, 62, 68 and 76.

The UN's commitment to the promotion of human rights and fundamental freedoms for all required a firm basis. Thus, as part of the deliberate efforts to institutionalize the commitment of the UN under the Charter and to transform it into a legal obligation, international legal instruments in the human rights area, such as the elaboration and adoption of the Universal Declaration, the preparation and adoption of the international Covenants on human rights and others, were made possible. These days, such international human rights instruments have gained weight in the international relations of countries.

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2 The Universal Declaration of Human Rights (UDHR)

Immediately after its establishment, the United Nations established a Commission on Human Rights (CHR) charged with the task of drafting a document spelling out the meaning of the fundamental rights and freedoms proclaimed in the Charter. As its first assignment, the Commission started work on an International Bill of Rights. In the first stage of this program, the Commission drafted and recommended to the General Assembly the Universal Declaration of Human Rights, which was generally adopted as Resolution 271 [IIIA] on 10 December 1948. As many writers argue, the UDHR, commonly referred to as the international Magna Carta, extended the revolution in international law contained in the United Nations. Its Preamble expressively asserts that:

> [r]ecognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world.

The influence of the UDHR has been substantial. Its principles have been incorporated into the

constitutions of many countries (Alfredsson et al., 2001). Although a declaration is not a legally binding document, the Universal Declaration has achieved the status of customary international law (Shaw, 2006). The Declaration was proclaimed "as common standard of achievement for all peoples and all nations".In terms of content, the UDHR has a holistic approach, and deals with both the civil and political and economic, social and cultural right.

According to the categories made by Vasak and Cassin the first two articles of the UDHR stand for human dignity-shared by all individuals regardless of race, religion, creed, nationality, social origin, or sex. Articles 3-19 of the Declaration invoke the first generation of human rights. These are more about civil liberties and other liberal rights that were fought for during the Enlightenment period (Ishay, 2008). Articles 20-26 address the second generation of human rights, those related to economic, social, and cultural rights while articles 27-28 focus on the third generation of human rights. As many scholars do agree, these rights are largely associated with communal and national solidarity as advocated during the late nineteenth-century and early twentieth century throughout the post-colonial era.

3 International Covenant on Civil and Political Rights (ICCPR)

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The International Covenant on Civil and Political Rights (ICCPR) was signed in 1966 and entered into force in 1976. Containing 53 articles, the Covenant embraces the traditional civil and political rights. The preamble to the ICCPR makes clear that the civil and political rights are derived from the inherent dignity of every individual and that they accord with the spirit of the Universal Declaration.

An analysis made by Charvet and Elisa (2008) shows that in the ICCPR, there are also some articles which mention not strictly the presumed civil and political rights. For instance, we can refer Article 23(2) (more of a social right); Article 1 (mainly a group right); Article 27 (social and

cultural right) and Article 47 (economic right).

Article 2(1) of the ICCPR imposes immediate obligations on the state party to respect, protect and ensure civil and political rights to all persons without discrimination. State parties are required to take immediate steps, including legislation, to give effect to the rights and provide all persons with effective remedies.

The First Optional Protocol to the Covenant on Civil and Political Rights, adopted at the same time, in 1966, establishes a procedure for individual complaints while the Second Optional Protocol to the Covenant deals with the abolition of death penalty within the States which have accepted the Protocol.

With regard to monitoring civil and political rights, the Human Rights Committee is the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its state parties. All state parties are obliged to submit regular reports to the Committee on how the rights are being implemented. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of "concluding observations".

In addition to the reporting procedure, Article 41 of the Covenant provides for the Committee to consider inter-state complaints. Furthermore, the First optional Protocol to the Covenant gives the Committee competence to examine individual complaints with regard to alleged violations of the Covenant by State parties to the Protocol. Under the Optional Protocol, any individual or group claiming to be victim of a violation of any of the rights in the Covenant may, so long as the state concerned has ratified the Optional Protocol, submit a written communication to the Human Rights Committee. The full competence of the Committee extends to the Second Optional Protocol on the abolition of the death penalty with regard to States which have accepted the Protocol.

4 International Covenant on Economic, Social and Cultural Rights (ICESCR)

Economic, social and cultural rights in international human rights law include a wide range of human rights. These include, for example, the rights to work and to just and favorable conditions of work; to rest and leisure; to form and join trade unions and to strike; to social security; to

protection of the family, mothers and children; to an adequate standard of living, including adequate food, clothing and housing; to the highest attainable standard of physical and mental health; to education and to participate in cultural life and enjoy benefits of scientific progress. At an international level, economic, social and cultural rights are protected in several international human rights treaties, the most comprehensive of which is the ICESCR. This Covenant focuses on such issues as food, education, health, and shelter. Rights contained in this Covenant are;

- Economic rights, such as the right to work (Article 6), to form and join trade union (Article 8), to social security (Article 9), to an adequate standard of living (Article 11);
- Social rights, such as the right to the highest attainable standard of physical and mental health (Article 12), to education (Article 13); and
- Cultural rights, such as the right to participate in the cultural life of the community and enjoy the benefits of scientific progress and its applications (Article 15).

Each party to the covenant is under obligation to undertake to take steps "to the maximum of its available resources to achieve progressively the full realization of the rights" in the treaty. The rights enshrined in the ICESCR are conditional; subject to available resources and, accordingly, to constitute an obligation of progressive realization only (Charvet and Elisa, 2008), therefore, lack strength (Duner, 2002).

Every convention contains articles that establish procedures for monitoring and reporting how state parties, governments that have ratified the document, are complying with it. The treaty monitoring body of the ICESCR is addressed by the creation of the Committee on Economic, Social and Cultural Rights, which has become competent to receive and review regular national reports.

5 African Charter on Human and Peoples' Rights (ACHPR)

An important idea in the international discussion of human rights is that universal principles might be implemented on regional basis. The UDHR, particularly, is believed to inspire regional human rights instruments. African Charter on Human and Peoples' Rights (also known as the Banjul Charter), which entered into force in 1986, is one of such major regional human rights

instruments. The African Charter, in its provisions, covers a variety of civil, political, economic, social and cultural rights, as well as the right to self-determination, development and the environment.

The adoption of the Charter is believed to mark important beginning in the protection and promotion of human rights in the continent. For Mutua (1993), the rhetoric of human rights in the African states has several important implications, such as, to back up the anti-colonial struggle-a fight for political self determination, to demonize and delegitimize the colonial and minority white-ruled states-as Apartheid South Africa, and to abolish the most brutal dictatorships the continent has ever known. The Charter recognizes in Article 2 that everyone is entitled to all the rights and freedoms recognized and guaranteed therein, without distinction of any kind such as race, ethnic, group, color, sex, language, religion, political or any other opinion, national and social origin, fortune or birth, or other status.

The African Charter is a human rights instrument "specifically designed to respond to African traditions and African conditions" (Ankumah, 1996:1). The two significant features of the Charter are that "it views individual and peoples' rights (collective rights) as interlinked" and "it not only proclaims rights but also duties" (Ankumah, 159). The African Charter is also distinct in kind by clearly stipulating the duties of individuals towards their family and community at large. The Charter takes African way of life and African values into account.

The African Charter is also distinctive for its treatment of economic, social and cultural rights on an equal footing with civil and political rights (Heyns, 2004). A much criticized feature of the African Charter is the inclusion of "clawback" clauses in some of the rights provided for in it (Alfredson et al, 2001). Ankumah (1996) has stressed this criticism by stating that;

> Other human rights treaties contain limitations or derogation clauses which specifically prescribe under what circumstances previously guaranteed rights may be limited or derogated from. The African Charter neither contains a derogation nor limitation clause. Rather many of its provisions include "clawback" clauses (Ankumah, 176).

The Charter envisages the establishment of an African Commission on Human and People's Rights entrusted to ensure state compliance in implementing the rights and freedoms enshrined in

the Charter. The mandate of the African Commission on Human and Peoples' Rights can be found in Articles 45 through 55 of the Charter. The Commission is empowered to consider state reports, inter-state communications as well as NGO and individual complaints.

The African Charter calls upon state parties to the Charter to "allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the [present] Charter" (article 26). Article 26 should be read together with article 25 which imposes a duty on states to "promote and ensure through teaching, education and publication, the respect of the rights contained in the [present] Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood."

A Protocol to the Charter was adopted in 1998, providing for the creation of an African Court on Human and Peoples' Rights (ACtHPR).The Protocol came into effect in January 2004. Under the Protocol, individuals and non-governmental organizations may bring cases, if the state ratified the jurisdiction of the Court. The Protocol provides that actions may be brought on the basis of any instrument, including international human rights treaties, which have been ratified by the state party in question. The Court can apply as sources of law any relevant human rights instrument ratified by the state in question, in addition to the African Charter.

2 International Human Rights Law in the Domestic Legal System

The inalienability and inviolability of human rights have been incorporated in various international instruments, and mechanisms are adopted to implement these. The concept of international protection of human rights is firmly established in international human rights law in the forms of treaties, customary international law, general principles and other sources of international law. Human Rights Treaties, according to Pierre and Burns (1992:9), fall into the following four categories of human rights instruments;

General Conventions, which concern all or large portion of human rights and have been adopted at the universal or regional levels.

Topically Specific Conventions, which are intended to guard against particular human rights abuses, for example genocide, war crimes and crimes against humanity, slavery and traffic in

persons, forced labor, and torture.

Conventions on Group Protection, which correspond to the special needs of distinct groups, such as refugees, stateless persons, migrants, workers, women, children, and combatants, and civilians in time of armed conflict.

Conventions Prohibiting Discrimination based on race, sex, and in education, employment, and occupation.

Majority of states are parties to different international instruments that embody standards of human rights protection. States, through different arrangements, discharge their duties of safeguarding human rights for their citizens. They bear the duty to promote and protect human rights by creating conducive environment at home, which includes adopting international norms into their domestic legal system so as to give judicial effects to these norms. Accordingly, the role of the states and the domestic systems remain the cradle for the protection of human rights. Available international procedures are only supplementary to effective national remedies. As Waters argues,

> The very structure of the modern human rights treaty regime, with its emphasis on supervisory rulings by supranational institutions, has deepened the need for better domestic enforcement of international human rights treaty obligations. In order to remain in compliance with their international law obligations, states must ensure that the human rights treaties-and the ruling of supranational bodies interpreting those treaties- can be quickly and effectively implemented into domestic law (Waters, 2007: 640).

Enforcement of human rights at the domestic level requires both institutional and legal frameworks. In this regard, the domestic status of human rights treaties becomes crucial. But, how do states incorporate human rights into their domestic legal system?

Essentially, there are two approaches regarding the way states adopt international treaties into their domestic laws; namely “monist approach”, where international law automatically becomes part of the domestic legal system when adopted, and the “dualist approach” where the international law must be transformed into domestic law by legislation. The dualist tradition, as Oppenhiem (1986) describes, international and domestic laws are essentially different in terms of

their source, the subjects they regulate and their substance. Accordingly, international law cannot operate directly in the domestic sphere, needing to be transformed into domestic law by the legal acts of states. The proponents of dualism, however, are in disagreement over which law should prevail in case of conflict between the two laws.

Unlike dualism, monism does not draw a sharp distinction between domestic and international law. Instead, it tends to view all laws as emanating from a single source. For proponents of monist approach, international law and domestic law are the application to different subject-matter of different part of one great system of law but not two unrelated systems of laws Lillich and Newman (1979). Under this view, international law is automatically incorporated into the domestic legal order. This implies that enabling law is not needed in order to make a treaty an integral part of the law of a signatory state. The monist tradition recognizes a distinction between domestic and international law only when it comes to which law should prevail in case of conflict between the two laws. In this regard, monists take the view that international law is of a higher order and thus trumps conflicting domestic laws.

Generally, questions relating to the domestic application of international human rights standards must be considered in line with two principles of international law. The first, as reflected in Article 27 of the Vienna Convention on the Law of Treaties, is that '[A] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty'. In other words, a State Party should amend the domestic legal order as necessary in order to give effect to their treaty obligations. The second principle is reflected in Article 8 of the UDHR, according to which 'everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law'. This implies that legally binding international human rights standards should operate directly and immediately within the domestic legal system of each State Party, thereby enabling individuals to seek enforcement of their rights before national courts and tribunals.

The Proclamation of Tehran of 1968 states that "it is imperative that the members of the international community fulfill their solemn obligations to promote and encourage respect for human rights and fundamental freedoms for all" (Article 1) and it "urges all peoples and governments to dedicate themselves to the principles enshrined in the Universal Declaration of

Human Rights and to redouble their efforts to provide for all human beings with a life consonant with freedom and dignity and conducive to physical, mental and social welfare". Moreover, the 1993 Vienna World Conference on Human Rights, prescribed that it is the duty of States to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems.

Thus, it is appropriate to discuss the availability and nature of such legislations and institutions in Ethiopia in order to assess the country's overall performance in enforcing human rights as compliance to its international and regional human rights treaty obligations. The next chapter clearly deals with these issues.

CHAPTER TWO

DOMESTIC LEGAL AND INSTITUTIONAL FRAMEWORKS TO PROTECT HUMAN RIGHTS IN ETHIOPIA

It is known that human rights entail obligations since the existence of a right in favour of something imposes a duty on somebody to perform or refrain from engaging in certain conduct. "Human rights norms constitute part of a body of standards in international law that regulate the conduct and responsibility of states" (Anselm, 2003:1). The obligations conferred upon states signatory to international treaties are categorized as positive and negative. The positive obligation requires states to take measures in the furtherance of the rights contained in the agreements while the negative obligation refers to the obligation required of states to respect or refrain from violation of the terms of international agreements. As Anselm argues, "fulfillment of the responsibilities implied by the primacy of domestic jurisdiction in international law requires functional states to be able to provide basic protection to their inhabitants" (Anselm, 2).

In short, domestic protection of human rights and fundamental freedoms designates the totality of activities undertaken at the national level-by way of meeting four duties: duty to respect, duty to protect, duty to promote and duty to fulfill-to advance the realization of human rights (Hongju, 1999). The duty to respect signifies the state's recognition of rights and freedoms and an attempt to avoid their violation from its own side. The duty to protect involves punishing other third party that violates human rights. The duty to promote is basically concerned with the creation of

awareness on human rights. The duty to fulfill requires not only the punishment of perpetrators but also more concerned with remedying the victim.

The above mentioned duties have a number of different aspects, such as ensuring legal and institutional frameworks (in line with international commitments), such as an independent judiciary, to prevent, halt or redress any abuses of those rights and freedoms recognized by law. It is worth noting that the efficiency of the protection of human rights lies on the existence of adequate mechanism to ensure the observance of the rights embodied in the international conventions. This means that states are under an obligation to adequately prevent, investigate, punish, and, whenever possible, to restore rights that have been violated and/or to provide compensation (Rover, 1998).

The responsibility of states also extends to ensuring that their government, their constitution and their other domestic laws enable them to carry out their international obligations. According to Anselm, such a project requires;

> states with constitutional governments in which people are guaranteed the fullest right of participation in determining their collective and individual fates, i.e., states in which governments are accountable both to their people and to norms and institutions that effectively prevent, restrain and redress arbitrariness (Anselm, 2003:3).

Generally, the enforcement of human rights can be evaluated mainly by mechanisms used to respect, protect, promote and fulfill the basic rights and freedoms at the national level. In the area of human rights, states carry out their international obligations in a particular way through their legal systems; among others through the adoption of international human rights principles and standards in the national constitution and basic laws. In this chapter, the current Ethiopian position in terms of the availability of legal and institutional guarantees of human rights protection is discussed. This will be done on the basis of the constitutional provisions of the country and its international duties incurred due to its accession to different human rights instruments either global or regional. In this regard, the first section will deal with the status of international human law in the domestic legal system. The second discusses constitutional guarantees while the third is about some institutional protection of human rights in the country.

1 The Status of International Human Rights Law in the Ethiopian Legal System

International human rights laws require states to take appropriate and effective measures to implement (i.e., to protect, promote and fulfil) the rights prescribed under the treaties which the states are party to. States take the prime responsibility in devising the necessary mechanisms to undertake the protection, promotion and fulfilment processes of human rights within their jurisdiction. Defining the status of human rights treaties in the domestic legal system as well as guaranteeing the protection of the rights with remarkable mandates to exercise jurisdiction in applying those rights and freedoms enshrined in the national laws such as the Constitution are some of the positive measures to be taken by states to enforce human rights. To accomplish these tasks, states should take national legislative measures in order to make possible the enforcement of international human rights standards at the domestic setting. Hongju (1999) talks about the importance of internalization of human rights norms into domestic system through legal means. He says, "legal internalization occurs when an international norm is incorporated into the domestic legal system through executive action, legislative action, judicial interpretation, or some combination of the three" (Hongju, 1413). And, according to Rover,

> The obligations created by international human rights treaties for states parties are twofold. The first obligation is to adopt (enact) legislation at the national level to ensure compliance with the requirements of a given treaty. The second requires states to refrain from practices that are in contravention of treaty provision (Rover, 369).

However, the way in which a state views the relationship between international law and national law will have some impact with regard to the implementation of international obligation at the domestic level. The Ethiopian case, therefore, has to be seen in this context.

Ethiopia has been a member to different Conventions in different times. The major Conventions to which Ethiopia is a member include, the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Prevention and Punishment of the Crime Against Genocide; and the African Charter on Human and Peoples' Rights. However, the most important issue here is whether or how human rights treaties can be directly applied, or incorporated in some ways, by Ethiopian legal system, especially by the courts. This question necessitates the discussion of the status of international law in the

Ethiopian domestic legal system.

With regard to treaty making process, the FDRE Constitution has made explicit that the power to conclude international agreements is vested in the executive which, after proper deliberation, has to refer them to the House of Peoples' Representatives (the legislature) for their ratification (Art. 55(12)). There is also a provision in the Constitution regarding the relationship between treaties, including human rights treaties, and domestic laws.

The FDRE Constitution (Art. 9(4)) makes all international agreements ratified by Ethiopia an integral part of the law of the land. This provision, however, has been debatable among scholars. This is because; pursuant to Article 2(2) of the Federal Negarit Gazette Establishment Proclamation No. 3/1995, "all laws of the Federal Government shall be published in the Federal Negarit Gazette", whereas Article 2 (3) of the same proclamation states that "all Federal or Regional legislative, executive and judicial organs as well as any natural or juridical person shall take judicial notice of laws published in the Federal Negarit Gazette". This implies that the laws governing Ethiopians usually have to be published in the Federal Negarit Gazette before they become part of the laws of Ethiopia. International law in Ethiopia becomes applicable before national authorities only in the event that the agreement has been incorporated into the laws of Ethiopia through an act of Parliament (the legislature). Put simply, international human rights instruments can only be enforced and be effective only after proper ratification process. Accordingly, Ethiopia could be classified as a dualist state as a national legislation needs to be promulgated in order for the provisions of international instruments to be implemented at the domestic level.

Gebreamlak argues that "publication of an act of parliament is a not necessary precondition for its entry into force". He mentions, "the proclamation that approves the ratification of a treaty will have a legal effect after the lapse of a certain time period, even before its publication in the Federal Negarit Gazette" (Gebreamlak, 2010:44). His argument is based on Article 57 of the Constitution which prescribes that if any federal law including a law that proclaims the ratification of treaties is not signed by the president within fifteen days from its submission, it will enter into force. This argument seems plausible though there are people who do not agree. Also, in analyzing Article 13 of the FDRE Constitution, it is worth noting that some treaties or conventions are part of Ethiopian law although

they have not been incorporated into the laws of the country through a specific proclamation nor published in the Federal Negarit Gazette.

Another important topic in relation to the status of international human rights law in the Ethiopian legal system is about the hierarchy of the former as compared to the domestic laws. This issue has been touched upon by different authors. The major question, according to Takele (2009) is whether international law will prevail in case of a conflict between national and international laws. Particularly, the problem arises from the interpretation of the supremacy clause of Article 9(1) of the Constitution. The problem, as noted by Takele, is that the article has led many to conclude that the constitution is superior to all ratified treaties. He argues, "[t]he prevailing scholarship that has put the Constitution at the apex of any law… is a consequence of the mistaken approach which allows domestic law to determine the position of treaties at the national level" (Takele, 133).

As Takele correctly suggests, this dilemma becomes inappropriate when we consider it from the international law perspective. From an international law point of view, he says, the international obligation takes precedence over the domestic legislation. Otherwise, it will be a violation of an international obligation if the contracting State disregards this rule.

In particular reference to the status of international human rights treaties in the domestic legal system, it is good to have a close look at Art. 13(2) of the FDRE Constitution which provides that the fundamental rights and freedoms specified in the Constitution shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights; international Covenants on human rights and other international instruments adopted by Ethiopia. In this case, it is appropriate to conclude that the place given to international human rights norms in the domestic laws is paramount which can significantly contribute to the national human rights performance.

It is truly argued that ratification of treaties by itself cannot be an end; there need to be efforts for their implementation. Most importantly, the efficiency of the protection of human rights lies on the existence of adequate mechanisms to ensure the observance of the rights embodied in the international conventions. In this regard, states should take reliable measures to meet their international obligations successfully. States typically take measures to give effect to human

rights treaties domestically in three important ways: through constitutional human rights protections, through rights-specific implementing legislation and through human rights institutions, notably human rights commissions.

2 Constitutional Protection of Human Rights in Ethiopia

It is widely believed that one way of discharging states' international obligation is to extend constitutional recognition (or rendering constitutional protection) to human rights. Constitutional recognition of human rights basically signifies the codification of human rights principles and standards in the states' national constitution. The principal reason behind the need for the codification of human rights in a state's constitution is that a constitution gives human rights an upgraded protection (Allan, 2001). This maximized protection emanates from the nature of a constitution. In democratic societies, it is claimed; constitutions are the result of negotiation between the ruled and the ruler. Thus, they embody, among others, fundamental rules that put limitation upon the activities of government branches or the polity. One should note that the rights and freedoms contained in the global and regional human rights instruments are guaranteed, as a matter of international law, primarily against the misuse of legislative, executive, or judicial powers within the country. According to Allan, "[t]he principle of separation of powers enables the law to serve as a bulwark between governors and the governed, excluding the exercise of arbitrary power" (Allan, 2001:121). Of course, democracy, [therefore human rights protection], demands a significant commitment to active civil participation by citizens, called "social capital" needed to sustain an effective democratic regime (Hollenbach, 1998).

For such efforts to be consistently effective, it is important to concretize human rights and fundamental freedoms by way of framing appropriate legislations and institutions. Giving human rights constitutional force, particularly, is thought to ensure that those rights cannot be derogated through later legislation (Mahoney, 1993). This belief emanates from the grand narrative which declares a constitution as the supreme law of any country. Such guarantees, however, can be carried out in different ways. Some constitutions opt to devote a chapter in the constitution, as has been done by Ethiopia. In Ethiopia, therefore, the primary human rights provisions are included in the Constitution. A wide area of literature has been done so far discussing the different human rights provisions in the Ethiopian constitutional and legal development mainly under the three regimes, Emperor Hailse Selassie's, the

Derg's and the present government. As many would agree, improvements have been seen in the area of human rights protection along with progressive changes in the provisions of the Constitutions as the latest is by far better than the first.

The 1931 Constitution of the "Empire of Ethiopia" is known for it was the first written constitution in the country's history. This Constitution can be said to be adopted and granted to the people by the Emperor (Emperor Haile Selassie). The title of Chapter III of the Constitution, which was believed to be modelled upon the Meiji Constitution of Japan (1889), was entitled "The Rights Recognized by the Emperor as Belong to the Nation and Duties Incumbent on the Nation".

The Constitution was intended, as argued by Clapham (1993), for both external and domestic effects. "Externally, the Constitution was intended to convey an impression of 'modernity' [...] and domestically to secure the formal subordination of nobility to the Emperor" (Clapahm, 58).

As Scholler (2005) explained, the contribution of the 1931 Constitution is limited to its being the first written constitution to introduce the concept of guaranteeing constitutional protection of human rights in the Ethiopian legal history. It has obviously served as a model for the succeeding Ethiopian constitutions. According to Paul and Christopher (1967:912), "[t]he Constitution did not itself establish civil and political rights as working law; its provisions, in this sector, were not self-executing; they were promises to be implemented through future legislations".

As Scholler and other scholars argue, the 1931 constitution was too much concerned with the inviolability of the Emperor's power to the extent of almost neglecting human rights. According to Clapham;

> It [The 1931 Constitution] was an instrument designed to consolidate the power of those who already held it, by appealing to an external model of legitimation which would consolidate the legitimacy of the regime in the eyes of its principal foreign allies, and to which domestic political actors expected to subscribe (Clapham, 59).

The 1931 Constitution was replaced by the 1955 Revised Constitution. It is believed by most of the scholars on Ethiopian history and politics that the federation with Eritrea made the revision of the 1931 Constitution essential. The Revised Constitution, like its predecessor, perpetuated, to a larger extent, the absolute power of the Emperor. It took a form of a gift from the Emperor to his "subjects" (Paul and Christopher, 1967). The proclamation promulgating the Revised Constitution ascertains this fact by stating "we [the Emperor] granted to our faithful subjects and proclaimed a Constitution for the Empire of Ethiopia". By implication, the fundamental rights and freedoms under this Constitution would be understood as given by the Emperor which could be taken away any time by the same.

Chapter III of this Constitution, like the 1931 Constitution, has been dedicated to deal with rights and duties of the people. Under this chapter, the Constitution, for example, guarantees the right to life, liberty and property (Article 43), peaceful assembly and association (Article 45), equal protection before the law (Article 37), freedom of religion, freedom of speech and press (Article 41), and so on. However, though the human rights promises in the Revised Constitution are more detailed than that of the 1931, they were curtailed by limiting phrases which indicate they were of rhetoric than practical.

The Revised Constitution gives significant place for international treaties, which would be much important for escalated protection of human rights. Its Article 122 states that;

> The present Revised Constitution, together with those international treaties, Conventions and obligations to which Ethiopia shall be a party, shall be the supreme law of the Empire, and all future legislation, decrees, orders, judgments, decisions and acts inconsistent therewith, shall be null and void.

The next Constitution was the Draft Constitution of 1974 (also known as the Endalkachew Constitution). This Constitution was recognized to follow the British model, according to Clapham (1993), which had been projected to make the executive responsible to an elected legislature. However, this Constitution could not survive for long due to events which led to its suspension by the military Derg before it was formally promulgated.

It is easy to find out that the 1974 Draft Constitution had relatively expanded articles covering various human rights provisions when one compares it to its predecessors. In addition, a comparative analysis shows that, unlike the Revised Constitution, the Draft Constitution provides a more detailed and precisely defined list of human rights. As Scholler (2005) noted that, among others, the Draft Constitution enshrined social rights which were not present in the 1955 Revised Constitution.

Following the overthrow of the Emperor, Ethiopia could be said to have no constitution up until the 1987 Constitution of the People's Democratic Republic of Ethiopia was promulgated. Chapter seven of the 1987 Constitution, which is entitled as "Fundamental Freedoms, Rights and Duties of Citizens", envisaged some provisions on human rights.

Clapham (1993) compares the 1955 and the 1987 Constitutions and says;

> Both of them were intended to consolidate the power of an existing regime by giving it a formal basis, which on the one hand sought to convey an impression of legality and participation to the domestic population, and on the other sought external support and recognition by adopting an acceptable external model (Clapham, 69).

Clapham's argument is plausible in the sense that the people of Ethiopia were not practically enjoying the rights enshrined in those constitutions. This is because a mere inclusion of rights into a constitution does not suffice the protection and fulfilment the rights.

Another important point to mention here is that the 1987 Constitution of the People's Democratic Republic of Ethiopia disregarded the civil and political rights focusing on the social, economic and cultural rights. This was largely due to the fact of its socialist leaning, "committed to the ideology of Marxism-Leninism on the Soviet model" (Clapham, 1993:69). On this issue, Schwab (1981) underlined that, "[t]he experience of the country under Haile Selassie's regime had significant impact upon the ideological orientation followed by the Derg Government which led to the notion of human dignity and

rights as consisting economic rights rather than civil or political rights" (Schwab, 6).

It is widely argued that a much more important place for human rights was given in the 1991 Charter. It is known that immediately after the downfall of the Derg regime, a Transitional Government was set up in Ethiopia. The Transitional Government was responsible in the adoption of the Transitional (Interim) Constitution known as the Charter of 1991. The Charter of 1991, under its first article of the section providing rights, declares the full application of the Universal Declaration of Human Rights. This fact is taken as a premise to argue in favour of the claim that much emphasis for human rights began to be given since the issuance of the Transitional Charter (Heyns, 2004; Pausewang, 1996)).

The Charter, compared to the previous Constitutions, recognized "the right to engage in unrestricted political activity and the right to organize political parties" (Scholler, 57) which makes it peculiar in this regard. As Pausewang (1996:200) said, "compared to the Derg regime, the human rights situation has improved dramatically" during the Transitional Period. The Charter envisaged democratic reconstruction and human rights protection under the rule of law.

The current Constitution (also known as the FDRE Constitution) that has overtaken the Transitional Charter was promulgated in 1994. The FDRE Constitution continued the emphasis given for human rights by the Transitional Charter. It provides relatively detailed provisions of human rights and freedoms as compared to the previous constitutions. Chapter three of this Constitution, which comprises one third of the Constitution, is completely devoted for fundamental rights and freedoms under the title of "Fundamental Rights and Freedoms". In fact, recognition of fundamental rights and freedoms starts at the preamble of the Constitution that asserted the respect of fundamental rights and freedoms is important in building a democratic society.

The present Constitution encompasses civil and political rights, the economic, social and cultural rights and environmental rights (all the three generation of rights) running from Article 14 through 44. The rights enshrined in the Constitution includes the right to life, security of person and liberty (Articles 15, 16 & 17, respectively), prohibition against inhuman treatment (Article 18), the right of arrested, accused and convicted persons (Articles 19, 20 & 21, respectively), right to privacy (Article 26), and many more.

It is a widely held opinion among scholars that the 1994 Constitution is in cognizant of historical injustices in the country. In order to address those injustices, peace and the prospect of a democratic order based on the full respect of individual and people's fundamental freedoms and rights are considered as common aspirations of the Ethiopian nations, nationalities and peoples, aimed at building a single economic community in Ethiopia, which is one of the aspirations of the Constitution.

The 1994 Constitution, in addition to incorporating a Bill of Rights, has also made an arrangement for protection and respect of human rights through internalizing international instruments and establishing special institutions. Chapter two of the Constitution (under the title of 'Fundamental Principles of the Constitution') recognized human rights as inalienable and emanate from the nature of "mankind"/humankind (Art. 10). This article also identifies the principles through which the remaining provisions make sense by stating "[h]uman and democratic rights of citizens and peoples shall be respected". Chapter three of the Constitution is a reiteration of this principle of the constitution. Most importantly, the FDRE Constitution has made human rights provisions binding upon both the federal and state governments. All legislative, executive and judicial organs of a government at both levels are duty bound to respect and enforce the provisions of fundamental rights and freedoms.

Due to their broad scope, we can find human rights legislations in Ethiopia distributed in many areas of laws, such as the Civil Code, the Criminal Procedure Code and the Penal Code. Hence, it is safe to conclude that some human rights are guaranteed both on the level of the Constitution and at the same time on the level of the Civil Code or any other code which is important for the application of human rights by the courts. It is also very essential to recognize that much of the human rights provisions contained in the Constitution are also found in the major international and regional human rights instruments which the country has acceded to.

Human Rights in the FDRE Constitution and in the ICCPR and the ACHPR

The legal framework for actual protection and fulfillment of human rights in Ethiopia should also be seen from the fact that the Constitution includes major human rights provisions enshrined in the international and regional human rights treaties which the country is a party to. For convenience, only some articles from the ICCPR and the ACHPR are mentioned below, which are considered much

important for the assessment of human rights protection in the country measured against its obligation under international and regional human rights laws.

Topic	FDRE Constitution	ICCPR	ACHPR
Right to Life	Article 15	Article 6(1)	Article 4
Right of Security of Person	Article 16	Article 7	Article 6
Right to Liberty	Article 17	Article 9(1)	Article 6
Prohibition Against Inhuman Treatment	Article 18	Article 7	Article 5
Rights of Persons Arrested	Article 19	Article 9(2)	Article 7
Rights of Persons Accused	Article 20	Article 10(2)	Article 7
Non-Retroactivity of Criminal Law	Article 22	Article 15	Article 7
Right to Equality	Article 25	Article 26	Article 3
Right to Privacy	Article 26	Article 17	
Freedom of Thought, Belief and Religion	Article 27	Article 18&19	Article 8

3 The Reach of the Bill of Rights

The Constitution also purports to use certain indicative words to define the subjects who are eligible to exercise a particular human rights provision. These words show the extension/or reach of the provision. The 'Reach of the Bills of Rights' commonly applies to identify the principle applied to determine who the beneficiaries of the Bill of Rights (right-holders) are and who are bound by it (duty bearers). The beneficiary of human rights is easily identifiable, as Rakeb (2002) argues, since most of the rights in the

Bill of Rights have universal application, in the sense that they are for the benefit of 'everyone'. The human rights embodied in different legal instruments convey this fact by having phrases indicating the categories of persons that the provisions are addressing. Only in few instances are rights restricted in their application to a particular class of beneficiary such as 'children', 'women' or 'refugees'.

The provisions in Chapter III of the FDRE Constitution, which can be called the Bill of Rights for simplicity, stipulate the beneficiaries (right-holders) which have the phrases 'everyone', 'every person', 'all persons' or 'no one' in their statements. For example, Article 15 of the Constitution provides that "every person has the right to life", and Article 17 states that "no one shall be deprived of his or her liberty". On the other hand, there are articles which define the beneficiaries of the rights enshrined in the Constitution as a certain group of persons. For instance, Article 35 is about the rights of women while Article 36 is about the rights of children.

What is relatively difficult is to determine the duties imposed by the Bill of Rights (duty bearers). The difficulty is mostly related to the traditionally held opinion that takes any human rights law, for more convenience a Bill of Rights, governs only the relationship between individuals and the state, known as 'vertical application of human rights'. The assumption behind this opinion is that the state is superior in power that abuses the rights of citizens leading to the conviction that we need 'a bill of rights' which puts limitation upon such undue interference of the government in the lives of its citizens. "Since the State is more powerful than the individual person, and is endowed with 'state authority', a bill of rights is adopted to protect the individual against abuse of the state's powers" (Rakeb, 22).

With regard to the bearer of duties in relation to the enforcement of the Bill of Rights, the same chapter (Chapter III) begins by imposing duties and responsibilities on all federal and state government branches, the legislative, the executive and the judiciary, to respect and enforce the provisions of the Chapter. Article 13(1) of the Constitution provides this obligation. By the supreme nature of the Constitution, a provision of a federal or regional statute, a ministerial regulations or other statutory regulation, which is inconsistent with the Bill of Rights, is of no effect. This implies that, a person may challenge the actions of any of these state organs for violating his or her human rights and for not abiding by its duties under the Bill of Rights.

However, the application of the Bill of Rights is not confined to protecting individuals against abuses of their rights by the state but also against abuses by other individuals; i.e., horizontal application of the Bill of Rights. The Constitution of Ethiopia bestows horizontal duties, in addition to the vertical application of the Bill of Rights, in that it binds, in Article 9 (2), all citizens, organs of state, political organizations, other associations as well as their officials to ensure observance of the Constitution and to obey it. Article 13 (1), furthermore, binds the State to ensure citizens' rights from unjust interferences from others. The State is thus required to take positive steps towards the effective enjoyment of these rights. This includes the obligation to enact legislation and create the framework to prevent violations of rights and enable citizens enjoy their protected rights without interference from others.

4 Human Rights Institutions in Ethiopia

Though discussions on the status of international human rights instruments in the national legal system and the constitutional guarantees of basic rights and freedoms is important to assess the domestic implementation of international human rights standards, it should be complemented by other dimensions, including the non-legal ones. This is because; rendering legal protection or constitutionalizing human rights is not sufficient for their full realization. Such practices need "social internalization of human rights norms" which occurs "when a norm acquires so much public legitimacy that there is widespread general adherence to it" (Hongju, 1999:1413). To these effects, human rights institutions, such as ombudsmen and human rights commissions, play major role while contributing in the domestic implementation of international human rights norms. Therefore, in addition to adopting human rights enshrined in different documents, states have to arrange institutions committed for human rights protection.

The United Nations, for example, recognised the complementary role that could be played by national institutions in the promotion and protection of human rights. The Organization has provided a set of normative standards for human rights commissions called the Paris Principles. In establishing such a framework, states are required to take into account the "principles relating to the status and functioning of national institutions for the protection and promotion of human rights," as agreed by the United Nations General Assembly in 1993. According to the Paris Principles, human rights commissions are given a broad mandate to investigate alleged human

rights abuses, compel witness testimony and the production of documents, and engage in mediation to resolve disputes. The Paris Principles have become the standard by which national institutions are judged as to their effectiveness, their independence and their relationship to government.

In addition to adopting human rights enshrined in different documents, states have to arrange institutions committed for human rights protection. Human rights institutions, in their respective capacities, are the primary objects of such duty that the states must discharge for promoting and protecting human rights. As Cole mentions "national human rights institutions have emerged as a potentially key player in closing the gap between rhetoric and compliance" (Cole, 2005:473). Rendering legal protection without institutional frameworks is pointless. Therefore, the establishment and proper functioning of such institutions is very important along with the legal protection.

The FDRE Constitution has such view when adopting Article 55(14) & (15) which empowers the House of People's Representatives for the establishment of two institutions: the Human Rights Commission and the Institution of the Ombudsman. This has been materialized in promulgating two proclamations: "Ethiopian Human Rights Commission Establishment Proclamation No. 210/2000" and "Institution of the Ombudsman Establishment Proclamation No. 211/2000" defining their mandate and powers.

The Establishment Proclamation of the Ethiopian Human Rights Commission (EHRC) states that the Commission is established primarily for the enforcement of human rights as are enshrined in the Constitution. It is designed to act as one of the organs in enforcing the rights and freedoms of the Ethiopian nations, nationalities and peoples, one of the primary functions being *"*to advocate and promote respect for, and an understanding of, human rights*,"* and another being to "educate the public regarding the nature and content of such rights*"*. The Commission is also entrusted with the task of investigating cases of violation of human rights enshrined in the Constitution, in its own initiative or upon a compliant submitted to it. It makes reports on different human rights conditions in the country, such as prison conditions. The Commission also engages in activities aimed at awareness creation and educating people on human rights.

Ethiopia has even expanded the human rights regime by providing for the establishment of the Institution of the Ombudsman. As it is set out in the enabling legislation of the Ethiopian Institution of the Ombudsman (EIO) which was passed by the Parliamentary Proclamation No. 211/2000, the basic function of the Ombudsman is to protect citizens against administrative injustices and bureaucratic oppression and to provide citizens with accessible avenue for compliant when such injustices and oppressions occur. Making government organs duty bound to respect and enforce human rights as are enshrined in a constitution or any other legislation is one form of the state's responsibilities to organize its agents in such a way that human rights are protected best. The Institution can investigate action taken by any Ministry or department of Government or any member of such Ministry or department of Government, any local authority, institution controlled directly and indirectly by the state or any statutory body. The Institution is much important especially in redressing human rights violations which occur in work places/ administrative areas.

In Ethiopia, besides the institutions established by the Government, there are such institutions, like Ethiopian Human Rights Council, working in the area of monitoring human rights promotion and protection in the country in conformity with the provisions of the Constitution and international human rights conventions which the country has ratified. NHRIs, NGOs or civil societies play a significant role in raising public awareness about their rights and duties through education.

To sum up, an appraisal of Ethiopia's record regarding the enforcement of international and regional human rights instruments, which the country is a party to, has to be made in view of the abovementioned legal and institutional frameworks. This is because; any violation of human rights and fundamental freedoms listed in the Ethiopian Constitution can also be the violation of the country's treaty obligation due to its entry into international and regional human rights regime.

CHAPTER THREE

EXPLORATION OF HUMAN RIGHTS SITUATION IN ETHIOPIA

It is known that international human rights law lays down obligations on governments to act in certain ways or to refrain from certain acts in order to promote and protect human rights and fundamental freedoms of individuals or groups. This principle is emphasized in the Universal Declaration of Human Rights and in numerous other international human rights conventions, declarations, and resolutions. The enforcement of a bill of rights requires that systems are in practice to identify and prevent possible abuses in advance of them occurring and, where they do occur, to provide post facto remedies (Rover, 1998). In a nutshell, these internal systems that the state establishes and the activities it undertakes to respect and protect (promote) must be in conformity with the minimum standards laid down by the international human rights system.

Furthermore, the rights and freedoms contained in the global and regional human rights instruments are guaranteed, as a matter of international law, against the misuse of legislative, executive, or judicial powers within the country. The obligation to protect requires states to protect individuals and groups against human rights abuses. It also includes activities to deal with complaints on the violations of the rights prescribed by law through legislative, executive and judicial undertakings. Thus, as Rover suggests,

> [a]n assessment of the enforcement of international human rights norms must be made on the evaluation of efforts made towards the effective prevention of such violations. This may require prompt, thorough and impartial investigations of any allegation of such a crime having been or being committed and officials responsible must be brought to justice (Rover, 183).

Both the regional and global human rights Conventions which Ethiopia is a party to oblige it to secure individuals' rights and freedoms in domestic law, and to provide effective remedies before national authorities for breaches of their provisions. Hence, the current human rights situation in Ethiopia has to be measured by considering the national and international human rights provisions with special emphasis to progresses so far have observed around their protection. Such practices as to prevent and put an end to violations of basic rights and freedoms are the major themes of this chapter. Thus, the following discussion with regard to human rights situation in the country is made largely by considering actions taken (ought to be taken) by the government to deter or redress violations of those rights stipulated in the national as well as

international legal documents.

3.1 Major Allegations on Human Rights Violations in Ethiopia

Some like to claim that Ethiopian Government's human rights record must be put in perspective. According to them, Ethiopia's record of human rights has been improving, when measured against international standards, since the country's transition from the Derg regime to the EPRDF's. The Government has also been repeatedly dismissing the allegations of human rights organizations (national or international) as well as others as grossly exaggerated and misleading. Human rights situation, the Government claims, has improved dramatically after the Derg was overthrown and that the majority of violations that occurred were not instigated or condoned, by the government.

The official interviewed from ERHC emphasized the truth that current human rights violations in the country are not systematic and proclaimed, unlike the Derg's time. He said that "the current efforts to protect and promote basic rights in Ethiopia encompass a process of empowering people to take increasing control of their lives". This, according to the official, enables the people to impact policies of its nation, including policies to protect human rights, while making the Government accountable which in turn make difficult for the Government to deprive of them their rights. The official's reason was that "countries in which the majority of the population is excluded from any degree of power are more suitable to transgress rights than those wherein people take an active part in decision making and can fight for their rights." This is a sound argument in the sense that people's increased awareness on issues, like human rights, is very much important for their effect.

However, contrary to the claims made by the Government and some individuals about the improvements recorded in human rights protection in the country, there have been recurrent reports of serious infringements of the rights by both government and non-government bodies. Agents for which a state is responsible include such groups and individuals as ministerial civil servants, judges, police officers, prison officials, and other similar groups. This section shows the occurrence of political and non-politically motivated human rights violations as benchmarks for the appraisal of the enforcement of international human rights instruments in the country, which is the topic of the next chapter.

But, it is impossible due to the constraints of time and space to discuss in depth the wide range of these violations. Thus, in this research an attempt is made to narrow the list of human rights to a small set of rights identified as civil and political rights. So the paper will be restricted to a discussion of the right to life, personal liberty and security of person, the right to be protected from inhuman and degrading treatment and punishment, to those rights related to procedural justice and the right to privacy because of its close relevance to the other rights already mentioned. These rights, taken together, are essential and provide good ground for assessing Ethiopia's performance in enforcing international and regional human rights obligations at the national level.

3.1.1 The Right to Life

The right to life is considered as the most fundamental of human rights. The right to life, principally, requires larger legal protection for this right is considered as a prerequisite to the enjoyment of all other rights. As Donelly and Rhoda argue, the right to life, among others, requires "state guarantees of minimal conditions of social order, protection against private murders and protection against execution by the state or its agents" (Donelly and Rhoda, 1987: 218). This implies that there should be laws prohibiting murder and violent assaults along with a judiciary capable of enforcing such prohibitions. In addition, the state must assure that its own officials or agents are prevented from killing civilians.

The FDRE Constitution recognizes the right to life in Article 15. Ethiopia is also bound by the provisions of Article 6 of the ICCPR which affirms that, "Every human has the inherent right to life […] No one shall be arbitrarily deprived of his life". This right is expressed in similar terms in the UDHR (Article 3) and the African Charter on Human and Peoples' Rights (Article 4).

The Constitution (Article 15) also puts legal provision stipulating the deprivation of this right exceptionally "as punishment for a serious criminal offence determined by law".Recently, very few instances of judicial killings (death sentences) have been applied in Ethiopia. According to Ethiopian law, death sentences have to be confirmed by the Head of the State.In this particular point, it is worth noting that Ethiopia is not a party to the Second Optional Protocol to the ICCPR which prohibits death sentence as punishment of a crime. Concerning countries where death penalty is applicable, Article 6(2) of the ICCPR elaborates:

> In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime […].

Despite such legal provisions regarding the right to life, there have been reports and allegations made by national and international bodies claiming the presence of serious violations of the right to life in the country, in various forms, both by state's agents and private actors. According to many of these reports, the police and the army have allegedly carried out the major offences violating the right to life. Particularly, they have been condemned for repeatedly committing politically motivated killings on suspected armed insurgents, such as the Ogaden National Liberation Front (ONLF) and the Oromo Liberation Front (OLF) in Somali and Oromia regions.

There are many claims of such killings during army operations in Somali region of Ethiopia in a response to the attack by ONLF (an insurgent group which acknowledged responsibility for the attack) on a Chinese-run oil facility in the Degehabur zone of the Somali Region on April 24, 2008. According to reports, 65 civilians and nine Chinese nationals were killed in the attack. According to a 2008 Human Rights Watch (HRW) report, the government's counter-insurgency campaign against the ONLF had caused widespread human rights violation, which includes deaths of many civilians.The counteroffensive by the Government forces has resulted in widespread international criticisms. For example, the U.S. State Department (US-DoS) has issued in March 2008 a report stating its concern on widespread human rights abuses due to fighting between government forces and the ONLF. The report has made both the Government forces and ONLF accountable for human rights abuses, including killings, around the area. It has also mentioned that security forces committed arbitrary killings, largely politically motivated, at different times and in different parts of the country.

Clashes with government forces on numerous occasions resulted in the death of an unknown number of civilians (such as students), government security forces, and troops of armed insurgents and members of different political parties. According to national and international reports, some 193 people died in the riot after the May election though some have put the figure much higher. Ethiopian Human Rights Council (EHRCO) reported that, "from June 6 to 8, 2005, the police and army shot and killed 42 unarmed demonstrators in Addis Ababa" (EHRCO, 2005). International Federation for Human Rights (FIDH) reported at least 187 demonstrators were

killed during the year.

Other incidents of arbitrary infringement of the right to life, perpetrated by other than the government agents, have occurred in Addis Ababa and other areas were in 2008 due to several bombings that killed civilians and military personnel. More than 30 people were reported to die during the year because of the bombings. Although no one claimed responsibility, the government charged the bombings were the work of insurgent groups, affiliated with the OLF and Al-Ittihad al-Islamiya, and or agents of Eritrea.

There are also some reports of deaths in police custody due to torture. The victims include both political detainees (mainly suspected terrorists or insurgents) and common criminal suspects. Deaths due to lack of adequate medical treatment is another common incident showing an abuse to the right to life in the police custody, according to reports.

However, many more people have died in other forms of social violence (for example, ethnic or religious motivated clashes, or due to disputes over plot of land), for which the degree of official responsibility varies and is disputed. Reading from the 2007 and 2008 reports of EHRCO, one can see that such clashes had been prevalent in Oromia and South regions. HRW has reported that serious human rights violations have occurred in areas affected by the clashes, and that the government has not investigated or brought to account the perpetrators (HRW, January 2009). The US-DoS (2008) has also been explaining its concern to the government to address the cause of the clashes adequately. However, though there have been detailed accounts of some extra-judicial killings, but there have been no adequate independent investigations to establish the facts on other similar cases.

3.1.2 The Rights to Personal Liberty and Security of Person

The rights to personal liberty and security of person are well recognized in the FDRE Constitution which prescribes in its Article 17 that “no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure established by law”. In addition, Ethiopian laws provide full protection to the Ethiopian citizens against arbitrary arrest and detention. The same article of the Constitution provides that “No person may be subjected to arbitrary arrest and no person may be detained without a charge or conviction against him”. This

requisite is repeated in Articles 49 through 63 of the Criminal Code of Ethiopia, which set out rules for arrest, detention, and release on bail. The Criminal Code also contains a provision which punishes unlawful arrest and detention "with rigorous imprisonment not exceeding ten years and fine".An arrested person must, according to the law, be shown the warrant for his/her arrest and brought before the issuing authority; and he/she may not be held for more than 14 days without being brought to court or released.

These provisions of Ethiopian domestic laws are reinforced by Article 9 of the ICCPR, which stipulates that "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention". This kind of provision could be found in Article 3 of the UDHR. About the security of person, Article 16 of the Constitution states that "Every one has the right to protection against bodily harm". In the same tone, Article 6 of the African Charter on Human and Peoples' Rights provides similar provisions. These rights specially require that a person not to be arrested or detained by a State without a legitimate motive, i.e. arbitrarily.

The reality is that the rules mentioned above are not applied in Ethiopia at a satisfactory level. EHRCO and other several human rights organizations have issued a number of reports on arbitrary arrest and detention committed contrary to the laws. The various security agents, like the common police and special police force have arrested and detained, or taken other arbitrary measures, without warrant, charge or bail, and without time limit. Political and security suspects have sometimes been taken away secretly without notice to family, friends, or close relatives; nothing said of their destination or reason for their arrest.

According to these reports, arbitrary arrest is considered as a powerful tool for the repression of political dissent. For instance, various reports have claimed that more than 11,000 persons detained in November 2005 following the large-scale antigovernment demonstrations following the May elections which the government also admitted. Most of the arrested and detained persons were released without trial.As the result of the unrest, many of opposition leaders, human rights defenders, journalists, publishers and ordinary citizens were charged with offenses such as genocide, treason and attempt to overthrow the constitutional order through the use of force.

According to a report by Amnesty International (AI) in 2009, in some of the more peripheral areas (especially areas known for insurgency), police enjoy wide discretion in arresting member

of political groups (or parties), despite the existence of formal legal protections. Reports on threat of such arrest in rural areas to intimidate voters during elections have been received by Ethiopian Human Rights Commission (EHRC), as the researcher was told by an official from the Commission.

The US-DoS in 2008 condemned the Government describing the fact that "although the constitution and law prohibit arbitrary arrest and detention, the government frequently did not observe these provisions in practice". Recently, Human Rights Watch has reported in January 2011 that "hundreds of Ethiopians have been arbitrarily arrested and detained and sometimes subjected to torture and other ill-treatment."This organization has been previously issuing several similar reports concerning the unlawful arrest and detention in the country, especially being committed on members of opposition political parties.

3.1.3 The Right against Inhumane Treatment and Punishment

Every Ethiopian has the right to be protected from inhuman treatment and punishment. Torture is absolutely prohibited by Ethiopian law. Article 18 states "Everyone has the right to protection against cruel, inhuman or degrading treatment or punishment". The statutes that govern the criminal law procedure prohibit acts of torture including assault and grievous bodily harm. There are also laws prohibiting the use of forcibly extracted confessions. The Civil Code of Ethiopia states "any admission or manifestation of the will obtained by methods of causing molestation to the personality shall be of no effect". It is prohibited to subject the accused person to any form of physical or mental torture or other cruel, inhuman or degrading treatment. As Rover has rightly explained, "[t]he prohibition of torture is absolute and knows no exception [and] there are no situations in which torture can be lawful, nor are there possibilities for a successful legal defence for acts of torture committed" (Rover, 1998:163).

Ethiopia has acceded to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment. In this Convention, it is prescribed that "Each State Party take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory

under its jurisdiction".Article 5 of the UDHR, Article 7 of the ICCPR, and Article 5 of the African Charter similarly talk about the right to humane treatment and the prohibitions of torture, cruel or inhuman treatment or punishment. Thus, Ethiopia is duty bound to respect the principles of the Conventions by way of preventing acts of torture and/or punishing the commission of such acts throughout the country.

Despite the presence of the laws prohibiting the use of torture and mistreatment, there were numerous credible reports of torture and inhuman treatment in the country. The victims include students and peaceful protestors, members of political opposition groups, people perceived to be supporters or members of insurgent groups, and individuals alleged to be connected to terrorist activities. According to the reports, security officials often beat or mistreated detainees. Police in some areas commit torture over criminal suspects in order to obtain confessions. There are also frequent reports of torture of suspected terrorists or armed insurgents.

Over the past few years, EHRCO, HRW, and AI have reported the use of torture against a variety of people deemed to be critics of the government. Opposition political parties reported frequent and systematic abuse of their supporters by police and regional militias. In 2006, EHRCO reported that some Coalition for Unity and Democracy (CUD) members and Ethiopian Teachers' Association officials arrested in December 2006 claimed in the court that they had been tortured in the police central investigation bureau in Addis Ababa.

In 2010, Human Rights Watch issued a memorandum "regarding serious patterns of torture and other cruel, inhuman, and degrading treatment in Ethiopia". The organization has documented incidents of torture and ill-treatment by Ethiopian security forces in a range of settings. In its 2011 report, the organization stated;

> Torture and ill-treatment of detainees arrested on suspicion of involvement with armed insurgent groups such as the Oromo Liberation Front and the Ogaden National Liberation Front in Somali region remains a serious concern. The Ethiopian military and other security forces are responsible for serious crimes in the Somali region […]. Very few incidents of torture have been investigated promptly and impartially, much less prosecuted (HRW, January 2011).

The US Department of State, in its 2008 report explained that during a campaign against

Ethiopian rebels in eastern Somali Region, the Ethiopian military tortured suspects in military custody. The report further claimed that "the Ethiopian government has failed to conduct credible and impartial investigations into the violations or prosecute those responsible for them."

In its country human rights reports for the year 2010, Bureau of Democracy, Human Rights, and Labor of the US Department of State alleged that;

> Numerous reliable sources confirmed in April 2009 that in Maekelawi, the central police investigation headquarters in Addis Ababa, police investigators often used physical abuse to extract confessions. Several prisoners who were held at Maekelawi and other nontraditional detention facilities independently claimed with credible detail that they and other detainees were tortured in police station jails in attempts by security officials to elicit confessions before their cases went to trial.

The torture does not, however, always result from government policy (or will) to torture suspects. Sometimes it is done due to lack of adequate legal knowledge from the part of security agents. An official from EHRC in an interview told the researcher that sometimes the act of torture stems from personal antagonism between the tortured and the torturer, as the Commission has been able to prove. This truth is also shared by officials from EHRCO.

3.1.4 Rights Related to Procedural Justice

Articles 19 through 23 of the FDRE Constitution deal with rights linked with judicial aspects of human rights. They include, among others, the right to be informed promptly about the arrest and charges, the right to remain silent, the right to appear before court within 48 hours (reasonable time) of arrest, the right to be released on bail [about the arrested persons]; the right to a fair and public trail or hearing, the right to be presumed innocent until found guilty, the right to be represented by legal counsel [for accused persons]; the right to appeal, humane treatment, the right to communicate with, and to be visited by, spouses or partners, close relatives, friends, religious councilors, medical doctors and legal counsel[for convicted prisoners and held in custody]. There are also provisions which prescribe the prohibition of retroactivity of criminal law and double jeopardy. Such provisions are also found in the UDHR (Articles 10&11), in the ICCPR (Article 9, 14&15), and in the African Charter (Article 7).

There are various provisions in the other domestic laws of the country which are supplementary

to the abovementioned guarantees in the Constitution and international and regional human rights instruments. Article 27(2) of the Criminal Procedure Code states that the accused or suspected person “shall not be compelled to answer and shall be informed that he has the right not to answer and any statement he may make may be used in evidence”. According to the law, accused persons have the right to a fair public trial by a court of law within a "reasonable time"; the accused has the right to appear before the court within forty-eight hours of arrest as per Article 29(1) of the Criminal Procedure Code.

Otherwise, as per Article 63(1) of the same Code;

> [W]hosoever has been arrested may be released on bail where the offence with which he is charged does not carry the death penalty or rigorous imprisonment for fifteen years or more and where there is no possibility of the person in respect of whom the offence was committed dying.

The Civil Procedure Code (Article 177) prescribes the application for ‘habeas corpus’.In all courts, defendants are entitled to legal counsel, may challenge witness testimony, and have the right of appeal. Public defenders are provided at no cost whenever defendants in such cases are financially unable to hire legal counsel.

Despite these protections, reports show that at times authorities allowed unreasonably longer detentions with little or no chance of appearing before court. Even sometimes arrested and detained persons may not know the reason for their arrest and detention let alone appearing before court (Sinedu, 2004). Some of these allegations are also shared by the Ethiopian Human Rights Commission which has admitted that judicial inefficiency, lengthy trial delays, and lack of qualified staff often resulted in serious delays in trial proceedings.

A critical area of the domestic laws that might be cited as reason for undue delay in bringing suspects to the court is Article 59 of the Criminal Procedure Code, which talks about detention. The provisions in its sub-article (2) which state “where the police investigation is not completed the investigating police officer may apply for a remand for a sufficient time to enable the investigation to be completed” and sub-article (3) “no remand may be granted for more than fourteen days on each occasion” are considered to give undue discretion to the police to detain

persons for several days or even months without appearing before court. The phrase "a sufficient time" is vague that it creates problems in the enjoyment of the rights of arrested and accused persons.

Concerning lengthy detention, the Anti-Terrorist Proclamation No.57/2009 is disputed by many for it prescribes detention of suspects of terrorism for relatively longer time than justice requires. Furthermore, the Proclamation contains provisions that undermine fundamental due process rights. The Proclamation restates the constitutional protection to be brought before a court within 48 hours of arrest, but then permits the police to request additional investigation periods of 28 days each from a court before filing charges, up to a maximum of four months.The other disputable Proclamation is the Anti-Corruption Proclamation which bans release on bail.

According to reports, prisoners arrested even for doubtful reasons can sometimes be held for months, even for years, without trial, sometimes for longer than the maximum prescribed time as punishment for their supposed offences. Furthermore, various EHRCO's reports indicate that some suspected prisoners have been denied contact with their legal counsel and detainees usually were not presumed innocent. These have resulted in serious human rights abuses on prisoners by disallowing the exercise of their constitutional rights.

3.1.5 The Right to Privacy

Privacy is one among the fundamental human rights which underpins human dignity and other values. It is protected in the UDHR, the ICCPR, and in many other major international and regional human rights treaties. Evidences show that nearly all countries have included this right in their constitutions. Some aspects of the right to privacy include information privacy (the right to handle personal data such as medical records), bodily privacy (the right to the protection of physical selves against invasive procedures such as genetic tests), privacy of communication (concerns the security and privacy of mail, telephones, e-mail, etc), and territorial privacy (concerns the setting of limits to intrusion into the domestic and other environments such as work place).

This right is also enshrined in the FDRE Constitution. Article 26 of the Constitution describes the right-holder and the extent of the right. It says,

> Everyone has the right to privacy. This right shall include the right not to be

> subjected to searches of his home, person or property, or the seizure of any property under his personal possession. Everyone has the right to the inviolability of his notes and correspondence including postal letters, and communications made by means of telephone, telecommunications, and electronic devices.

Pursuant to Article 32(2) of the Criminal Procedure Code, "no premises may be searched unless the police officer or member of the police is in possession of a search warrant". However, in practice, particularly outside Addis Ababa, police often searched property without obtaining warrants, according to reports. For example,

> [d]uring and following antigovernment demonstrations in June and November 2005, security forces entered homes and searched premises without warrants, took thousands of persons from their homes in the middle of the night without warrants (U. S. State Department, 2008).

International and national human rights bodies expressed their worries that the 2009 Anti-Terrorism Proclamation could seriously impact the right to privacy. They expressed their concerns regarding the wide definition of a terrorist and broad discretion of the police allowing searches without warrant.Human Rights Watch (HRW) issued a report based on an analysis of Ethiopia's Anti-Terrorism Proclamation in which it has assessed to what extent the Proclamation conforms to international standards. According to the organization, the Proclamation's definition of terrorist activity is "dangerously broad and inimical to fundamental human rights" (HRW, 2010).

This fear is shared by other international human rights organizations, like Amnesty International (AI) and International Federation for Human Rights (FIDH) as well as domestic human rights activists. These bodies have communicated their fear in different times to Ethiopian Government and to those whom they thought to have concern. They have requested the Government to revise such laws which affect negatively the enjoyment of human rights by citizens.

3.2 Administration of Justice

It is clear that one of the primary functions of a state's judiciary system is to protect human rights. It is also easy to connect human rights protection with the administration of justice,

especially in relation to criminal cases. For example, Ethiopia's Constitution strictly prohibits torture. Torture may also give rise to criminal procedure remedies, such as the exclusion of unlawfully obtained evidence. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment explicitly prohibits the use of any statement made as a result of torture as evidence in legal proceedings. The Constitution also bars the use of statements obtained through coercion. Therefore, we should notice that human rights protection in criminal procedure is closely related to the judiciary which contributes in the remedies for human rights violations. The judicial organs are called on to protect human rights through both enabling and repressive measures, they must, at all times, do so by means of reliable, transparent and consistent work practices.

However, judicial bodies are one part of the overall social mechanisms of realization and protection of human rights. Protection of human rights is the shared responsibility of the entire branches of government, operating in the spheres of legislation, judiciary and the executive, and the society at large. Of course, an evaluation of the effectiveness of the judiciary within the context of the overall machinery of the state is important. In this regard, it is necessary to critically consider the current Constitution and legal arrangements as well as institutional frameworks of the country.

Our Constitution provides the accused persons the right to a fair trial which includes the rights to seek a fair, speedy and public trial, to be informed with details of the charge and to challenge evidences presented against them. The right to a fair and public hearing within a reasonable time before an independent and impartial tribunal forms an integral part of states' obligation to provide effective remedies. The concept of a fair trial involves a multitude of rights which demand protection under the laws of a particular state. Violations of these rights may result in a trial being regarded as unfair.

The Constitution also guarantees an independent judiciary whereby the courts, as per Article 79(2), are "free from any interference of influences of any governmental body, governmental official or from any other source". Furthermore, sub-article 3 states that "judges shall exercise their functions in full independence and shall be directed solely by the law". Such and other important prescriptions for the exercise of justice are found in the different international and

regional human rights instruments which Ethiopia acceded to.

As opposed to the most important legal provisions, the judiciary and rule of law in Ethiopia has remained less satisfactory for many critics. In many cases, among others, the law which requires detainees to be brought to court and charged within 48 hours was not respected in practice. One example given by such persons is the fact that trails often are slowed by numerous postponements. They also cite the use of political influences in court decisions. But, according to researches done so far, the procedural guarantees set out in Ethiopian law are generally respected in common criminal cases. In political and security cases, however, these guarantees appear to be disregarded, according to official claims by opponent political parties, and reports of national and international human rights organizations. A 2008 report by US-DoS describes;

> Although the civil courts operated with independence, the criminal courts remained weak, overburdened, and subject to significant political intervention and influence. Constitutional interpretation remains solely with the upper house of parliament, exclusively comprised of ruling party members, which also handles judicial appointments and reviews judicial conduct. Judicial practice allows the court unilaterally to convict defendants on charges not raised by the prosecution at any point preceding the court's decision on guilt. This practice effectively impedes defendants from presenting an adequate defense as they may not be aware of the potential charges they face (U. S. State Department, 2008).

As instance of the above report by the US-DoS, many reports have ensured the defendants who were accused following the November riots, i.e., opposition politicians, journalists, and civil society activists, faced injustices in police custody and in the criminal proceedings. The fact that the trial concluded after nearly two years of proceedings has been mentioned as an indicative for delayed justice. Another incident most cited as evidence in assertion of injustices in the country is a report on the manner in which those persons allegedly affiliated with Ginbot Seven were treated. These persons, according to the 2010 US-DoS report, “were held for more than a month without charges while police gathered evidence, during which time family members were not informed of their whereabouts.”

Justice could also be denied through failure to carry out prompt and impartial inquiries into

serious allegations of human rights violations and to punish those implicated when they are well attested. The law provides citizens the right to appeal human rights violations in courts. Nevertheless, the abovementioned defendants complained that the courts' measure in this regard was inadequate; almost absent.

3.3 Prison Conditions

The researcher is informed from Federal Prison Administration that there are 200 (three federal and 117 regional) prisons and correctional camps in the country. But other reports show that there are several unofficial detention centers operating throughout the country; most are located at military camps, including in Dedessa, Tolay, Blate and Holeta. In December 2008 the EHRC reported there were 80,974 persons in prison. From the interview with the official of Ethiopian Human Rights Commission, the researcher has learnt that the number of prisoners has been high during election periods.

Reports released at various times by national and international human rights activists indicate that human rights condition in the prisons and correctional camps is by far less satisfactory. Even sometimes the conditions are "life threatening" according to the information received from the interview made with an officer of EHRC, and reports of other human rights groups. The Commission, since its commencement, has conducted its second overall investigation in the federal and regional prisons. In 2007-2008, the Commission had monitored over 35 federal and regional prisons and police stations with the objective of whether or not they met Standards Minimum Rules for the Treatment of Prisoners; and it reported, "[t]hough a number of the prisons were slowly growing out of the old perception that prisons were meant for correction but for further punishment, there is still a long way to go to the effect of the latter". The researcher was informed that the recent investigation, which the publication is ongoing, covered 119 prisons. The assessments have been based on international criteria.

The Standard Minimum Rules for the Treatment of Prisoners, states in Article 8 that "the

different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment". Another important international human rights instrument applicable for prisoners is the Convention on "Basic Principles of the Treatment of Prisoners" Article 1 of the Convention reads as "All prisoners shall be treated with the respect due to their inherent dignity and value of human beings".

The Commission, given the abovementioned principles, studied the human rights situation in the prisons which it has found the general conditions are improving. However, there are some prisons where prisoners are overcrowded, especially in sleeping quarters. The medical care has also shown advancement while the sanitary is still inadequate. Water shortages caused unhygienic conditions, and most prisons lacked appropriate sanitary facilities, according to the study team reporting to the Commission. Some problems, such as shortage of food and clean water have been reported by many prisons.

Recalling its 2008 report, the EHRC in its recent assessment found that still there are regional prisons where categories of prisoners or detainees are not made between juveniles and adults, men and women, pretrial detainees and convicted prisoners. Some other prisons have improved their status as a result of which they are giving better treatment for prisoners, according to the information. The Commission has also told the researcher that torture has taken place in some detention centers. But, the torture has not been systematic, said the officer.

3.4 Government's Response to Allegations on Human Rights Violations

> Three forms of denial appear in the discourse of official responses to allegations about human rights violations: *literal denial* (nothing happened); *interpretive denial* (what happened is really something else); and *implicatory denial* (what happened is justified) (Cohen, 1996:522).

The Ethiopian Government's reactions to accusations of human rights violations in recent years have been characterized by denial. The Government referred to such international organizations as a tool to foreign interests and dismissed their works (reports) biased, untrustworthy, prejudiced, and evidence of an undeclared political agenda. The Government often engages in a

controversy with such organizations and states making reports on human rights situations in the country. Recently Ethiopian government rejected reports by Human Rights Watch as well as US-DoS claiming that they included lies. The rejection, as claimed from the government part, was largely based on the errors of the reports themselves, especially by citing mistakes or distortions in the previous and current reports of these bodies.

The Ethiopian Government routinely reacts to allegations of human rights violations by referring to the threats from those who do not like to see Ethiopia's good; accusations of human rights abuses are invalid because they stem from various anti-Ethiopian development bodies to undermine the Ethiopian government. Allegations of human rights abuses are portrayed in this light and international and local human rights organizations and the political opposition are accused of cooperating in this defamation campaign. The Government also claims credit for having ended the systematic violations under its predecessor, the Derg. The Government has committed itself to bring to justice those persons responsible for serious crimes against humanity which occurred under its predecessor (Yacob, 1999).

Meanwhile, there have been situations in which the government has promptly responded to allegations of human rights abuses. For example, Amnesty International wrote in March 2008 that it had received some reports of torture, arbitrary killing and illegal detention. However, the organization also wrote that it has been informed too that public trial and imprisonment of those perpetrators responsible for such abuses. In addition to prosecuting those guilty of violations, the government took other steps to guarantee legal rights. For example, according to information received from EHRC, there are instances where the government has fired some of the police from their work who allegedly committed human rights abuses during their carriers. The government has also given trainings on human rights to police and security officers in different times.

As part of governmental institutions responsible for human rights protection, the Ethiopian Human Rights Commission has, for example, received 1307 cases in the last six months. These cases present human rights violations ranging from simple to serious ones. The victims include children, men and women. The perpetrators have been reported to be government and non-governmental bodies; such as police employers, and other fellow citizens. Among others, religious and ethnic based conflicts have inflicted most of the human rights violations reported so

far.

The Commission has investigated many of the cases presented to it and responded, except 405 cases whose investigation is going on. The official from the Commission has told the researcher that many of those of allegedly committed the abuses have taken immediate correctional methods, and that government's response in this regard is promising. In any case, many more efforts are required to enhance human rights protection in the country.

CHAPTER FOUR

ENFORCEMENT OF INTERNATIONAL AND REGIONAL HUMAN RIGHTS INSTRUMENTS IN ETHIOPIA: AN APPRAISAL

Previously, it has been discussed that the real work of implementing and enforcing human rights

takes place at the national level and that internationally recognized human rights instruments get their way to enforcement through national (domestic) implementation mechanisms, which could be summed up as legal and institutional frameworks. However, a mere inclusion of rights into legal documents and establishment of institutions cannot justify the fulfillment of those rights. Henry Shue rightly argues that "a right has been guaranteed only when arrangements have been made for people with the right to enjoy it" (Shue, 1980:16). The need for such arrangements implies that activities for human rights protection should go beyond documenting the rights to real enforcement measures.

And it should also be noted that enforcement of any constitutional or other legislative provisions requires an understanding of it by the concerned body. The legislative, for example, must ensure compliance to human rights standards when enacting laws. But legislative protection is not the end of the processes, rather, it has to be reinforced by judicial application of human right laws in case of their violation by means of punishing violators and remedying victims of that violation. Finally the process will be completed if the courts decisions are enforced by the executive organ of the state. In other words, practical human rights protection can be measured through the assessment of the outcomes of government policy and activities by all the three branches of government that are necessary to ensure the effective protection of human rights as compliance to the country's duty to enforce its treaty obligations concerning human rights.

In this case, it is essential that there exist laws outlining the power, functions or duties of the branches of the Government. These laws should include safeguards so that the state does not abuse its powers or exceed its authority to an extent that negatively affects the enjoyment of human rights. Therefore, each system of government should be based on a separation of powers, the independence of those powers, and specifically, the prevailing power of the judiciary.

> The principle of separation of powers enables the law to serve as a bulwark between governors and the governed, excluding the exercise of arbitrary power. Preserving

> certain fundamental liberties from serious infringements or abrogation is possible when there are constitutional limitations on the scope of the legislative power (Allan, 2001:121).

Moreover, this kind of appraisal takes into account the enjoyment of those rights by individuals and groups as are enshrined in the national Constitution and other basic legal documents vis-à-vis the international ones.

This chapter, therefore, examines how much Ethiopia is enforcing international and regional human rights laws, norms and principles at the domestic level paying attention to the availability and proper use of legal, institutional and procedural mechanisms in order to protect the rights and freedoms of its citizens and to prevent their violations within its jurisdiction. At this juncture, it is worth recalling that there exist allegations on violations of human rights and fundamental freedoms in the country, as have been discussed in the third chapter, by national and foreign human rights organizations. The violations, as already known, could be committed either by government bodies or private actors. Whoever the perpetrator is, however, the violations are in contravention of the Constitution and the major human rights conventions that Ethiopia is a party to. They are, in one way or the other, against the legal, institutional and procedural arrangements already set up by the country's national law or as part of its international obligation.

4.1 Legislative Enforcement of Human Rights in Ethiopia

In the second chapter, it has been discussed that treaty law creates legally binding obligations for states parties to adopt national legislation as well as to adopt or modify relevant policies and practices to ensure their full conformity with the treaty principles. Fulfilling the commitments under international treaties which they ratify must be among the foremost priority of countries. As international human rights laws, states are required to adopt legislative measures to give effect to human rights enshrined in those covenants which states are parties to. States are also required to provide effective remedies to those who claim their rights are violated. It is believed that remedies for violations of human rights and freedoms primarily requires the ratification and incorporation of international treaties and conventions, containing the provisions and mechanisms to enforce the rights, by states. As Allan argues, "the case for incorporation [of international and regional human rights instruments] rests on the need to provide effective

remedies within the domestic legal system for the individual whose rights and fundamental freedoms are infringed" (Allan, 28).

As a collar of its membership in the international community, Ethiopia has acceded to several international and regional human rights conventions. The Ethiopian government has accepted and shown its will for their effect of international declarations and conventions on human rights and has committed itself to guaranteeing the rights of citizens in conformity with international standards. Therefore, Ethiopia is duty bound to respect and promote human rights and fundamental freedoms of its citizens and subject itself to legitimate measures of international scrutiny in relation to its performance on such activities. This process, first and foremost, involves the constitutional recognition of human rights.

The Constitution of Ethiopia guarantees all basic civil, political, economic, social and cultural rights and enshrined provisions afforded to their protection. Article 10 (1) states that "human rights and freedoms, emanating from the nature of mankind, are inviolable and inalienable" and sub-article 2 guarantees that "human and democratic rights of citizens and peoples shall be respected." Moreover, Article 13 (1) mentions that "all Federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of this Chapter [i.e., Chapter Three]" while sub-article 2 provides that;

> The fundamental rights and freedoms specified in this Chapter [Chapter three] shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia.

In addition, it is important to recognize that the substantive provisions of the Constitution stand in close conformity to that of the UDHR and other major international human rights instruments. However, of more importance and in fact far more difficult to achieve is ensuring respect for these fundamental rights. Many writers argue that in Ethiopia the difficulties encountered in honoring its international obligations under treaties which it ratifies may be attributable to inactivity or reluctance in incorporating these treaties into domestic laws by enacting specific parliamentary legislation. In a number of cases, they allege, Ethiopia has failed to pass the necessary domestic legislation required to formalize its international obligations into applicable

law. If they are not, they remain unincorporated (though ratified) and are unenforceable on the domestic plane. Gebreamlak argues in this manner saying that "[t]he ratification of international human rights treaties is nothing more than its expression or intent to abide by it. The incorporation is the decisive step toward their implementation" (2008, 38).

An adequate data shows that state's international obligations under an unincorporated international treaty cannot be enforced on the domestic plane. For this reason, legislators have to carefully draft specific laws or proclamations so that a particular state could avoid legal drawbacks. This does work for Ethiopia, too. Hence, the legislative organ is expected to come up with laws or proclamations that stipulate the mechanisms, processes and guidelines on how to make them concrete and implementable. Otherwise, "if fundamental rights in Ethiopia's Constitution have not yet been specified in laws and regulations, then it will be difficult to cure such violations of human rights with judicial remedies" (Heyns, 2004: 205). Thus, parallel to the ratification of the conventions and inclusion of the provisions in the Constitution, the Government has to be concerned with the implementation of the provisions of these conventions. It is not enough of course to enact the legislation. It must then be applied and interpreted.

Besides, states often pass statutes to provide further protections for rights that are of particular concern. These statutes may define the scope of the protected rights and provide guidance to public officials on protecting and enforcing the rights. We find some such important statutes in Ethiopia, as on the Rights of the Child. States also make reference to the national Bill of Rights when enacting other laws. The logical outcome of such references is very useful to determine the status of domestic legislations in relation to the Constitution. Furthermore, it is important to adapt legislative scrutiny when enacting laws to avoid possible contradiction between the Bill of Rights and other domestic legislations. For Allan; "[p]arliamentary scrutiny of proposed legislation is, of course, a feature of all domestic systems of government, thus providing an opportunity for considering questions of compliance with both domestic and international human rights instruments" (Allan, 63).

As Takele (2009) rightly argues, the Ethiopian legislature has not deliberately enacted laws so far which contravene the country's national laws previously laid down, including the Bill of Rights under chapter three of the Constitution, which he takes as significant to protect human rights by

avoiding legal inconsistencies.

2 Executive Enforcement of Human Rights in Ethiopia

As explained above, the obligations of states under international law begins with adopting national legislation to the provisions of the treaties concerned. For most of the rights enlisted in human rights conventions and modern constitutions, an analogous set of ideas exists about the obligations of the authorities in the local traditions. The executive, charged with the formulation and application of public policy, must act always within limits stipulated by the national legislature. While policy decisions or government regulations must be consistent with the general purpose of the legislation that authorizes them, such legislation, even when enacted by established democratic procedures must conform to certain standards of justice, treated as essential features of the common good. Human rights can be the common good and play an active role as a guiding principle and moral foundation in the democratization processes, good governance being one of the factors involved. However, the existing portfolio of human rights enforcement by the executive is not satisfactory in Ethiopia.

Law enforcement officials (which are among the executives) form one group of state players who are expected to observe the treaty requirements in their daily work. States entrust the operational responsibilities of ensuring law and order and peace and security, which are matters of states responsibility in the area, to law enforcement organizations such as the police and military force. Law enforcement officials are required to promote, protect and respect the human rights of all people-which the obligation has clear implications that they must acquire adequate knowledge of both national law and international laws. Human rights law has direct relevance for law enforcement practices.

Law enforcement organizations often tend to give priority to the prevention and detection of crime. “Among those most commonly known and used powers vested on law enforcement officials are the powers of arrest and detention and the authority to use force where such is necessary for the achievement of legitimate law enforcement objectives” (Rover, 1998:146).

Other powers related to the prevention and detection of crime include powers of entry, search and seizure. These powers are largely vested upon the police.

The police, as a primary agency responsible for protecting civil liberties, are responsible for turning the promise of human rights into reality. Failure to protect human rights of a community is partly a failure of the police. Unlike other branches of government, the police are given wide powers including the authority to use force against citizens when appropriate. The very purpose of the police is to provide a safe, orderly environment in which these freedoms can be exercised. They are also the gatekeepers of the criminal justice system.

The Criminal Code of Ethiopia provides for provisions for procedures to be followed by all criminal justice agencies in criminal investigations and criminal legal proceedings. These include police powers and procedures during investigations of a crime. Ethiopia has ratified a key treaty, i.e. the Convention against Torture that has direct relation to police service. The mission of Ethiopia's police force is to enforce law and order, preserve peace and security, prevent and detect crime. The force includes a number of units that have specific expertise and work in particular areas, such as criminal investigation unit, anti-terrorism unit, field force unit, traffic unit, and so on.

Unfortunately, as allegations have indicated sometimes the work of police is marred by illegal arrest and detention, torture and excessive use of force, corruption, partiality, extra-judicial executions and abuses of due process of law. Impunity is serious problem with regard to police abuse of human rights. Many reports on human rights situations in Ethiopia, as have been shown in chapter three, explicate that there have been regular police abuses of due process of law. Examples include intimidating witnesses, refusal of bail and tampering of evidences. Some detainees and suspects held in prison complained of physical assault and lack of access to their families or a lawyer. Detainees also claim they are held on fabricated charges "dumped" on them by police in order to close files that have remained open for some time. Citizens often claim that police have been slow to investigate crimes. On the other hand, these security forces have been used to subdue political dissent and protest, and to impose the will of the political leadership.

In a healthy democracy, however, a police service exists to protect and support the rights of its community, not to repress or restrain freedom and ensure power for the governing regime. Good governance requires that the police account for the way they use force in carrying out their activities. This ensures the methods they use to protect peace and order, and incidents of police misconduct or abuse of powers will be dealt seriously. In other words, the police force enhances the security of people and if they are trained to respect human rights, that will also contribute to the rule of law.

In a workshop paper discussing major problems in the criminal justice, Hashim mentioned that "absence of the required level of understanding of human rights" by the police is a very serious problem in the country. He mentions that, for the true promotion and protection of rights and freedoms, it is essential that law enforcement officials to acquire and maintain appropriate skills, techniques and tactics. They must also be aware of their own (individual) capacity to protect-or to violate-human rights and freedoms. Moreover, the officials should understand the exact implications and limitations of the relationship between international law and law enforcement particularly where human rights and humanitarian laws are concerned.

3 Judicial Enforcement of Human Rights in Ethiopia

The national compliance to international human rights laws could also be considered in terms of judicial enforcement. Article 2(3) of the ICCPR expressly requires states to ensure that any person whose rights are violated shall have an effective remedy, and that those who claim a remedy have the right thereto determined by competent judicial or other authorities. The judicial branch undertakes the substantial responsibility of enforcing the safeguards of the rule of law, thereby protecting human rights. If the judiciary does not undertake its duties to support human rights activities, the human rights may become an easy target for unfair restrictions made by the government. Further, the effectiveness of judiciary is an important indicator of the advancement of a state's endeavor in the realm of human rights protection. As a result of the influence of the judiciary, individuals may enjoy rights and freedoms, and the other branches of Government may function efficiently (Rover, 1998).

The judiciary owes to the citizens to ensure respect for rights guaranteed to them under the

Constitution. The rights of individuals would be without value if no legal system were able to play an active role in their protection. The judicial process provides for the effective implementation of the law, the protection of the rights of individuals and groups, and sets a standard for the subsequent equitable enforcement of the law. Otherwise, "constitutional rights and freedoms, limiting the exercise of legislative and executive power, are unlikely to be of much practical value unless they can be judicially enforced" (Allan, 2001:161).

In discharging this mandate, whenever competent to do so, the judiciary should pay regard to the relevant domestic law and international covenants, and within permissible limits give interpretations of legislation when granting relief for violations of human rights. The executive and the legislative branches of a state exercise their mandate and discharge their responsibilities to the citizens of the state by ratifying treaties and enacting legislation to protect fundamental human rights and freedoms, but the judiciary breathes life into them through interpretation under the original jurisdiction of the courts. Therefore, legal enforcement of human rights through courts becomes one of the key implementation measures.

Though an international obligation of a state to observe human rights norms binds all branches of government, courts are more responsible than others. Human rights receive effective protection in the courts. As Takele argues,

> [u]nderlying the requirement of internalizing the substantive corpus of international human rights law is the aspiration that individuals and groups who are victims of violations of (treaty-based) human rights avail themselves of local remedies before local tribunals through local procedures just in same manner that they enforce the rights guaranteed under local laws (Takele, 2010:146).

Courts are the primary bodies to which victims of human rights violations look to obtain formal redress (Conforti and Francioni, 1997). Courts can enforce the provisions of human rights through exercising judicial power. Enforcement and redress are entrusted to the courts acting within their jurisdiction, and with a mandate to make such orders and give such directions as may be deemed appropriate if satisfied that no other form of redress is available under any other form. However, national courts are not always in a position to exercise their function as an effective remedy. This section will therefore deal with the role and importance of courts in effective

remedy to victims of human rights violations, and examine how judicial enforcement of human rights can be strengthened within the constitutional framework of Ethiopia.

4.3.1 Implementation of Rights at Court Level: Problems of Jurisdiction and Competence

As far as national courts are concerned, effective protection of human rights depends on the availability at all times of access to competent, independent and impartial courts of law which administer justice fairly in keeping constantly with constitutional provisions as well as complying with the international human rights treaties which the country acceded to. There must be courts or tribunals that are independent of the executive and able to provide a remedy when a person's treatment contravenes those limits (Allan, 2001). As Assefa states "[t]he judiciary ensures that the political branches operate within the limits provided by law and when violation occurs, the courts provide remedies to the victim" (Assefa, 2010:9).

The fundamental function of courts is resolution of disputes. Disputes can arise between individuals or between individuals and the government. The judiciary is also entrusted to ensure the rule of law. The principles of equality and due process of law lie at the heart of the rule of law, when interpreted as an ideal of constitutionality based on each citizen's equal dignity. The separation and independence of the judiciary from both the executive and the legislative power is designed to ensure that these conditions are duly enforced for the protection of the rights of the citizen. As Allan claims, "the rigorous standards of procedural fairness applicable to judicial proceedings are plainly an integral feature of the rule of law: their observance by courts enables the rights of individuals to be correctly ascertained and applied" (Allan, 2001:133).

An important aspect of the judiciary's role as an effective remedy lies in its independence. Independent judicial systems play a key role in providing remedies for human rights violations. The independence of the judiciary of any state striving to protect human rights, is the only guarantee of fairness in the state, and is the main building block of justice. This independence strengthens the effectiveness of the courts and enhances the judiciary's role in the realization of

justice and in the restoration of human rights. Without this independence, the confidence of citizens in justice will vanish; and citizens' freedoms will have no meaning if the judiciary does not judge with equity. Courts must be clearly independent, acting as servants of the constitutional order as a whole rather than as instruments of the executive and the legislative.

The Ethiopian judiciary has been entrusted with the responsibility of ensuring that human rights provisions of the Constitution are fully enforced in order to protect the rights of citizens. Ethiopian Government has undertaken to promote the development of these systems. Article 78 of the Constitution grants the judiciary the authority to implement that provision, stating: Judges are independent, and in the exercise of their judicial functions they are subject to no authority other than that of the law. It is imperative, therefore, that the independence of the courts of law in Ethiopia be upheld, maintained, and safeguarded. There are also important articles of the Constitution guaranteeing procedural justice.

However, as already shown in the third chapter, the issue of lack of independence and less effective protection of procedural rights in courts have been a regular topic in reports of human rights defenders where they have expressed concern about pressure on judges, breaches of transparency, obstacles to accessing justice, corruption, the lack of adequate funding of courts, and limitations on access to legal services. In this respect, Memberetsehay (2004) recognizes the importance of: prohibiting the improper influencing of judges; protecting the judiciary's freedom of expression and association; guaranteeing the proper qualification, training and selection of judges; providing judges with security of tenure and appropriate conditions of service; respecting conditions of immunity; and ensuring that the disciplining, suspension and removal of judges is determined according to law.

Judicial review, including when there is a case of constitutional law violations, is part of ensuring the rule of law, an important part of human rights protection by courts. Legislation must be interpreted consistently with fundamental rights and established principles of justice, some of which will ultimately limit the scope of the legislative power. Though constitutional litigation is not regarded as the most common way to protect human rights, but it might often be the last remedy. According to Allan, "the importance of any bill of rights lies not simply in the articulation of fundamental rights and freedoms, but the use of that statement as a benchmark to

determine the legality or 'constitutionality' of other laws" (Allan, 28).

Litigation in domestic courts concomitant with the Constitution as well as international standards and principles is one way of assessing the country's performance in protecting human rights. Apparently, the constitutional recognition of international human rights law becomes relevant in the case that if the legislature attempts to adopt legislation which is inconsistent with the conventions already incorporated into the domestic law of Ethiopia by virtue of Article 13(2). Since the rights covered in the international instruments which Ethiopia is a signatory are also, to a large extent, included in Chapter III of the Constitution; and pursuant to Article 10 of the FDRE Constitution, which states that fundamental rights and freedoms shall be protected, a law adopted which is in conflict with one of the ratified conventions is likely to be inconsistent with the Constitution as well. Hence, if the legislature adopts legislation which contravenes the provisions mentioned in Chapter III, that legislation has to be null and void. An individual facing a criminal charge may plead in his defense that the statute under which he is being charged is in contradiction to the human rights instruments it has ratified, or that actions taken by public authorities in seeking to prove a criminal charge were in contravention of the bill of rights. In this case, the said conventions will become relevant as a legal source to determine whether the law adopted is complying with the Constitution.

This task, however, requires judicial interpretation of human rights provisions which is important for their protection. According to Miers and Alan, "judicial interpretation comprises the occasions on which statutory provisions are applied to particular sets of circumstances" (1982: 178). Undoubtedly, enforcement requires interpretation in one way or another and a judge cannot make decisions without the power to interpret laws. This is especially observed when they adjudicate cases by making a reference to human rights provisions. The need to interpretation appears more essential when courts are to decide on cases involving constitutional issues. "It is ultimately for the courts to determine the validity of statutes in accordance with the principle of equality and with due regard for the other essential constituents of the rule of law" (Allan, 2001:3).

Obviously, in the normal course of their business, courts entertain many cases of such types which need constitutional interpretation. But, as Scholler (2003:32) argues, "the very nature of a

Constitution is regarded as a supreme law restricts the position of constitutional provisions being merely directory in nature". This implies that, apart from the ordinary principles of interpretation of laws, such as the special law prevails over the more general law and the recent law prevails over the previous law, "the specific relation between the higher ranking constitutional law (supreme law) and the ordinary law needs specific rules of interpretation" (Scholler, 9). However, Meirs and Alan argue that "by virtue of its almost complete control of the initiation, preparation and enactment of legislation, the government has a wide range of options which would arguably make the tasks of interpretation easier to perform" (Miers and Alan, 1982:180).

When discussing the role of the judiciary in enforcing fundamental rights under Ethiopian constitution, courts are required to preserve and protect the Constitution and constitutional guarantees. The FDRE Constitution has important provisions which, inter alia, exhort courts to pay due regard to international law, conventions, covenants and charters bearing on human rights when interpreting the fundamental rights provisions. But, the major shortcoming lies in the non-enforceability of constitutional provisions in courts. According to many writers, references by courts to international human rights standards and the Bill of Rights are minimal in Ethiopia due to the provisions set in the Federal Negarit Gazette. Unless and otherwise international codes are incorporated by statute, they are not part of domestic laws pursuant to Ethiopian Constitution. This negatively imposes on the direct implementation of international human rights instruments in the country. "To implement international human rights standards in Ethiopia, judges must refer to specific laws and regulations rather than rely on the Constitution" (Pausewang, 1996:200). Put simply, the rights provisions in the Constitution cannot be applied directly by Ethiopian courts.

In Ethiopia, ordinary courts are not entitled to give constitutional interpretation. Where a dispute arises which needs constitutional interpretation, the court or a party to a dispute has to bring it to the attention of the Council of Constitutional Inquiry. The Council either remands the case to the competent court where it has found no ground for constitutional interpretation or submits its findings to the House of Federation for final deliberation pursuant to Articles 82-85 of the Constitution. It is the House of Federation which has the power to interpret the Constitution and decide upon a constitutional dispute submitted to it by the Council of Constitutional Inquiry (per

Articles 62, 82 and 83 of the FDRE Constitution). This, however, should not be misunderstood as to mean that courts do not have any power of interpretation. The interpretation and implementation of the Constitution is a daily occurrence that goes on throughout the system. The House of Federation is, however, the ultimate authoritative interpreter of the Constitution. Such kind of constitutional remedy is only available in the case of direct application of the Bill of Rights and not in the case of indirect application. Whenever the Bill of Rights merely applies indirectly to a dispute, ordinary courts and not the House of Federation is primarily responsible for the application and interpretation of the Bill of Rights.

Another important issue is that the Bill of Rights in the Ethiopian Constitution is further subjected to a special interpretative regime, which should comply with principles of the international law adopted by Ethiopia (Art.13 (2)). However, "international law is narrowly construed to cover only the UDHR and those conventions ratified by Ethiopia" (Pausewang, 1996:200) making people around the judiciary lack confidence when the need arise for adjudicating cases citing international human rights standards. The matter gets tough when one refers Article 9(1) which affirms the supremacy of the Constitution. This has led some to a controversy over the hierarchy of the Constitution in relation to the international human rights standards which Ethiopia is a party to. With regards to this, Rakeb argues that; "as no additional detail is provided for, it can be argued that where there is an inconsistency between the provisions of the Constitution and international human rights standards, the former prevails" (Rakeb, 2002:22).

Given the drawbacks mentioned above, Ethiopian courts have less been willing to have regard to international human rights law though it has been enacted by parliament to make it part of Ethiopian law and bringing the Constitution into litigation in their adjudication of cases. "Though the basics of the criminal process are laid down in the Constitution, the courts resort to the constitution much less frequently" (Simeneh, 2010:16). He also mentions that "matters of constitutional interpretation are part of the problem for the administration of criminal justice system" (Simeneh, 18). In his analysis of the judiciary and enforcement of human rights provisions of the Constitution, Assefa has mentioned that "judges at federal and regional level think that they have little or no role in interpreting the provisions of human rights enshrined in

the Constitution" (Assefa, 2010: 25). He witnessed that more than 50 percent of Supreme Court and 46 percent of High Court at federal level have similar opinion. The associated problems include lack of awareness, translation problem and publication. Unfortunately, the international agreements which Ethiopia ratifies may not be published, negatively affecting the enforcement of human rights by courts of Ethiopia.

Another important aspect in providing effective remedies through national courts lies in the judiciary's professionalism and technical capacity to recognize and deal with violations of human rights and fundamental freedoms. Members of the legal profession must be prepared to be the guardians and watchdogs of violations and breaches of the rights of the citizenry of a state. Fundamentally, the profession must not allow such violations to go unrepressed. As Rover (1998) suggests, this has also to do with how judges can better deal with allegations of violations of human rights by examining how their standards of professionalism and knowledge of human rights can be improved. This involves developing human rights jurisprudence, training staff in international standards and in recognizing human rights violations during court sessions.

When we assess such facts as the judiciary's professionalism and technical capacity in relation to the enforcement of human rights in Ethiopia, Hashim (2004) identified such problems as excessive number of cases, prolonged appointments, absence of speedy judicial process, absence of modern operation systems, overlap of judicial and administrative duties, lack of ethical standards of judges and supportive workers constitute the major causes for the less degree of achievements in the enforcement of human rights by the judiciary.

4.4 The Role of National Human Rights Institutions and Civil Society Actors in Enforcing Human Rights in Ethiopia

The formal legal status of human rights legislation and courts' application of its provisions are, however, not the only mechanism for its enforcement. Where violations of human rights and fundamental freedoms are alleged to have occurred, the effective remedies available include the right of individuals to seek and receive assistance from others in defending their human rights and fundamental freedoms. Therefore, in addition to the abovementioned enforcement agents, the important components in ensuring the effectiveness of human rights protection are establishing

national human rights institutions (NHRIs), in line with international standards, and promoting the involvement of other civil organizations in the process. Sometimes, these actors are in a better position than courts of law to take into account the positive obligations of the state with regards to human rights.

Independent NHRIs and civil society actors play a vital role in identifying protection gaps in national human rights systems. In some countries, such institutions also have the jurisdiction to make recommendations that are related both to issues of law and policy. They can also identify areas where remedies do not exist and advocate legislative changes to promote and protect human rights and to provide effective remedies. They have an advocacy role in promoting and protecting human rights through seeking to resolve violations. As part of their role in receiving, investigating and seeking to resolve complaints of human rights violations, NHRIs can form partnerships with Non-Governmental Organizations (NGOs) and play an important role in assisting victims, informing them of their rights and advocating on their behalf. Though the primary responsibility for offering redress for violations lies with the state, NHRIs and NGOs can also offer victims assistance in making their rights a reality, and running programs for their rehabilitation (e.g. for torture victims).

Domestic human rights organizations ought to be recognized for their powerful contribution toward the advancement of human rights and the promotion of democracy. These actors, most importantly, can accompany or represent individuals or the public in instituting legal actions for violations of human rights when the latter are unable to do so by themselves. They also have lobbying effect in compelling governments to setup strategies for human rights protection. Their involvement in human rights issues may take many forms, e.g. monitoring places of detention, monitoring trials, and working to prevent torture and providing assistance to complainants. Consequently, human rights organizations are an important source for the advancement of the communities. This is due to the influential role that domestic institutions play in the country. This is possible, however, only when states let the NHRIs, NGOs and similar organizations and associations operate freely in the domestic setting. But only truly independent NHRIs and NGOs will be able to identify areas where national human rights systems provide ineffective protection.

Ethiopia has expressly provided in its Constitution for the establishment of a Human Rights Commission, one of the primary functions being "to advocate and promote respect for, and an understanding of, human rights," and another being to "educate the public regarding the nature and content of such rights". Ethiopia has even expanded the human rights regime by providing for the establishment of the Institution of the Ombudsman. The respect and protection of human rights require such institutions to ensure their effectiveness. Implementing impartial, independent and objective monitoring mechanisms help to determine the position of the stipulated organizations and the general situation prevailing around the protection of human rights. They also need to develop effective strategies and techniques for dealing with state structures in order to advance human rights and strengthen the national system for protecting human rights.

However, the efficacy of human rights institutions in Ethiopia has been questioned in the light of manifest human rights violations and disregard for basic human dignity in one or more forms. One recently positive development to be mentioned is that the Ethiopian Human Rights Commission has established centers of legal aid in different parts of the country to ensure that violations of rights are not overlooked and uncompensated based solely on a person's financial inability to seek justice in the courts. This would aid in making human rights as a larger interest of the community and not just an interest unique to the Government.

Therefore, it is not enough to simply speak about human rights and profess theories, but there must also be cooperation between government and civil society actors to safeguard, maintain, and ensure human rights throughout the country. The effectiveness of NHRIs and NGOs in fulfilling roles just mentioned is, inter alia, contingent upon their recognition by the government. However, we must not shut our eyes to the fact that Ethiopia is still below the required level of cooperation with the civil community organizations which safeguard human rights. For human rights in this country to be translated into a practical reality, there must be an increase in cooperation with organizations that support those rights. Generally, the protection mechanism can be successful when domestic institutions, both governmental and

non-governmental, are assisted to accomplish their mission effectively. Enforcement measures have to be taken to ensure the observance of human rights standards by all institutions and individuals.

CONCLUSION AND RECOMMENDATIONS

Conclusion

The subject "human rights" has been given a considerable significance both in national and international politics. Nowadays, people everywhere are increasingly demanding respect for their rights and freedoms. Also, it is a well established fact that respect for human rights is the basis for democracy, peace and sustainable development. On the other hand, the violations of, or indifference to, human rights results in hatred, conflict, insecurity and poverty.

Human rights can be violated by a government's action or inaction. According to one scholar,

when the government is seen as the guardian of human rights, citizens turn to it for protection; but when perceived as a violator, people fight it with any weapon accessible. But, human rights can also be violated by non-state (private) actors. This fact calls for concretization of human rights by way of creating responsible government and citizens so as to prevent and/or redress violations of the fundamental rights and freedoms in a particular country. States are the primary duty-bearers with regard to the protection of human rights. The duties involve the formulation of laws towards respect for and protection of human rights while discouraging unjustifiable disregard for their infringements. However, in claiming and exercising these human rights, everyone, at individual level, also accepts the responsibility not to violate the rights of others.

The 1994 Constitution of Ethiopia incorporates and codifies many human rights considered as fundamental to Ethiopian society. The Constitution guarantees all basic civil political, economic, social and cultural rights and makes ample provision for the respect for and promotion of these rights in the country. The substantive provisions of the Constitution stand in close conformity to that of the UDHR and other major international human rights instruments. The Ethiopian government has also accepted and shown its will for their effect of international declarations and conventions on human rights and has committed itself to guaranteeing the rights of citizens in conformity with international standards.

Despite the existence of significant legal and institutional arrangements, enforcement of human rights in Ethiopia falls far below the required standard when measured against the international and regional obligations it has entered. The study established that while the country has signed several international instruments, the enforcement and implementation of the provisions fall short of the claimed standards. Pursuant to international human rights standards, Ethiopian Government has an obligation to grant maximum possible protection of those rights at least included in its Constitution. As data have shown in the third chapter, various forms of violations of human rights occur in the country. Reports of human rights violations continue to be presented by Ethiopian and foreign human rights organizations. Most of them are dismissed by the Government as fabrications or “rumors”. The Government appears very sensitive to criticism and concerned about its international reputation.

Important instances have proved that human rights record in Ethiopia has improved from what

was under the former regimes. However, the country is still grappling with various and sometimes serious violations of human rights. These include extra-judicial killings, cruel, inhuman and degrading treatments, arbitrary arrests, and long pre-trial detentions and the evasion of the privacy of individuals. The study found that the police and security forces have inflicted substantial damage to human rights in the country. Consequent upon the analysis of the scope of rights guaranteed by the 1994 Constitution of Ethiopia, the study stressed that it is not possible to have an exhaustive list of rights to have an extended appraisal.

By considering allegations on human rights violations, the research examined the challenges associated with the enforcement of human rights in the country. It has discussed a number of institutional and legal challenges including those arising from the nature of the Constitution, as drawbacks to enforce human rights in courts. The paper also focused on the remedies available to victims of violations. One little progress has been recorded is in the establishment of legal aid centers by the Ethiopian Human Rights Commission.

The study considered the procedural challenges that inhibit the due enforcement of fundamental rights. These challenges significantly flow from the courts' incompetence to interpret the Constitution. This challenge will partly be resolved if there is a change of attitude on the part of the judiciary/judges.

One significant way in which the enforcement of human rights in the country would be effective is through creating strong human rights culture. A strong human rights culture is the necessary underpinning of an effective protection of human rights. Such a culture cannot take hold unless particularly the political culture is supportive of human rights. This reflects the fact that human rights practices are embedded in social structure, as in the politics.

Recommendations

In view of the major findings, the study recommends the following;

i. The Government must seriously investigate allegations of human rights violations in the country,
ii. The prison and detention centers have to be improved so as to avoid human rights violations,

iii. The police and the justice system require funding. There personnel should benefit from various capacity-building programs,

iv. Security forces such as the police and military must be exposed to trainings on human rights. There should be adequate mechanisms by which these forces are accountable in their works,

v. Furthermore, those who violate the rights of persons must be controlled and sanctioned adequately,

vi. In respect of the judicial system, the quality of justice delivered must include timelines, and

vii. Since education is central in the realization of human rights, the Government must pay much attention to it.

REFERENCES

BOOKS

Alfredson, Gudmundur etal (Eds.) *International Human Rights Monitoring Mechanisms*. The Hague: Martinus Nijhoff, 2001.

Allan, T.R.S (2001) *Constitutional Justice: A Liberal Theory of the Rule of Law*. Oxford: Oxford University Press.

Ankumah, Evelyn A. (Ed.) *The African Commission on Human Rights: Practice and Procedures*. The Hague: Martinus Nijhoff Publishers, 1996.

Charvet, John and Elisa Kaczynsko-nay (2008) *The Liberal Project and Human Rights: The Theory and Practice of a New World Order*. Cambridge: Cambridge University Press.

Clapham, Christopher (1993) *"Constitutions and Governance in Ethiopian Political History"*. Genesis of the Ethiopian Constitution of 1994, a Symposium Organized by InterAfrica Group.

Conforti B and Francioni F (Eds.) *Enforcing International Human Rights in Domestic Courts*. The Hague: Martinus Nijhoff, 1997.

Donelly, Jack and Rhoda E. Howard (Eds.) *International Handbook of Human Rights*. New York: Greenwood Press, 1987.

Duner, Bertil (2002) *The Global Human Rights*. Lund: Studentliterntur.

Eide, Asbjorn et al (Eds.) *Economic, Social and Cultural Rights: A Textbook* (2nd edn.). London: Martinus Nijhoff Publishers, 2001.

Ethiopian Human Rights Council (1995) *Democracy, Rule of Law and Human Rights in Ethiopia: Rhetoric and Practice*, Addis Ababa.

Gomez, Felip Isa and Koende Feyter (eds.) *International Protection of Human Rights: Achievements and Challenges*. University of Deusto: Bilbao, 2006.

Heyns, Christof (Ed.) *Human Rights Law in Africa*. Vol.2. Leiden/Boston: Martinus Nijhoff Publishers, 2004, pp. 1075-1101.

Hill, Dilys M. (ed.) *Human Rights and Foreign Policy: Principles and Practice*. Southampton:

MacMillan Press, 1989.

Ishay, Richard R. (2008) *The History of Human Rights: From Ancient Times to the Globalization Era.* Berkley: University of California Press.

Lillich, R.B. and Newman F.C (1979) *International Human Rights: Problems of Law and Policy*. Boston: Little Brown.

Mahoney, John (1993) *The Challenge of Human Rights: Origin, Development and Significance*. London: Blackwell Pub.

Memberetsehay Tadesse (1999E.C.) *Features of Ethiopian Laws and Justice* [Title in Amharic], Addis Ababa.

Miers, David R. and Allan C. Page (Eds.). *Legislation*. London: Sweet & Maowell, 1982.

Moskowitz, Moses (1974) *International Concern with Human Rights*. DOBBS, Ferry: Oceana Publications, INC.

Murray, Rachel (200) *The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2000*. London: Cambridge University Press.

Mutua, Makau (2002) *Human Rights: A Political and Cultural Critique*. University of Pennsylvania Press.

Newman, Frank (1990) *International Human Rights*. Cincinnati: Anderson Publishing.

Oppenhiem, L. (1986) *International Law: Treaties* (8th edn.) London: Longmans, Green and Co. Ltd.

Paul, James C.N. and Christopher Clapham (1967) *Ethiopian Constitutional Development: A Sourcebook*, Vol. 1. Oxford University Press.

Pausewang, Siegfied (1996) *"Human Rights in Ethiopia"* in Human Rights in Developing Countries: Yearbook 1996 by Peter Baehr etal (Eds.). Oslo: Nordic Publications, pp.195-247.

Penngard, A.M. Bolin (2001) *"Human Rights: the Regime of the UN"* in Gudmundur Alfredson etal (Eds.) International Human Rights Monitoring Mechanisms. The Hague: Martinus Nijhoff, 2001.

Pierre, Claude Richard and Burns Weston (eds.) *Human Rights in the World Community: Issues and Action* (2nd edn.). Philadelphia: University of Pennsylvania Press, 1992.

Poole, Hilary (Ed.) *Human Rights: The Essential Reference*. Phoenix, Arizona: Oryx Press, 1999.

Ramcharan, B.G. (1989) *The Concept and Present Status of the International Protection of Human Rights: Forty Years After the Universal Declaration*. London: Martinus Nijhoff Publishers.

Ratner, Steven R. (2001) *Accountability for Human Rights in International Law*. Oxford: Oxford University Press.

Rover, C. De. (1998) *To Serve and to Protect: Human Rights and Humanitarian Law for Police and Security Forces*. Geneva: ICRC.

Scholler, Heinrich (2003) *Notes on Constitutional Interpretation in Ethiopia*. Published by the Federal Supreme Court of the FDRE and the Friedrich Ebert-Stiftung, Addis Ababa.

Scholler, Heinrich (2005) *Ethiopian Constitutional and Legal Development*, Vol. 1. Koln: Rudiger Koppe Verlag.

Shaw, Malcolm M. (2008) *International Law* (6th edn). Cambridge: Cambridge University Press

Shue, Henry (1980) *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy*. Princeton, New Jercy: Princeton University Press.

Trechsel, Stefan (2005) *Human Rights in Criminal Proceedings*. Oxford: Oxford University Press.

Vijapur, Abdulrahim P. and Kumar Suresh (eds.) *Perspectives on Human Rights*. New Delhi: Nice Printing Press, 1999.

Vincent, R.J (1995) *Human Rights and International Relations*. Cambridge: Athenaeum Press, Ltd.

Wacks, Raymond (2006) *Philosophy of Law: A Very Short Introduction*. Oxford: Oxford University Press.

JOURNAL/SERIES ARTICLES

Assefa Fiseha (2010) "*The Concept of Separation of Powers and Its Impact on the Role of the Judiciary in Ethiopia.* Ethiopian Constitutional Law Series, Vol. 3, AAU Press.

Donelly, Jack (1982) *"Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights"*. The American Political Science Review, Vol. 76, No. 2, pp. 303-316.

Donnely, Jack and Rhoda E. Howard (1988) "*Assessing National Human Rights Performance: A Theoretical Framework"*. Human Rights Quarterly, Vol. 10, No. 2, pp.214-248, The John Hopkins University Press.

Gebreamlak Gebregiorgis (2009) *"The Incorporation and Status of International Human Rights under the Federal Democratic Republic of Ethiopia Constitution"*. Ethiopian Human Rights Law Series, vol. 2

Hongju, Harold (1999) *"How Is International Human Rights Law Enforced?"* Indiana Law Journal, Vol. 74, pp. 1397-1417.

Nickel, James W. (2002) *"Is Today's International Human Rights System a Global Governance Regime?"* The Journal of Ethics. Vol. 6, No 4, pp 353-371.

Simeneh Kiros (2010) *"Normative, Institutional and Practical Challenges in the Administration of Crinimal Justice in Ethiopia"*. Ethiopian Human Rights Law Series, Vol. 3, AAU Press.

Ssenyorijo, Manisuti (2010) *"Reflections on State Obligations with Respect to Economic, Social and Cultural Rights in International Law"*. The International Journal of Human Rights, First Published on 30 July 2010.

Takele Soboka (2009) *"The Monist-Dualist Divide and Supremacy Clause: Revisiting the Status of Human Rights Treaties in Ethiopia"*. Journal of Ethiopian Law, Vol.23, No.1, AAU Press.

Takele Soboka (2010) *"Judicial Referral of Constitutional disputes in Ethiopia: From Practice to Theory"*. Ethiopian Constitutional Law Series, Vol.3, AAU Press.

Waters, Melissa A. (2007) *"Creeping Monism: The Judicial Trend Toward Interpretive Incorporation of Human Rights Treaties"*. Columbia Law Review, Vol.107, No. 3, pp.

628-705. Columbia: Columbia Law Review Association.

Yacob Haile-Mariam (1999) *"The Quest for Justice and Reconciliation: The International Criminal Tribunal for Rwanda and the Ethiopian High Court"*. Heinonline Comparative Law Review, Vol.22, pp.667-745.

PAPERS

Rakeb Messele (2002) *Enforcement of Human Rights in Ethiopia*. A Research Subconducted by Action Legal Aid, Addis Ababa.

Joint Workshop on *"Human Rights Law and Humanitarian Principles"* organized by the Federal Police Commission and the International Committee of the Red Cross (ICRC), December, 2004, Addis Ababa.

REPORTS AND PRESS RELEASES

Amnesty International 2010 Annual Report for Ethiopia, available at *http://www.ai.org/en/world-report-2011/ethiopia*

"Ethiopia: Hidden Crackdown in Rural Areas," Human Rights Watch news release, January 11, 2006, http://www.hrw.org/en/news/2006/01/11/ethiopia-hidden-crackdown-rural-areas.

"*Ethiopia: Investigate Torture by Police,*" Human Rights Watch news release, March 17, 2004, http://www.hrw.org/en/news/2004/03/17/ethiopia-investigate-torture-police.

"Ethiopia: Repression Sets Stage for Non-Competitive Elections," Human Rights Watch news release, April 9, 2008, http://www.hrw.org/en/news/2008/04/09/ethiopia-repression-sets-stage-non-competitive-elections.

Ethiopian Human Rights Commission, *Correctional Facilities Monitoring Visit Report* (Addis

Ababa, December 2008).

Ethiopian Human Rights Council (2009) *Compiled Reports*: January 2007-December 2008, Vol.4, Addis Ababa.

Ethiopian human Rights Council (2007) *Compiled Reports*: December 2002-December 2007, Vol.3, Addis Ababa.

Government Communication Affairs Office, "*Ethiopia's Response to the U.S. State Department Report on the Human Rights Situation in Ethiopia,"* 2009, available at; http://www.aigaforum.com/ethiopia_esponse_to_us_state_dept_report_2009_part1.pdf (accessed September 16, 2010).

Human Rights Watch, *Collective Punishment: War Crimes and Crimes against Humanity in the Ogaden Area of Ethiopia's Somali Regional State*, June 2008.

Human Rights Watch, Ethiopia's Human Rights Report (2008) available at; http://www.hrw.org/en/world-report-2009/ethiopia

Human Rights Watch, Ethiopia's Human Rights Report (2009) available at; http://www.hrw.org/en/world-report-2010/ethiopia

Human Rights Watch, Ethiopia's Human Rights Report (2010) available at; http://www.hrw.org/en/world-report-2011/ethiopia

International Federation for Human Rights (FIDH). *Human Rights Situation in the Federal Democratic Republic of Ethiopia.* 46th Session of the African Commission on Human and Peoples' Rights**,** 11-25 November 2009, Banjul, The Gambia**.**

UN Human Rights Council, Report of the Working Group on Universal Periodic Review: Ethiopia, A/HRC/13/17, January 4, 2010.

US State Department, Bureau of Democracy, Human Rights, and Labor, *"Country Reports on Human Rights Practices - 2008: Ethiopia,"* February 25, 2009, available at; http://www.state.gov/g/drl/rls/hrrpt/2008/af/119001.htm (accessed September 11, 2010).

US State Department, Bureau of Democracy, Human Rights, and Labor, "Country Reports on Human Rights Practices - 2010: Ethiopia," April 10, 2011, available at;

http://www.state.gov/g/drl/rls/hrrpt/2010/af/119001.htm (accessed May 5, 2011).

ETHIOPIAN LEGISLATIONS

Anti-terrorism Proclamation No. 652/2009 of the Federal Democratic Republic of Ethiopa.

Criminal Procedure Code of the Empire of Ethiopia of 1961. Negarit Gazeta, Extraordinary Issue, No. 1 of 1961, Addis Ababa.

Civil Procedure Code of the Empire of Ethiopia of 1965. Negarit Gazeta, Extraordinary Issue No.3 of 1965, Addis Ababa.

Civil Code of the Empire of Ethiopia. Proclamation No. 165 of 1960, Negarit Gazeta, Vol.19 No.2.

Criminal Code of the Federal Democratic Republic of Ethiopia. Proclamation No. 414/2004, Addis Ababa.

Constitution of the Federal Democratic Republic of Ethiopia. Federal Negarit Gazeta, Year 1, No.1, 21st August 1995, Addis Ababa.

Federal Negarit Gazette Establishment Proclamation No. 3/1995, Addis Ababa.

INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

African Charter on Human and Peoples' Rights, adopted on 27 June 1981 entered into force on 21 October 1981 OAU Doc. CAB/LEG/67/3 rev. 5, 21

Charter of the United Nations, June 26, 1945, 59 Sat 1031, T.S. 993, 3 Bevans 113, entered into force October 24, 1945

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment UNGAR 39/46 of 10 December 1984, entry into force on 26 June 1987

International Convention on Civil and Political Rights (ICCPR), UNGA Res 2200 A (XXI) of 16 December 1966, entry into force on 23 March 1976

International Convention on Economic, Social and Cultural Rights (ICESCR) UNGA Res 2200 A (XXI) of 16 December 1966, entry into force on 3 January 1976.

Appendix I

Persons interviewed

Ato Birhanu Abadi, Communication Officer, Ethiopian Human Rights Commission. On February 09, 2011, Addis Ababa

Anonymous, Federal Prisons Administration.

Appendix II

Interview Questions

1. How do you measure the current Ethiopia's human rights record?
2. What are the obstacles in enforcing international and regional human rights instruments in the country?
3. Which list of human rights did you frequently receive reports on so far?
4. Can you suggest on the overall Government's efforts to promote human rights in the country?
5. How do you handle cases of human rights violations?

6. What are the major causes of human rights abuses in the country?
7. How do you evaluate the successes of the Commission?
8. How many prisons and correctional camps are there in the country?
9. How many prisoners are there in these prisons and correctional camps?
10. What seems the situation of human rights protection in the prisons and correctional camps?
11. Generally, what should be done to heighten the protection of human rights in the country in line with its obligation from treaties it has entered?

Declaration

I, undersigned, declare that this thesis is my original work and has not been presented for a degree in any other university and that all sources of materials used for the thesis have been duly acknowledged.

_____

Bayenew Lisanework
May, 2011

This thesis is submitted for examination with my approval as an advisor of the candidate.

_____

Solomon Mebrie (Dr.)
May, 2011