



## **COLLEGE OF LAW AND GOVERNANCE STUDIES**

### **SCHOOL OF LAW**

### **GRADUATES PROGRAM**

Master of Laws (LL. M) in Constitutional and Public Laws

ASSESSMENT OF THE ESTABLISHMENT OF LIYU POLICE IN THE  
ETHIOPIAN FEDERATION: THE CASE OF SELECTED REGIONAL LIYU  
POLICE

A Thesis Submitted in Partial Fulfillment of the Requirements for the  
Award of Master of Laws (LL. M) in Constitutional and Public Laws at  
School of Law, College of Law and Governance Studies, Addis Ababa  
University

By: Tiruneh Endeshaw

JUNE 2020

Addis Ababa, Ethiopia

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## **ACRONYMS**

ENDF	Ethiopian National Defense Force
FDRE	Federal Democratic Republic of Ethiopia
NNP	Nations, Nationalities and Peoples
ONLF	Ogaden National Liberation Front
HOPR	House of peoples Representative
Para.	Paragraph
SNNPRS	The Southern Nations, Nationalities and Peoples Regional state

## ***ABSTRACTS***

*This study assesses the legal basis and constitutional power of regional states to establish Liyu police in Ethiopia. Primary and secondary data were collected. Relevant laws of Ethiopia and interview with key informants were used as primary source of data and relevant books, articles, documents, reports and also websites of related international and regional institutions are utilized as a secondary source of data. The obtained data were critically compared, analyzed, interpreted and judged through the basic tools of legal reasoning to draw meaningful conclusion. The Findings of this study revealed that the Somali regional state has failed to act within the proper scope of power allocated to regional states by the FDRE constitution and also the federal government has failed to respect the power defined by the constitution. It is also ascertained that Liyu Police of SNNPRS and Somali have no legal basis for their establishment.*

## DECLARATION

I, Tiruneh Endeshaw, hereby declare that the thesis entitled as “*Assessment of the Establishment of Liyu Police in the Ethiopian Federation: The Case Of Selected Regional Liyu Police*” is my original work and that it has not been submitted for any degree or examination in any other university. I also pledge that all sources used in any form are duly acknowledged.

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# CHAPTER ONE

## INTRODUCTION

### 1.1. Background of the Study

In recent years, general interest in the study of policing and the application of police powers has increased substantially. One of the main reasons why so much interest has been generated in the study of police powers in modern times is that increasing numbers of the wider population are beginning to question the exercise of such authority. The police are invested with far reaching Powers and a significant degree of discretion in order to perform their duty to up hold the law and protect citizens.<sup>1</sup>

The term police are most commonly associated with the police forces of a sovereign state that are authorized to exercise the police power of that state within a defined legal or territorial area of responsibility. Police forces are often defined as being separate from the military and other organizations involved in the defense of the state against foreign aggressors<sup>2</sup> Policing is a process of preventing and detecting crime as well as maintaining order and could be engaged in by any number of agencies or individuals.<sup>3</sup> The police is the governmental department charged with the preservation of public order the promotion of public safety, and the prevention and detection of crime.<sup>4</sup>

More and more countries, particularly those making political transitions to democracy and those engaged in genuinely deepening democracy, are adopting a democratic model of policing, which is founded on principles of equity and equality, accountability, transparency, participation, respect for diversity, the accommodation of dissent, protection of individual and group rights, and encouragement of human potential.<sup>5</sup> The primary role of police in democratic societies is to

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<sup>1</sup> *UN Code of Conduct for Law Enforcement Officials, art.2*

<sup>2</sup> *Walker Samuel, A Critical History of Police Reform: The Emergence of Professionalism (1977)14*

<sup>3</sup> *Maw by, R, Hand book policing: model of policing. (2<sup>nd</sup> Edition.UK: William) (2008) 17*

<sup>4</sup> *Black's Law Dictionary (10th Ed. 2014)*

<sup>5</sup> *Police Accountability: Too Important to Neglect, too Urgent to Delay. Common wealth Human Rights Initiative, (2005) 12*

protect the fundamental rights of citizens and the primary criteria for police governance includes equity, delivery of service, responsiveness, distribution of power, redress, and participation.<sup>6</sup>

Depending on how a constitution organizes power between the central and regional governments, a country may be said to possess either a unitary or a federal system.<sup>7</sup> Federalism can be described as a system which is created, by written agreement between central and regional government and distribute specified powers to each level of government, compound sovereign states, in which at least two governmental units the federal and the regional, enjoy constitutionally separate competency, although they may have also concurrent powers.<sup>8</sup>

Ethiopia has adopted federal system of governance to achieve unity through diversity since 1995.<sup>9</sup> The federal system that started de facto since 1991 and de jure following the adoption of the 1995 constitution attempts to end the cycle of political crisis by decentralizing power and resources to nine constituent states and two autonomous cities and by ensuring self rule to the ethno-linguistic groups at various levels.<sup>10</sup> The Ethiopian federal Constitution contains a long list of exclusive federal competences, a short list of exclusive state competences, and a clause regarding residual powers.

Article 51 sub article 6 of the constitution embraces the right of the Federal Government to institute a Federal Police Force and article 52 sub article 2 (g) of the constitution gives power to regional states to own and administer regional police officers with the aim of maintaining public order and peace within the state. At present, the country has a police force organized at central and regional levels, the federal government has its own police force and the states have their own police agencies.<sup>11</sup>

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<sup>6</sup> P.A.J. Waddington, *Policing Citizens: Authority and Rights* (1999)25

<sup>7</sup> Ronald L. watts ,*Comparing federal systems*(Third edition, Institute of intergovernmental relations, school of policy studies, Queens University(2008) 5

<sup>8</sup> George Anderson , *federalism: An introduction*( Oxford university press, new York 2008) 12

<sup>9</sup> FDRE constitution Article 1

<sup>10</sup> Assefa Fiseha, *Federalism and the Accommodation of Diversity In Ethiopia, A Comparative Study*(2007)97

<sup>11</sup> Erwin van Veen, *Ethiopia's political settlement and the organization of security*, September (2016)28

Furthermore different sources confirm that all regions have established Liyu police.<sup>12</sup> Numbers range from thousands to tens of thousands, depending on the region. Whereas some have existed for longer than others, and access to weapon stockpiles and equipment differs between regions, the development of others has only unfolded in recent years.<sup>13</sup> Since the FDRE constitution is too general concerning the role and nature of the police forces envisaged to be established by regional states there are different critics concerning the constitutionality of establishing the Liyu Police.

With this general overview in mind, the thesis discusses the establishment of Liyu police especially in the SNNPRS and Somali regional state. It also discusses the scope of the power of regional states to establish a police force.

## **1.2. Statement of the Problem**

Every federal system is structured by a national constitution that divides power, establishes central institutions, prescribes the rules for resolving disputes, and provides a procedure for its own alteration.<sup>14</sup> And the constitutional division of power between the federal government and the constituent units has to be made based on relevant principles to bring unity through diversity. Constitutional division of Police competence is one of the critical aspects that have to be made properly in federations. The need for going beyond traditionally laid out division of power to devise mechanisms that can bring different components of the security apparatus function independently as well as in coordination with each other is generally required, but has increasingly become a necessity.<sup>15</sup>

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<sup>12</sup> Land info, *Ethiopia: The special police (Liyu Police) in the Somali Regional State*, 3 JUNE 2016, available at <http://www.landinfo.no> last accessed on August 2019

<sup>13</sup> Ann M Fitz-Gerald, *Ethiopia's Security Dilemmas*, 18 July 2019, <https://rusi.org/commentary/ethiopias-security-dilemmas>, last accessed on October 2019

<sup>14</sup> Cheryl Saunders, *"The Relationship between National and Sub-national Constitutions," Seminar Report: Sub-national Constitutional Governance, (1999)21*

<sup>15</sup> Waddington(n 6)

The police are expected to work within the confines of the constitutional mandate and the context of international standards which are informed by international human rights instruments. The police are also needed to execute their duties with fairness, equity and professionalism and refrain from violation of human rights of victims as well as suspects in the process of treating victims, arresting suspects and conducting investigations.

Article 52 sub article 2 (g) of the constitution gives power to regional states to own and administer regional police officers with the aim of maintaining public order and peace within the state. There is nothing specified in the Constitution what the nature of the police force should be. The ambiguity within the latter part of this provision has allowed the creation of further informal security forces.

There are numerous reports that show regional Special Forces or Liyu Police involved in human rights violations in different parts of Ethiopia. The 2018 Human Rights practices report by United States Department of State explained that Impunity of police officers remained a problem, including for killings and other violence against protesters. It also showed that the government supported limited training on human rights for police and army personnel.<sup>16</sup>

According to a report by Ethiopia's National Disaster Risk Management Commission and the UN Office for the coordination of Humanitarian Affairs the incursions of Somalia Liyu police into Oromiya State in 2017 resulted in the deaths of hundreds of people and the displacement of more than 1 million people.<sup>17</sup> Evidences also show that Somali Liyu police, on 23 and 24 May 2018, attacked four localities in Chinaksen District of East Oromiya Zone, killing five farmers and burning down about 50 homes. These attacks caused residents of these four kebeles and another four neighboring ones to flee their homes for safety.<sup>18</sup>

It was widely reported that civilian authorities at times did not maintain control over regional security forces. Rural local police and militias sometimes acted independently and extra judicially. As confirmed by different organs President of Amhara region, Dr. Ambachew

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<sup>16</sup> *Country Reports on Human Rights Practices for 2018 United States Department of State, Bureau of Democracy, Human Rights and Labor(2018)7*

<sup>17</sup> *Relief Ethiopia, conflict displacement situation report April 2018 available at <https://reliefweb.int/report/ethiopia/> last accessed on Nov 2, 2019*

<sup>18</sup> *Amnesty International news 2018/06 available at <https://www.amnesty.org> accessed on Nov 8, 2019*

Mekonnen, along with two senior regional state officials, was killed on June 22, 2019 while in a meeting in his own office in Bahir Dar, by members of the regional Liyu police.<sup>19</sup> Amhara People Democratic Party (ADP), the party governing the region and federal authorities has said in statements that the killing of the president and his advisor happened in “a failed coup” attempt.<sup>20</sup> Little is known about the exact numbers, structure, funding, command arrangements and roles of these Liyu police or Special Forces. As a result different International organizations including Amnesty International issued a call for Ethiopian government to immediately disband Liyu police.<sup>21</sup> Taking into consideration the prevalence of Human Rights violations by these Regional Liyu police, it is of a paramount importance to investigate the legal basis for the establishment of Liyu police in Ethiopia.

### **1.3. Objectives of the Study**

#### **1.3.1. General Objective**

The general objective of this study is to assess the legal basis and constitutional power of regional states to establish Liyu police in Ethiopia.

#### **1.3.2. Specific Objective**

Under the umbrella of this objective, the specific objectives were:

- To identify the International standards regulating and guide policing and police forces.
- To explore how police competence is arranged under the federal constitution of some selected federations
- To explore the basis for the establishment of SNNPRS and Somali regional state Liyu police
- To assess the scope of power of regional states to establish police force under FDRE constitution

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<sup>19</sup> *Borkena Ethiopian News*, 2019/06/23, available at <https://borkena.com>, accessed on Nov 9, 2019

<sup>20</sup> *Addis standard news*, June 24, 2019, available at <https://addisstandard.com>, accessed on Nov 20, 2019

<sup>21</sup> *Amnesty* (n 18)

## **1.4. Research Questions**

1. What are the International standards regulating and guide policing and police force?
2. How do policing powers arranged under the federal constitution of some selected federations?
3. How are the SNNPRS and Somali regional Liyu police established?
4. Whether Regional states have power to establish Liyu police under FDRE constitution or not?

## **1.5. Research Methodology**

As it was indicated in the objective part of this study an assessment of the establishment of Liyu police in the Ethiopian federation requires the analysis of the constitutional framework and the practice. It also requires exploring the experience of other countries. As a result to conduct this research, the researcher used qualitative research approach

The study essentially utilized both primary and secondary sources of data. As a primary source, the research has used relevant laws of Ethiopia such as the FDRE constitution, Somali, and SNNP regional state constitutions, police establishment proclamations and all other related legal instruments.

In addition, interview with key informants has been employed as a primary source of data. To this end certain empirical qualitative data were collected by the researchers through interviews made with legal Researchers, and constitutional law scholars. Purposively selected 2 key informants, 1 legal researcher from SNNPRS Justice Professional's training and research institute and 1 legal drafter from SNNPRS Attorney General have been interviewed. And also purposively selected 2 constitutional law scholars have been interviewed.

Relevant books, articles, documents, working papers, conference and seminar proceedings, reports and also websites of related international and regional institutions are utilized as a secondary source of data.

A detailed analysis of the laws and procedures relevant to the establishment of the Regional Special Forces or Liyu police, experience of other countries and an interview with key informants is undertaken. With regards to exploring experience of other countries, the researcher has selected South Africa, India, and Switzerland, by taking into account their democratic form

of government, because they are multicultural federations like Ethiopia, and also for the reason of their well established and effective institutions

## **1.6. Ethical Consideration and Data Biasing Controlling**

The research work had been given due recognition for the works of others through citation. The title of the research is somehow very sensitive and the researcher kept everything confidential if it has a possibility of affecting the interest of individuals. Moreover, the researcher asked in advance the consents of persons for data collection purposes and recording during interview times.

## **1.7. Scope of the Study**

This study has both geographical and conceptual scope. Conceptually, this research not concerned with federal, defense, city police, militia and other security apparatus. It only deals with Liyu Police established at regional government level of Ethiopia. Geographically, all of the regional Liyu Police forces are not the subjects of this study. The researcher purposefully selected two regional states Liyu Police. Accordingly, the SNNPRS Liyu Police is selected due to the fact that the regional state is the most multi- ethnic state. The Somali regional Liyu Police is selected due to the time of its establishment and the critics forwarded against it.

## **1.8. Significance of the Study**

Currently different organs are demanding constitutional reform to be held in Ethiopia. Addressing the issue of Liyu police is one of constitutional reform issue that has to be addressed properly. So it is important to make this type of study with the objective to investigate the legitimacy of Liyu Police and to assess the power of regional sates to establish police force .Furthermore, the research may contribute and serve as reference to works of policy-makers, researchers in constitutional law .

## **1.9. Limitation of the Research**

The researcher of this thesis has faced the following problems while conducting this research. Lack of researches conducted regarding Liyu Police, Lack of access to the necessary materials like reports and documents prepared by various public institutions in relation to Liyu police and

unwillingness of regional police and Liyu police officials to give information concerning Liyu police were the major problems the research has faced while conducting the study. So the researcher is compelled to use secondary data especially concerning Somali regional state Liyu police.

## **1.10. Organization of the Research**

To make the work coherent and attractive, the body of this thesis is organized in five chapters. The first chapter contains the general overview of the research which includes precise introduction of the study. Chapter two is deals with conceptualization of police and policing in the context of federations. The third chapter presents the Establishment of Liyu Police in The Ethiopian Federalism and chapter four deals with the Power of Regional States to Establish Liyu Police. Finally, the fifth chapter presents the finding as conclusion and recommendations.

# CHAPTER TWO

## CONCEPTUALIZATION OF POLICE AND POLICING IN THE CONTEXT OF FEDERATIONS

### 2.1. Conceptualization of Police and Policing

Although often treated as synonymous, police and policing are distinct concepts. The word ‘policing’ is etymologically related to ‘politics’, the governance of the city or state, and was used in broad terms to signify social regulation in the widest sense. Policing relates to broad processes of social regulation that underpin the routines of everyday life, as such, these are performed by a wide range of agencies and institutions.<sup>22</sup> The word policing is also described as the exercise of the authority of state over the civil population. That authority is based on the monopoly of legitimate coercion cops usually ask or command people to do something and those people normally comply; but if they do not then the cops will force them into compliance.<sup>23</sup>

The police are the most visible manifestation of government authority responsible for public security.<sup>24</sup> The police are a constituted body of persons empowered by a state to enforce the law, to protect the lives, liberty and possessions of citizens, and to prevent crime and civil disorder.<sup>25</sup> The Police are body of officers representing the civil authority of government. Police forces are often defined as being separate from the military and other organizations involved in the defense of the state against foreign aggressors.

Historically before 19th century the maintenance of public order was perceived as a strictly local affair<sup>26</sup>. The responsibility for ensuring peace within the community fell upon the shoulders of ordinary citizens who shared similar beliefs and values and who could be relied upon to enforce

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<sup>22</sup> *Wadding (n 6)30*

<sup>23</sup> *Ibid*

<sup>24</sup> *Geneva Centre for the Democratic Control of Armed Forces (DCAF), Senior Police Advisor to the OSCE Secretary General, International Police Standards Guidebook on Democratic Policing(2009)8*

<sup>25</sup> *Ibid(n3)17*

<sup>26</sup> *G. Jack Bengtson, Jr Partners in crime: Federal crime control policy and the States, 1894 – 1938, A Dissertation Submitted to the Graduate College of Bowling Green State University in partial fulfillment of the requirements for the degree of Doctor of Philosophy,( December 2006)21*

those societal norms that were most closely associated with the prevailing moral and ethical values.

In the early 19th Century, however, this system increasingly challenged by the social, demographic, and economic developments and was replaced, to a great extent, by advances in the development of a formalized process of law.<sup>27</sup> Law enforcement system began to evolve as a result of the introduction of a political and legal framework and after institutionalization of law enforcement.

## **2.2. Functions, Responsibilities and powers of the Police**

As far as the nature of the police function is concerned, it is stated that it is universal in society, though it is only in larger and more complex states of modern times that the full time officials are appointed with special police responsibilities regulated by law. It is stated that Prevention and detection of crime, the maintenance of public order and the provision of protection and assistance for people in need are the major functions and responsibilities of the police. It is also clear that the criminal procedure code of Ethiopia provides the major duties of police are preserving the peace and preventing crime; discovering the commission of offences; apprehending offenders; and prosecuting offences when members of the police are appointed as public prosecutors.<sup>28</sup> It is also stated the police have particular powers to momentarily take peoples' freedom, to limit their full enjoyment of their rights. In order to be able to fulfill their responsibility, they are authorized to use force and firearms, arrest and detain and search and seizure.<sup>29</sup>

## **2.3. Democratic Policing**

Despite fundamental differences in policing structures and styles across societies, public approval of, and satisfaction with, police services are universally invoked to legitimize the most

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<sup>27</sup> *Ibid* (n 6)

<sup>28</sup> *The Criminal Procedure Code of the Empire of Ethiopia proclamation No.185, of 1961* Article 9

<sup>29</sup> Mahesh K. Nalla, *Democratic Policing: a Comparison of Police Officers' Perceptions of their Role and Functions in Transitional Societies*, VARSTVOSLOVJE, *Journal of Criminal Justice and Security* (year 11 no. 4) 520-535

coercive tool of order maintenance used by the state.<sup>30</sup> More and more countries, particularly those making political transitions to democracy and those engaged in genuinely deepening democracy, are adopting a democratic model of policing, which is founded on principles of equity and equality, accountability, transparency, participation, respect for diversity, the accommodation of dissent, protection of individual and group rights, and encouragement of human potential.<sup>31</sup>

The primary role of police in democratic societies is to protect the fundamental rights of citizens and the primary criteria for police governance includes equity, delivery of service, responsiveness, distribution of power, redress, and participation.<sup>32</sup> Police service is directly dependent on the public approval of police existence. Police seek public approval but maintain impartiality in offering services to all groups. Police intervene in the lives of citizens, albeit with strict limitations as provided by the constitution and other legal provisions. Police use force to the extent that law is observed and order is restored. Police tend to mirror the socioeconomic, cultural, and other characteristics of the community in which they serve. Police are part of, and not separate from, the community they serve. Finally, police are accountable to the public.<sup>33</sup>

There is an assumption that police in democratic societies work for the community in which they serve and that the citizens support the police to effectively discharge their duties of crime prevention and order maintenance.<sup>34</sup> In sum all democratic police systems share the ideal that police powers are to be used according to the rule of law and not according to the whims of the ruler or the police agent.

## **2.4. Democratic policing and Rule of Law**

Upholding rule of law is one of the key objectives of democratic policing that is recognized under international legal frameworks relevant for the police. The Rule of Law refers to a system of authority and power in which all authority and power is exercised in accordance with public

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<sup>30</sup> Hung-En Sung, *Police effectiveness and democracy: shape and direction of the relationship*, Article in *Policing* (April 2006)

<sup>31</sup> *Ibid* (n 5)12

<sup>32</sup> Trevor Jones, Tin Newburn and David Smith, *Democracy and policing*, policy studies Institute(1994) 208

<sup>33</sup> *Ibid*

<sup>34</sup> *Ibid* (n 29)

laws that have been determined in a public manner by a body usually a parliament that has democratic legitimacy, as well as those laws created by international bodies such as the United Nations and Human Rights.<sup>35</sup> It is meant to restrain policing from partial, arbitrary or unnecessarily violent behavior.

UN code of conduct for Law Enforcement officials also incorporates concepts relevant for the principle of Rule of law. Article 1 of the code provides that Law enforcement officials shall at all times fulfill the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession. They are also duty bound to respect the law and the present code as well as to the best of their capability, prevent and rigorously oppose any violations of them. Basic Principle 1 of the UN Basic Principle on Use of Force and Firearm by Law Enforcement Officials requires the governments and law enforcement agencies to adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. The obligation to adopt and implement rules and regulation is further illustrated by principle 11 which stipulates several guidelines to be included in the rules and regulations on the use of force and firearms.

International legal framework provides also that the legislation and policies that govern the work and conduct of the police should be clear, precise and accessible to the public.<sup>36</sup> These policies define the role of the police, the values, goals, priorities and the ethics that they abide by. “Police personnel are subject to the same legislation as ordinary citizens, and exceptions may only be justified for reasons of the proper performance of police work in a democratic society” as noted in the Universal Declaration of Human Rights . The police should always their lawfulness of their intended actions and they should abstain from carrying out an action which they know to be unlawful. Police personnel shall be personally responsible and accountable for their actions or for orders to their superiors.

The police are also expected to intervene in situations where and when law and order are endangered, even if the police officers are off duty but they must only act within the means of the law. They must always identify themselves when entering a situation. The police are there to

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<sup>35</sup> *International Police Standards Guidebook on Democratic Policing*(n 24) 20

<sup>36</sup> *Ibid* 13

enforce the law no matter whom or what the suspect's social standing, organizational or political affiliation

The principle of rule of law is recognized as one of the constitutional principles in Ethiopia. As a supreme law, a constitution evokes respect due to law. FDRE constitution has a preamble which addresses itself to the Nations, Nationalities, and peoples of the country.<sup>37</sup> It also describes the determination of the Nations, nationalities and peoples for rule of law, democracy, lasting peace and the need for full respect of individual rights and freedoms

## **2.5. Basic principles of Democratic policing**

There exists different principles of democratic policing that are also used as a standard to evaluate basic aspects of police systems. These principles are recognized in different international and regional instrument the major ones are discussed below.<sup>38</sup>

### **2.5.1. Police Ethics**

Police must earn the public's trust and demonstrate professionalism and integrity by adhering to the Rule of Law and a code of professional conduct. Police must use discretion when enforcing the law because of limited resources and the need to set priorities for the correct action. It is important to note that "the exercise of discretion lies at the heart of the policing function and is also the art of suiting action to a particular circumstance"<sup>39</sup> For police discretion to be used appropriately, it needs to ignore the irrelevant factors of a case, have consistency and ensure that decisions are based on rationality and community morals.<sup>40</sup> We require discretion in our society because it upholds the spirit rather than the letter of the law, law breaker's intent is not always deliberate or evil, laws cannot conceive of every situation and the community does not always want the law to be enforced.<sup>41</sup> Discretion is an important part of our society because it allows lenience within the law as the community's morals and belief change. However, discretion has ethical problems which affect democratic policing. Discretion can lead to inappropriate focus,

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<sup>37</sup> *FDRE constitution, preamble*

<sup>38</sup> *International Police Standards Guidebook on Democratic Policing(n 24)10-11*

<sup>39</sup> *International Police Standards Guidebook on Democratic Policing(n 24) 20*

<sup>40</sup> *Ibid*

<sup>41</sup> *Collin Lewis, Complaints against Police. The Politics of Reform, Annandale, 1999, pp 9. And Council of Europe, Codes of Conduct for Public Officials, 2000, Article 7.*

unfairness, has the opportunity for abuse and the biggest, being the clash between police discretion and the rule of law. Discretion does not allow accountability and it doesn't provide a guarantee of being exercised impartially. Discretion effectively replaces the legislated law with one created by a single person. It continues to permit despotic rule, whereas laws that are democratically formulated emerge from the community. For all the reasons it seems that discretion is opposed to the rule of law. However, discretion is an essential element in the working of any police officer.

Police officers must not allow their private interests to interfere with their public position, and it is their responsibility to avoid such conflicts of interests. They must never take advantage of their position for their private interest or that of their families and/or friends. Corruption constitutes a serious criminal offence, as well as being severely damaging to the public image of the police and the authority of the state. Therefore, police must not come in to a position of any form of corruption. Corruption includes the direct or indirect offer and/or acceptance of a gift, money in the return for any act or omission that provides information which stems from the police officers position.

### **2.5.2. Human Rights**

The police have particular powers to momentarily take peoples' freedom, to limit their full enjoyment of their rights; for example to stop, question, detain and arrest etc and under extreme circumstances to use lethal force. Police have the discretion to determine how much power may be used when it comes to their powers, however, they must abide by the Rule of Law and the best international standards. The Police are obliged to protect all citizens equally without discrimination and without distinction as to sex, race, language, color religion, birth or other statuses.<sup>42</sup>

All governments are required to adopt the necessary measures to instruct law enforcement officials, during basic training and all subsequent training and refresher courses, in the provisions of national legislation in accordance with the UN Code of Conduct for Law Enforcement

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<sup>42</sup> *Ibid* (n 24)

Officials as well as other basic international human rights standards applicable to law enforcement officials.<sup>43</sup>

The UN Code of Conduct for Law Enforcement Officials, the UN Standard Minimum Rules and the UN Body of Principles set out several important principles and prerequisites for the humane performance of law enforcement functions, including that: <sup>44</sup>Every law enforcement agency should be representative of, and responsive and accountable to, the community as a whole ;The effective maintenance of ethical standards among law enforcement officials depends on the existence of a well-conceived, popularly accepted and humane system of laws; Every law enforcement official is a part of the criminal justice system, the aim of which is to prevent and control crime, and the conduct of every official has an impact on the entire system ;Every law enforcement agency should discipline itself to uphold international human rights standards and the actions of law enforcement officials should be open to public scrutiny; Standards for humane conduct of law enforcement officials lack practical value unless their content and meaning become part of the creed of every law enforcement official, through education and training and through monitoring.

According to the international human right standards, authorities are obliged to provide for “the right to security of person and protection by the state against violence or bodily harm, whether inflicted by government officials or by an individual group or institution<sup>45</sup> Guaranteeing the equal protection of all before the law prohibits the police from discriminating against people of a certain race, gender or ethnic status. “Discriminatory policing has the effect of criminalizing entire communities and denying them justice”<sup>46</sup>

Democratic Policing also follows specific policing techniques. Police officers must be devoted to the ideology that the accused is innocent until proven guilty by a court, as well as to the principle of a due investigative process. Interviews by the police must be conducted in which a person can

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<sup>43</sup> Amnesty International, *International Secretariat, 1 Easton Street, London WC1X 8DJ, United Kingdom, 10 Basic Human Rights Standards for Law Enforcement Officials, December 1998 AI Index POL 30/04/98*

<sup>44</sup> *Ibid* 3

<sup>45</sup> *International Convention on the Elimination of All Forms of Racial Discrimination, 1965, Art 5*

<sup>46</sup> Newburn T. (2008). *Hand book of policing: Policing in comparative and historical perspective. (2<sup>nd</sup> Edition Portland: William. 2005) 5*

understand, as well as being informed of their rights such as contacting a lawyer. Suspects must also be informed of any charges laid against them and any statement that is gained through torture or use of force is not admissible in court and it is a misuse of power and authority. It is within the Police's duty of care to present clear rules and guidelines to any person who is under the influence of drugs and/or alcohol. The Police must also be sensitive and adaptable to the special needs of people, such as children, women and the disabled.

When we look at the Ethiopian constitutional framework, the constitution devotes much to human rights and it imposes a responsibility and duty to the respect and enforcement of fundamental rights and freedoms at all levels of the federal and state legislative, executive and judicial bodies including the police.<sup>47</sup> In the process of discharging its duties like preventing and investigating crimes and other related activities police has the obligation to refrain from acts that violate the human rights of citizens. It is also clearly indicated under article 13 (1) of the FDRE Constitution that every government organ has the obligation to respect human rights. And just because of the reason that this obligation is highly related with the day to day functions of police it requires a special attention from the police. The claims and criticisms over government in relation to violation of human rights is mostly the result of unwanted and excessive use of force by police officers.

### **2.5.3. Accountability and Transparency**

#### **A. Accountability**

The police are invested with far reaching powers and a significant degree of discretion in order to perform their duty: to uphold the law and protect citizens. Much of their work is enacted immediately and can only be scrutinized afterwards. Because of these aspects of police work, it is crucial that the public can place their trust in the police and that they can hold the police accountable for their actions. Accountability is especially important when police actions may be labeled as misconduct.<sup>48</sup> Accountability is defined as a system of internal and external checks and balances aimed at ensuring that police carry out their duties properly and are held

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<sup>47</sup>FDRE constitution article 13(2)

<sup>48</sup> *Ibid* (n 5)12

responsible if they fail to do so. Such a system is meant to uphold police integrity and deter misconduct and to restore or enhance public confidence in policing.<sup>49</sup>

In practice, police accountability mechanisms can be clustered in four different areas that correspond to the levels they operate at. They are 1) internal accountability; 2) accountability to the state; 3) accountability to the public; 4) independent external oversight.<sup>50</sup>

There are different international and regional instruments pertaining to police accountability standards. The United Nations Code of Conduct for Law Enforcement Officials (UN Code of Conduct)<sup>51</sup> supplements ICCPR's basic accountability model with features, specifically pertaining to law enforcement. The preamble to the UN Code of Conduct clearly states that "every law enforcement agency should be representative of and responsive and accountable to the community as a whole".<sup>52</sup> United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (UN Body of Principles)<sup>53</sup> demand establishment of comprehensive and effective reporting and review procedures when the firearms were used by the police in the performance of their duty and in cases of death or injury caused by the use of force and/or firearms.

In African there are also instruments pertaining to police accountability .Among these ,The Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa (Robben Island Guidelines,<sup>54</sup> Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines)<sup>55</sup> are the major ones that prescribe similar accountability mechanisms to the UN Body of Principles.

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<sup>49</sup> *United Nations Office On Drugs And Crime, criminal Justice Handbook Series, Handbook On Police Accountability, Oversight And Integrity(2011) 4*

<sup>50</sup> *Democratic Policing Series ,Police Accountability: A Comprehensive Framework(2017) 9*

<sup>51</sup> *UN Code of Conduct for Law Enforcement officials, preamble (a)*

<sup>52</sup> *Ibid*

<sup>53</sup> *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ,December 1988*

<sup>54</sup> *ACHPR resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa of 23 October 2002*

<sup>55</sup> *ACHPR, Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, 8 May 2014*

Democratic policing requires that the police are and consider themselves to be accountable to: the citizens, their representatives; the State; and the law. Therefore, their activities ranging from the behavior of individual police officers to the strategies for police operations to appointment procedures or to budget management must be open to scrutiny by a variety of oversight institutions.<sup>56</sup> These institutions range from government policies and bodies to non-government organizations. The media also play an important role as they illustrate police and their activities to the wider community. “Democratic Police services can be distinguished by their submission to, and acceptance of, outside supervision and examination and the degree of openness of these examinations”<sup>57</sup>

## **B. Transparency**

Another central feature of democratic policing is the notion of policing with the consent of the people.<sup>58</sup> Since the police cannot assume that they always act with the consent of citizens, they must constantly work to ensure that the public encourages their work. Democratic police forces are not supposed to be insular, self-contained, or cut off from the communities from which their power derives. Openness to the free and the poor should be a master ideal of democratic policing.<sup>59</sup> Transparency is a key factor in gaining public support and it also provides a mutual understanding between the public and the police. Measures to achieve transparency and communication include providing the public with crime reports about police operations, the establishment of enabling the public to access to the police service, the creation of open-ended forums for discussion and the introduction of community-based policing.

### **2.5.4. Organization and Management of Police**

Before discussion of the principles regarding police organization and management issues it is important to look what is considered as police organization and management. As far as police organizational structures are concerned, police structures can be organized by purpose, method, client, time/shift, geography (place) and level of authority.<sup>60</sup> It is also argued that Police

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<sup>56</sup> *International Police Standards Guidebook on Democratic Policing* (n 24)11

<sup>57</sup> Bayley D. & Shearing, , *The future of police. Law and Society Review*, (1996)14

<sup>58</sup> *Ibid* 56

<sup>59</sup> Jerome H. Skolnick, *Ideas in American Policing*(August 1999)2

<sup>60</sup> Wilson O. W, *Police Administration*( 4th edition, New York: The McGraw Hill Companies, 1950) 19-22

organizations because of their close affinity to military organizations, have generally embraced the common characteristics of classically defined organizations.<sup>61</sup> That is, they are governed from the top down. They rely on complicated systems of policy and procedure; they are rank centered. Management in policing also stress adherence to formal regulations rather than achievement of general organizational objectives, such as preventing crime or staffing security needs<sup>62</sup>

Since the police are responsible for the direction and control of the appropriate civil authorities currently states consider the democratic political control of the police to be an indispensable element of stability and security. AS a result the police organization must provide for a clear chain of command and allotment of competencies within the police. <sup>63</sup>Senior police officers should be given sufficient operational responsibility to be able to make operational decision autonomously. These decisions must be in accordance with the law and subject to review by legislative, executive and judicial powers. Police agencies must also have systems of supervision in place to assess the performance of their police officers. Democratic policing requires ongoing quality control of the service delivered to the public. Police Supervisors must also take responsibility for the performance of officers and must verify compliance with codes of conduct and human rights standards through regular unannounced and independent inspections.

## **2.6. Police in context of Federalism and Federations**

### **2.6.1. Federalism**

In recent times, federalism as a political idea becomes popular for integration of unity and accommodation of diversity under a single political system. About twenty-five countries of the world covering 40 per cent (two billion) of the population live in countries that claim to be federations or have a federal character.<sup>64</sup>

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<sup>61</sup> *Fyfe, J. J. Greene, J. R. Walsh, W.F. Wilson, O.W and Maclacen, R.C, Police Administration (5th ed. New York: McGraw-Hill Inc.)164*

<sup>62</sup> *Ibid 64*

<sup>63</sup> *Geneva Center for the Democratic Control of Armed Force, Guidebook on Democratic Policing, International Police Standards, Senior Police Adviser to the OSCE Secretary General(2008) 24*

<sup>64</sup> *Ronald L. watts (n 7) 5*

Federalism refers to the philosophical perspectives promoting the federal solution while Federation is an empirical phenomenon, a particular form of institutional arrangement<sup>65</sup>. According to Stanford Encyclopedia of Philosophy, “Federalism is the theory or advocacy of federal political orders where final authority is divided between sub-units and a center.”<sup>66</sup> Federalism, as a normative political philosophy prescribes the use of federal principles, i.e. combining joint action and self-government<sup>67</sup>. ‘Federal political systems’ is a descriptive catch all term for all political organizations that combine what Daniel Elazar called ‘shared rule and self-rule’. Federal political systems, thus broadly construed, include federations, confederations, unions, federacies, associated states, condominiums, leagues, and cross-border functional authorities<sup>68</sup>. Being federal means the legitimate recognition and accommodation of diversity. Especially where conflict arises, federalism underlines the meaning of diversity by making its institutional accommodation possible.

In such instances, federal arrangements are not mechanisms for ‘disguising’ internal oppositions, although they can be utilized for such a purpose. Territorial dual identities expressed by citizens seek also to count on institutions reflecting the basic federalist principle of facilitating unity and diversity at the same time by means of a political pact and legitimacy at the state (federation) and sub-state (constituent unit) levels. As a consequence, people’s political loyalties to both national and regional institutions may provide stability and legitimacy to the whole federal polity<sup>69</sup>

By definition, federalism includes autonomy for the state’s sub-units, while leaving the international borders intact. According to William Riker’s classic definition; A constitution is federal if (1) two levels of government rule the same land and people, (2) each level has at least one area of action in which it is autonomous, and (3) there is some guarantee (even though merely a statement in the constitution) of the autonomy of each government in its own sphere.<sup>70</sup>

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<sup>65</sup> Burgess, Michael, 'Federalism and federation: a reappraisal' in Burgess, M and Gagnon, A. (ed.) *Comparative federalism and federation*. New York: Harvester Wheat sheaf,(1993)4

<sup>66</sup> Andreas Follesdal, “Federalism”, *The Stanford Encyclopedia of Philosophy*, Edward N. Zalta (ed.)

<sup>67</sup> Preston King, *Federalism and Federation* London: Croom Helm, 1982.

<sup>68</sup> Daniel Elazar, *Exploring Federalism*, Tuscaloosa: University of Alabama, 1987

<sup>69</sup> Luis Moreno and Cesar Colino, *Diversity and Unity in Federal Countries, A Global Dialogue On Federalism* (Volume VII, McGill-Queens University Press 2010) 5-6

<sup>70</sup> Riker, William. *Federalism: Origin, Operation, Significance*. Boston: Little, Brown and Company(1964)11

In combining regional self-rule and shared governance, federalism may represent a compromise between regional minorities, who seek self-determination and/or protection of their rights, and the central leadership of the state, who is reluctant to give up territory. Though the specific federal design is typically not specified, the literature increasingly argues that federalism can peacefully accommodate heterogeneous groups by decentralizing key policies and thus providing a stake for ethnic elites in the maintenance of the existing state<sup>71</sup>

### **2.6.2. Division of Police Power**

Federal political orders require attention to several constitutional and other institutional issues and most importantly the distribution of police competence. There is no simple formula for determining the appropriate allocation of powers between orders of government. In a federative context, the distinction between local affairs and affairs of general interest, between matters affecting particular interests and matters affecting the common interest, is the criterion used to decide which questions fall under the legislative power of the federated entities and which are the responsibility of the federal parliament.<sup>72</sup>

The principle of subsidiary has also used as a guiding principle for the distribution of power in many federations. It is derived from the Latin root *subsidiuum*, which refers to assistance in terms of the smaller matters of life.<sup>73</sup> The principle of subsidiarity can be defined as a principle by which the smallest possible social or political entities should have all the rights and powers they need to regulate their own affairs freely and effectively.<sup>74</sup> It also requires that the responsibilities of the larger social and political entities be limited to the things that the smaller entities cannot accomplish alone. It thus has a dual aspect: negative subsidiary requires that a larger entity should not intervene in what a smaller one can do for itself; while positive subsidiary requires that it must intervene to provide assistance when needed. This duality underlies the original nature of a subsidiary approach: “subsidiary not only creates a limit on intervention by a higher authority in the affairs of a person or collectivity that is able to act for itself, but also an

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<sup>71</sup> *Alemayehu Fentaw, MA thesis on Conflict Management in the Ethiopian Multi-national Federation, European University Center for Peace Studies Stadtschlaining, Austria, 14*

<sup>72</sup> *Ronald L. watts(n 7) 21*

<sup>73</sup> *Ludger Kuhnhardt, “Federalism and Subsidiarity.” Telos 91 (1992)79*

<sup>74</sup> *Eugénie Brouillet, Canadian Federalism and the Principle of Subsidiarity: Should We Open Pandora’s Box?*

obligation to intervene in the affairs of that person or collectivity to give it the means to accomplish its objectives. Subsidiarity is “neither a centralizing nor a decentralizing principle”, but rather “a dynamic principle that outlines the balance of forces present and the objectives of the entities making up the system”

For example competences like defence, foreign affairs, immigration, major taxation powers, currency and foreign exchange, foreign and interstate trade, maritime shipping, inter-regional communication and matters physically transcending state boundaries and key aspects of economic activity for which uniform regulation is deemed important, including currency and postage are under exclusive federal powers.<sup>75</sup> Concerning Police competence distribution in federations it is usually shared, occasionally concurrent or joint, rarely federal.<sup>76</sup>

### **2.6.3. Some Federal Experiences**

#### **A. India**

India's Constitution, which came into force on 26 January 1950, when India became a republic, is the world's longest, with 395 articles (divided into 22 parts), 12 schedules, and three appendices. The Constitution is, in fact, a detailed legal code dealing with all important aspects of the constitutional and administrative system of India. It establishes a "Union of States," which now consists of 28 states, six "union territories," and one National Capital Territory.<sup>77</sup>

Article 246 of the constitution of India distributes legislative power between central government and state governments. Three lists are distinguished: the Central List, the State List and the Concurrent List. The parliament has exclusive power to make laws regarding matters enumerated in list 1. such as, Defense, Foreign affairs, banking, currency, union taxes etc. State legislatures have exclusive power to make laws for the state regarding any of the matters in list 2. It contains 66 items and comprises of subjects of local or state interests. subjects such as public order, police, prison, courts and other allied institutions are placed in the state list.

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<sup>75</sup> Anderson (n 8) 35

<sup>76</sup> Ibid

<sup>77</sup> A *Global Dialogue On Federalism*, A Joint Program Of The Forum Of Federations And The International Association Of Centers For Federal Studies, Volume I, p.191

Both parliament and state legislature can make laws on subjects specified in list 3. However, primacy is given to Union laws over state laws. This clearly indicates that the union government has supremacy over the state governments in matters related to legislation.

Furthermore the Seventh Schedule of the Constitution of India provides the administrative power divisions between the Central and State Government. According to this arrangement, Police is managed by the State Government. As a result all states have their individual police laws. That is not to say that the Union Government does not have any say in police governance, Article 355 of the Constitution enjoins upon the Union to protect every state against external aggression and internal disturbance. It also imposes the duty upon the Union Government to ensure that that government of every state is carried on in accordance with the Constitutional provisions.

Indian model of police organization is an example for a multiple unorganized decentralized policing. Each state has its own police force, whose top echelons are filled by officers of Indian Police Service, which is a central service.<sup>78</sup> Each of the 28 states and 7 union territories of India have its own police force. Each state legislature has exclusive power to make laws relating to the police force and its functioning.<sup>79</sup> Since the executive power of the state extends to subjects in the State List (list 2), it is the responsibility of the state governments to establish and maintain police forces and exercise superintendence over them. Rules and regulations governing the state police forces are framed by the state governments and contained in their Police manuals. However, regarding internal security, the Indian Constitution bestows extraordinary powers to the central government in case of a crisis that allows it to take over the police powers of the federated states.

And last, but not the least important, is the quasi federal character of the Indian polity with specific provisions in the constitution, implying a coordinating and counseling role for the centre in police matters and even authorizing it to set up certain central police organizations.

In sum, the functions frequently involving the union government (not exclusively) are: the protection of the sovereignty of the country, public order in case of major disturbances, intelligence gathering, investigation of certain types of crimes, statistical analysis of criminal

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<sup>78</sup> *Policing in Federal Countries*(published by Forum of Federations 2002) 8

<sup>79</sup> *Ibid*

activity and maintenance of large information on a computer-based system. In addition, functions of coordination can sometimes be found in certain federal states. However, they vary immensely in scope and implementation and cannot be considered core responsibilities

### **B. Republic of South Africa**

In 1910 the Union of South Africa became a self-governing dominion within the British Commonwealth, with a decentralized unitary system. The apartheid system developed in the 1950s involved a massive attempt at social engineering which collapsed in the 1990s. Following Nelson Mandela's release from prison, negotiations led to an interparty agreement on an interim quasi-federal constitution in 1993.<sup>80</sup> After the holding of democratic elections and the formation of a coalition government, a Constitutional Assembly drafted a new constitution, which came into effect in 1996. In this constitution the label "federal" is avoided and South Africa is formally a devolved union, but its features have a strong federal character, drawing especially on the German model of integrated federalism.<sup>81</sup> It has a racially and ethnically diverse society.<sup>82</sup>

The constitution recognized three "spheres" of government (the term "levels" was specifically avoided), giving formal constitutional recognition to the central, provincial and local governments, and it was designed to promote cooperative federalism rather than competitive federalism. The legislative powers of all three spheres are set out, but the central government is favored, since concurrent powers are extensive and the central government may set national standards and norms and may override provincial standards that threaten national unity or national standards.

The Constitution of the Republic of South Africa 1996, Section 198(a) notes that the national security of citizens is the responsibility of government. Section 199(1) states that the security services protecting the country are the South African National Defense Force (SANDF), the South African Police Service (SAPS) and any intelligence services formed in line with the Constitution. In short, the term 'security services' refers to law enforcement agencies that offer a public service to citizens.

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<sup>80</sup> *Ronald L. watts(n 7) 49*

<sup>81</sup> *Ibid*

<sup>82</sup> *Bongani khumalo and renosi mokate, Republic of South Africa, 263*

Under the Constitution, the powers to control and manage the police service in accordance with national policy, set by the national Minister of Police, are vested in the National Commissioner.<sup>83</sup> In terms of Part A of schedule 4, the Constitution provides that the province and national government have concurrent competency over policing. However, the powers of the province are qualified in that the powers of the provincial executive are, to an extent, set out in chapter 11 of the Constitution.

In terms of the Constitution, provinces are entitled to: Monitor police conduct, Oversee the effectiveness and efficiency of the police service, including receiving reports on the police service, Promote good relations between the police and the community, Assess the effectiveness of visible policing Liaise with the cabinet member responsible for policing with respect to crime and in the province.<sup>84</sup>

In order to perform the above-mentioned functions, the province is given powers to: Investigate, or appoint a commission of inquiry into any complaints of police inefficiency or a breakdown in relations between the police and any community and Make Recommendations to the cabinet member responsible for policing.<sup>85</sup>

The Constitution provides that: A member of the cabinet must be responsible for policing and must determine national policing policy after consulting the provincial executive and taking into account the policing needs and priorities of the provinces as determined by the provincial executive. The national policing policy may make provision for different policies in respect of different provinces after taking into account the policing needs and priorities of these provinces.<sup>86</sup>

The Constitution further provides for the following: Provincial are responsible for policing their respective provinces in accordance with national legislation and subject to the control of the National Commissioner Annually, provincial commissioners must report on policing in the province to the provincial legislature and submit a copy of the report to the National

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<sup>83</sup> *South African Constitution, section 207 (2)*

<sup>84</sup> *Ibid section 206 (3) (a)–(e)*

<sup>85</sup> *Ibid section 206 (5)*

<sup>86</sup> *Ibid, section 206(1) and (2)*

Commissioner. If the provincial commissioner loses the confidence of the provincial executive, that executive may institute appropriate proceedings for the removal or transfer of the commissioner or take disciplinary action against him/her in accordance with national legislation<sup>87</sup>

Chapter eleven of the constitution of South Africa lays down that the South African Police Service has a responsibility to prevent, combat and investigate crime, maintain public order, protect and secure the inhabitants of the Republic and their property, uphold and enforce the law, create a safe and secure environment for all people in South Africa, prevent anything that may threaten the safety or security of any community, investigate any crimes that threaten the safety or security of any community, ensure criminals are brought to justice and participate in efforts to address the causes of crime.

The Police as an official department responsible for policing in the country have to ensure that all its activities are confined within the prescripts of the law. First of all the Police department in South Africa has to make sure that all directives, instructions, orders and or regulations seek to recognise and uphold the supreme law.

### **C. Switzerland**

Switzerland is a federation composed of 26 cantons (Article 1), of which six are so-called “half cantons,” arising out of the historic division of three cantons taking place before the foundation of the federation in 1848.<sup>88</sup> The Swiss federation was created from the bottom up, based on a covenant (foedus) uniting formerly independent states. Swiss federalism was designed primarily to accommodate communal diversity and to provide for peaceful management of deeply rooted conflicts among adherents of different religious, cultural, and political traditions. When the Swiss federal state (named “Swiss Confederation”) was founded in 1848,<sup>3</sup> the cantons had

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<sup>87</sup> *Ibid*, section 207 (4) (a)–(b), 207(5) and 207 (6).

<sup>88</sup> Thomas Stauffer, Nicole Töpferwien, and Urs Thalmann-Torres, *Switzerland*, *Handbook of Federal Countries*, (2005)345

already developed their own national identities, which nowadays counterbalance linguistic, religious, and economic diversity.<sup>89</sup>

The division of competencies between the Confederation and the cantons is organized according to the system of enumerated federal powers. Federal competencies must be mentioned in the federal constitution.<sup>90</sup> There are no issue-areas that are in the domain neither of the Confederation nor of the cantons. Each new issue that is not mentioned in the constitution automatically falls within cantonal power.<sup>91</sup> So, theoretically speaking, there can never be lacunae in the division of powers. A further observation concerns the power to distribute the competencies. As the revision of the constitution is a federal matter<sup>92</sup>, and the distribution of competencies arises exclusively from the constitution, the revision of powers is a federal competence. However, this power is limited by the cantonal right to shared rule.

Since the revision of 1999, the constitution states explicitly that the Confederation will only assume the tasks that require uniform regulation<sup>93</sup>. This rule binds the Confederation to the principle of subsidiarity in terms of the division of powers between the cantons and the central government. In this sense, the Confederation only has jurisdiction if a uniform regulation is necessary.

Switzerland vests the administration of justice in the member units (cantons) but the legal penal framework (penal code, penal procedure) in the federation.<sup>94</sup> The cantons can establish their own police forces as they wish as long as they comply with federal regulation, including the penal code. The country has no formal list of police competence and regulates the division of

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<sup>89</sup> *Thomas Fleiner And Maya Hertig, Swiss Confederation, Diversity And Unity In Federal Countries, A Global Dialogue On Federalism Volume Vii, (Mcgill-Queen's University Press Montreal & Kingston London Ithaca,2010) 333*

<sup>90</sup> *Ibid, 345*

<sup>91</sup> *constitution of Switzerland Article 3*

<sup>92</sup> *Ibid Articles 192-195*

<sup>93</sup> *Ibid Article 42(2)*

<sup>94</sup> *Federalism and police system, published by Geneva Centre for the Democratic Control of Armed Forces (2011)*

competencies between the federal and the local level using the so-called “principle of subsidiarity”<sup>95</sup>

According to this principle, all powers not explicitly assigned to the federal level belong automatically to the local level. This translates into the existence of a single list defining crimes dealt with by the federal police. These crimes in Switzerland are defined by law, not the constitution. All other crimes are assigned to the cantonal police. Federal responsibilities include economic spying, terrorism and political crimes, border protection, complex and organized crimes. All other public security issues not specifically and explicitly listed in the competency of the federal police are by default dealt with by the individual cantons (“principle of subsidiarity.”)<sup>96</sup>

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<sup>95</sup> *Ibid* Article 3 and 5

<sup>96</sup> *Federalism and police system (n 95) 25*

# CHAPTER THREE

## THE ESTABLISHMENT OF LIYU POLICE UNDER ETHIOPIAN FEDERALISM SYSTEM

### 3.1. Ethiopian Federalism

In 1991, following the collapse of military rule, Ethiopia established a federal system creating largely ethnic-based territorial units, its framers claiming they have found a formula to achieve ethnic and regional autonomy, while maintaining the state as a political unit. The FDRE Constitution, true to Ethiopia's federal dispensation, provides for the establishment of two orders of government structured at federal and state level.<sup>97</sup> Creation of the federal system was meant to end cycles of political crises by decentralizing power and resources and by ensuring self-rule to the various ethno-linguistic groups residing in nine constituent regional states and two semi-autonomous cities (Addis Ababa and Dire Dawa).

Given Ethiopia's diversity and its spur to political instability, federalism might appear to be the ideal conflict-management device. Indeed, it has contributed to relative peace, opened up political space for various groups, and improved service delivery. Yet much remains to be achieved in terms of enhancing the autonomy of the states, strengthening the institutions of democracy, and protecting minorities in the regional states.<sup>98</sup>

The FDRE Constitution, true to Ethiopia's federal dispensation, provides for the establishment of two orders of government structured at federal and state level.<sup>99</sup> The federal government has two federal houses: the House of Peoples Representatives and House of Federation.<sup>100</sup> The HOPR, the lower house, is composed of elected parliamentarians and exercises legislative power.<sup>101</sup>

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<sup>97</sup> *Zemelak Ayitenew Ayele, The politics of sub-national constitutions and local government in Ethiopia, Perspectives on Federalism(Vol. 6, issue 2, 2014) 92*

<sup>98</sup> *Assefa Fiseha And Mohammed Habib ,Diversity And Unity In Federal Countries, A Global Dialogue On Federalism Volume Vii(Edited By Luis Moreno And César Colino Senior Editor John Kincaid)152*

<sup>99</sup> *FDRE Constitution, Art 50 (1)*

<sup>100</sup> *Ibid Art 53*

<sup>101</sup> *Ibid Art 54 (1 & 2)*

The House of federation, the upper house, consists of representatives of the country's ethnic communities and deals with non-legislative matters pertaining to, among other things, self-determination of ethnic communities, inter-state disputes, the division of revenue, and resolution of disputes involving the interpretation of the federal Constitution.<sup>102</sup> The federal government also has a parliamentary executive as well as a judiciary.<sup>103</sup>

### **3.2. Division of Powers under the Constitution**

The Constitution of the FDRE has divided legislative, executive, and judicial powers between the federal and state governments. The fact that the Ethiopian constitution provides for dual nature of the federation can clearly be seen from art 50(2) of the constitution which reads "the federal government and the states shall have legislative, executive and judicial powers". The constitutional allocation of legislative power is defined on the basis of three categories; namely, exclusive powers (of the federal government and/or of the states), concurrent powers and reserve power. The Ethiopian Constitution in general follows the United States' and Swiss' forms of distribution of powers.<sup>104</sup>

The Ethiopian federal system appears to reflect some aspects of coming together as well as holding together.<sup>105</sup> Although it is a fact that none of the constituent states existed as autonomous entity, owing to the aggregate nature of the federation, the federal government appears to be one with enumerated and limited powers and the federation is based on the accommodation of diversity within the various Ethiopian Nations, Nationalities and Peoples existent at the time of ratification by the Constituent Assembly. It is the states that hold residual powers as per Article 52(1), excepting the power of taxation, for undesignated powers of taxation are as per Article 99 left to the determination of HPR and HoF. Thus Article 99 should logically be treated as an exception to Article 52(1). It is worth noting that the powers granted to the federal government are not limited to the list under Article 51. It might appear that by virtue of the reserve clause,

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<sup>102</sup> *Ibid*, Art 62

<sup>103</sup> *Ibid* Arts 72-79.

<sup>104</sup> Assefa Fiseha, *Federalism and the Accommodation of Diversity in Ethiopia: A Comparative Study* (Revised edition, *Forum of Federations, an international Network on Federalism*, Wolf Legal Publishers, Nijmegen: the Netherlands, 2007) 285

<sup>105</sup> *Ibid*

any power not mentioned under article 51 belongs to the states, but other provisions of the Constitution also indicate additional powers entrusted to the federal government.

Powers seem to be additional; i.e. under Article 55, 74 and 77, So the reserve power of the state's only applies after discounting all power of the federal government distributed throughout the Constitution.

The provision of the constitution dealing with powers and functions of the federal government gives the federal government the power to “formulate and implement the country’s policies, strategies and plans in respect of overall economic, social and development matters “(article 51(2) of the FDRE constitution). The federal government is also empowered to establish and implement national standards and basic policy criteria for public health, education, science and technology as well as for the protection and preservation of cultural and historical legacies (article 51(3) of the FDRE constitution). This arrangement of power distribution shows that most of the policy-making areas concurrent.

Broadly speaking, the exclusive federal power includes: defense, foreign affairs, immigration, major taxation powers, currency and foreign exchange, foreign and interstate trade, maritime shipping, inter-regional communication, postage and matters physically transcending state boundaries such as high-way transport services and key aspects of economic activities, for which uniform regulation is deemed important. Some of these powers are justified on the ground that it would mean unnecessary multiplication of authority, creation of inconsistent directives and creating chances of friction.

Regarding police competence distribution under FDRE constitution the Federal Government and the states share the police structure. Article 51 sub article 6 of the constitution provides the right of the Federal Government to institute a Federal Police Force. And also Article 52 sub article 2 (g) of the constitution gives power to regional states to own and administer regional police officers with the aim of maintaining public order and peace within the state.

The constitution is too general concerning the role of the police forces; but Ethiopia has a policy formulated by the Federal Government. Accordingly, the policy document underlined that the Security organs and police have great role in effectiveness of an endeavor of government to

maintain peace and order of the country; its people and individuals.<sup>106</sup> Ethiopian Police institutions which are responsible for safeguarding the constitution and enforcing the laws enacted pursuant of the constitution, provides policing services as provided by the principles of community policing philosophy and strategy as well as delivering police services have great Role in solving problem of community to achieve the goal of the national security plan: create safe and orderly environment enabling the citizens and investors to work and achieve the goal of Ethiopian Transformation and Development Plan.<sup>107</sup>

So the police is responsible to respect and safeguard the constitution, to ascertain rule of law, to maintain the safety and order of the people, protect citizens right and perform duties for the effective realization of development and transformation plan. Generally the police while conducting policing duties is required to abide by the constitution and the justice police, and other relevant laws enacted in accordance with the constitution in order to uphold rule of law and protect human rights.

### **3.3. The Structure of Police in Ethiopia**

Regarding the structure of police in Ethiopia the FDRE constitution adopts decentralized structure of policing. Accordingly police in Ethiopia is organized at federal<sup>108</sup> and regional level<sup>109</sup> as well as at city administration level in Addis Ababa and Dire Dawa.

#### **3.3.1. Federal Police Commission**

In Ethiopia, at the federal level, government has established Federal Police commission by the Federal Police Commission Proclamation No.720/2004. The Commission is accountable to the Ministry of peace<sup>110</sup>

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<sup>106</sup> *FDRE criminal justice policy,2010,page6*

<sup>107</sup> *Worknehe Gebeyehu Weldekidan, An analysis of the influence of politics on policing in Ethiopia, submitted in accordance with the requirements for the degree of Doctor of Literature and philosophy in police science, University of South Africa , (March 2016) 19*

<sup>108</sup> *FDRE Constitution, article 51*

<sup>109</sup> *Ibid, article 52*

<sup>110</sup> *Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 1097/2018 Article 33(4) (d)*

Article 6 of Proclamation No.720/2004 provides that the Federal Police have, inter alia, the following powers and functions: Prevent and investigate crimes that fall under the jurisdiction of Federal Courts; Prevent any activities in violation of the Constitution that may endanger the Constitutional order; Prevent violence against public peace, hooliganism, terrorism, trafficking in and transferring of drugs; Prevent crimes against the interests and institutions of the Federal Government; Without prejudice to Sub Article (2) of this Article, maintain law and order in any region in accordance with the order of the Federal Government when there is a deteriorating security situation beyond the control of the concerned region and a request for intervention is made by the region: or when disputes arise between two or more regions and the situation

becomes dangerous for the Federal security; Safeguard the security of borders, airports, railway lines and terminals, mining areas, and other vital institutions of the Federal Government; Give security protection to higher officials of the Federal Government and dignitaries of foreign countries; Execute orders and decisions of courts; Execute orders issued by the Federal Public Prosecutor (the former) in regard to investigation of crimes; Issue a certificate of no criminal record

Regarding the organization of The Federal Police Commission, it has a Commissioner General and Deputy Commissioner Generals to be appointed by the government upon the recommendation of the Minister; Management Committee; police officers; and the necessary support staff.<sup>111</sup>

Finally, the proclamation also provide for a framework for the federal-regional police force relationship. To this end, establishment of joint council of regional and federal police commission is envisaged by law with a view to strengthen their relationship.<sup>112</sup> The Joint Council shall have the powers and duties to: facilitate the building of modern police institution, staffed with professional and ethically qualified police officers and equipped with appropriate technology, in every region; follow up the application of uniform standards on issues relating to the recruitment, training, employment and administration of police officers in all the regions; create enabling conditions for the conducting of joint operations involving matters having

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<sup>111</sup> *Ethiopian Federal Police Commission Establishment Proclamation No. 720/2011 ,article 7*

<sup>112</sup> *Ibid ,article 18*

national significance; devise ways and means of reducing threats of crimes and criminal offences, create conducive conditions for strengthening the participation of the public in the prevention of crime, and evaluate the implementation of same;

Even thou a joint council of federal and regional police commission is established and entrusted with powers and functions; there is no procedure to execute decisions of the council. The Addis Ababa and Dire Dawa city administration police commissions are accountable to the Commission; provided, however, that they may be accountable to their respective city administration through delegation by the Commission.<sup>113</sup>

### **3.3.2. Regional police Forces**

Ethiopia's State Police Forces (regional police) maintain law and order in Ethiopia's constituent states. While their numbers, structure and even uniforms may vary, they each report to a Regional Police Commission that works together with the Federal Police Commission. The state police forces' legal basis is article 52 subsection 2 of the Constitution<sup>114</sup>

## **3.4. The Liyu Police of the Two Regional States**

### **3.4.1. The SNNPRS Liyu Police**

#### Introduction

The Southern Nation Nationalities and Peoples Regional State is located in South and Southwest part of Ethiopia. Internally, it is almost surrounded by Oromia and to some extent bordered with Gambela Regional State to the northwest. Internationally, it shares borders with Kenya and South Sudan to the South and West respectively. The region has an area of 110,931.90 sq. km which covers 10% of the total national area, and is the fourth largest constituency next to Oromia, Somali and Amhara respectively. It is the third largest constituency in terms of demographic composition, which represents about 20% of the country's population.<sup>115</sup>

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<sup>113</sup> *Ibid* (n 112) article 20

<sup>114</sup> *Erwin van Veen, Perpetuating power Ethiopia's political settlement and the organization of security, CRU Report (September 2016)*28

<sup>115</sup> *2007 National Census Report of Ethiopia*

One of the most spectacular characteristics of SNNPRS is its enormous diversity. The region is home to multiple ethnic, cultural, racial, religious, political and socioeconomic markers that define the plurality of identities distinguishing individuals and groups from each other<sup>116</sup>

According to Article 45 (1) of the Southern Constitution, the region has four-tier internal administrative structure: the regional/state level, the Zone/Special Wereda level, the Wereda level and finally the Kebele level. The Zone in the Southern Region is an ethnically based territorial entity. However there are some Zones in the region that are arranged on multinational/ethnic level. The Special Wereda has the same status as the Zone, but is used for smaller and territorially concentrated groups<sup>117</sup>

#### **3.4.1.1. Legal Framework of Establishment**

Regarding the power to establish regional police force Article 47 2(e) The Revised constitution of SNNPRS Entitles the regional government of SNNPRS to establish and administer regional police force as well as to maintain peace and order of the region. Furthermore the Proclamation enacted to Define Powers and Duties of the Executive Organs of the SNNPR Proclamation No. 178/2011 E.C. established the different executive organs of the region.

According to this proclamation the Bureau of peace and Security is established as one of the executive organs of the region. It also provides that police commission of the region and office of militia are accountable to the regional Bureau of peace and security.

There is also proclamation and regulation which provides the establishment of police commission and office of Militia of the Region respectively .Article 5 of SNNRS Revised Police Commission Establishment proclamation provides for the establishment of the regional police Commission which is mandated on policing activities at all levels of administration in the region.<sup>118</sup>The office of militia of the region is also established by regulation number 28/97. This regulation provides the structure, organization and power and duties of militia.<sup>119</sup> The

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<sup>116</sup> *Beken V. C. 2012; Unity in Diversity Federalism as a Mechanism to Accommodate Ethnic Diversity; the Case of Ethiopia. Zurich, Minster Litvelag press.*

<sup>117</sup> *Zemelak Ayele; The Politics of Sub national Constitutionalism and Local Government in Ethiopia*

<sup>118</sup> *Southern Nation, Nationalities and Peoples' Regional state Revised Police Commission Establishment proclamation No151/2006 Art 5*

<sup>119</sup> *SNNRS organization and administration of militia regulation number 28/1997*

regulation also provides that the office of militias is organized to operate across the region in coordination with regional police.

However, the regional council does not enacted specific law concerning establishment, power, and organization, of the Liyu Police which is operating in the regional state. One interviewee who has research experience on the subject matter <sup>120</sup> reveals that Liyu Police is known by the name Liyu Hayel in the region and the structure, organization, and training of liyu police is different from regular police of the region and it resemble like military . The interviewee also explained that the establishment of Liyu Police seems temporary and has a command nature; as there is no permanent address for Liyu police. Another interviewee<sup>121</sup> also stated that there is no legal framework of Liyu Police.

This interviewee further explained the accountability of the Liyu Police is blurred; and stated in practice it seems accountable to the chief administrator of the region.

From the above we can conclude that even thou Liyu police is operational in the region it is not established within the legal framework of the regional police. And the absence of legal framework made questionable the accountability of the Liyu police in the SNNPRS.

That is also against the principle of rule of law that requires the legislation and policies govern the work and conduct of the police to be clear, precise and accessible to the public In particular, this made the prevalence of rule of law, human right protection, and the applicability of other international and domestic standards expected from police problematic.

#### **3.4.1.2. Objective**

The SNNPRS Revised Police Commission Establishment proclamation<sup>122</sup> provides that the regional police of SNNPRS have the objective to maintain Peace and security of the Public by respecting and ensuring the observance of the country and state constitution and also other laws

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<sup>120</sup> *Interview with Mr Teferi Gutema, senior researcher works in SNNRS justice organs professionals training and research Institute, oct 29/2019*

<sup>121</sup> *Interview with Mr Misikir Abiy ,Legal drafter Works In SNNRS Attorney General Office ,Oct 29/2019*

<sup>122</sup> *Southern Nation, Nationalities and Peoples' Regional State Revised Police Commission Establishment proclamation No 151/2006 article 11*

of the country enacted in accordance with the constitution by preventing and investigating crime and traffic accident through the participation of the public.

However there is no clarity as to why the Liyu Police or Liyu Hayil of the region was established. My interviewee explained that he observed most of the time the Liyu police are deployed in areas where there is riot and ethnic conflicts in different administrative levels of the region<sup>123</sup>. So it seems that the objective of the Liyu police is to maintain Peace and security of the Public by preventing riot and ethnic conflicts not by preventing and investigating crime and traffic accidents like the formal police force as indicated in the enabling proclamation of the regional police.

#### **3.4.1.3. Organization**

Regarding organization of the SNNRS police commission, it is headed by A Commissioner General appointed by the executive council of the region.

And there are also deputy commissioner General and a Director and deputy director of the college appointed by the executive council of the region and also include Members of the commission or college management, Members of the police and the necessary other civil servants.<sup>124</sup>

Concerning the organization of the Liyu police it is blurred. In practice it seems accountable to the chief administrator of the region.<sup>125</sup> Another interviewee also explained that the establishment of Liyu police seems temporary and has a command nature; as there is no permanent address for Liyu police.<sup>126</sup>

#### **3.4.1.4. Duties and function**

The Southern Nation, Nationalities and Peoples' Regional state Revised Police Commission Establishment proclamation provides the Common powers and duties of Police Institutions

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<sup>123</sup> *Ibid* (n 121)

<sup>124</sup> *Ibid* (n 123) article 11

<sup>125</sup> *Interview with Mr Misikir Abiy ,Legal drafter Works In SNNRS Attorney General Office ,Oct 29/2019*

<sup>126</sup> *Interview with Mr Teferi Gutama, senior researcher works in SNNRS justice organs professionals training and research Institute, Oct 29/2019*

found at different level in the region<sup>127</sup>. Accordingly these police institutions have the powers and duties to: Prevent and Investigate acts of crime against the constitutional order, human right and security of the government and the region; Ensure that traffic rules are observed on roads administered by the federal and region, investigate traffic accidents; Work in collaboration with the Regional Justice Bureau with respect to Crime investigation'; Prevent crimes relating to counterfeiting currencies and documents. Investigate crimes falling under the jurisdiction of the region; Where there is sufficient and reasonable ground to suspect the likely of terrorist act and where it is believed that surprise search is necessary to prevent such acts, order to stop and search vehicles and pedestrians found in the suspected area,; arrest suspects and seize materials related to the matter; Prevent, control and investigate crime and traffic accident work in collaboration with the Regional Transport Bureau and Concerned organs; Provide professional assistance in time of emergency and work with the concerned organs in cooperation.

Regarding Liyu police it is unclear whether it performs regular police duties or not. Liyu police are deployed in areas where there are riot and ethnic conflicts in different administrative levels of the region. According to my Interviewee<sup>128</sup> because of multiethnic nature of SNNPRS, the region faced various ethnic conflicts and these conflicts are usually about control over water, pasture land and other resources, yet are also about administrative boundaries and access to state resources resulting from administrative representation. Another Interviewee<sup>129</sup> also emphasized that even if there are about 56 ethnic groups in the region, the composition of Liyu Police is not representative. In most cases they were observed while acting in partial manner during conflicts.

### **3.4.2. The Somali Region Liyu Police**

#### **Introduction**

The Somali Regional State is one of the regional states of Ethiopia characterized as the poorest and most underdeveloped regions in Ethiopia, suffering from a lack of basic infrastructure, weak

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<sup>127</sup> *Southern Nation, Nationalities and Peoples' Regional state Revised Police Commission Establishment proclamation No151/2006 article 10*

<sup>128</sup> *Interview with Mr Teferi Gutema, senior researcher works in SNNRS justice organs professionals training and research Institute ,oct 29/2019*

<sup>129</sup> *Interview with Mr Misikir Abiy ,Legal drafter Works In SNNRS Attorney General Office ,oct 29/2019*

governance structures and institutions, and endemic food insecurity. Its approximately five million people are mostly ethnic Somalis who are either pastoralists or agro-pastoralists.

#### **3.4.2.1. Legal Framework of Establishment**

Evidences show that Liyu Police of the Somali region was created in 2007 following the attack by the Ogaden National Liberation Front (ONLF) on a Chinese oil exploration field near the town of Abole. (The raid left 74 Ethiopian soldiers and nine Chinese workers dead.)<sup>130</sup> It was established by the former regional President Abdi Mohamed Omar (known as Abdi Iley), in his capacity as chief of the Regional Bureau of Justice and Security.<sup>131</sup> In mid-2008, the government collected unemployed young men, former militia members and regional police, and sent them to a training camp in Jinacsane, 20km north-western of Jigjig.

The first 800 Liyu police militia men celebrated their graduation ceremony in a Garab'ase military barack of Jigjig in the presence of the region's President, Da'ud Mohamed, and its Peace & Security Head, Abdi Mohamed (aka Abdi Iley), in early January 2009<sup>132</sup>. In 2009, Abdi Iley became SNRS president, and Liyu police replaced federal army and police in the front line against the ONLF.<sup>133</sup>

Even though the revised constitution of Somali regional state provides that the region has the power to establish police force to maintain peace and order in the region<sup>134</sup>, as it is ascertained by different international as well as national bodies there is no enabling law for the establishment of Liyu Police of the Somalia Region. Mr. Jamal DiriHalis according to his interview with the BBC Amharic service affirmed that there is no legal ground on the structure and organization of

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<sup>130</sup> Human Watch's Report 2012 Ethiopia: 'Special Police' Executive 10. New York: HRW. Available at <https://www.hrw.org/news/2012/05/28/ethiopia-special-police-execute-10> last accessed on sep 2019

<sup>131</sup> Land info, Ethiopia: The special police (Liyu Police) in the Somali Regional State, 3 JUNE 2016, available at <http://www.landinfo.no> last accessed on August 2019

<sup>132</sup> Rasaasa News, "Ethiopia: Double Discrimination – Gender Violations of Minority Women", 2011-02-18, <http://rasaasa.com> last accessed on August 2019

<sup>133</sup> International Crisis Group (ICG), Ethiopia: Prospects for Peace in Ogaden, 6 August 2013, Africa Report N°207, <http://www.refworld.org/docid/5200d1c84.html> last accessed on September 2019

<sup>134</sup> The revised Somali region constitution article 47(2)(f)

Somali region Liyu police.<sup>135</sup> Furthermore another Interviewee<sup>136</sup> of the BBC Amharic service also ascertained the fact of absence of legal basis for the establishment of Somalia Regional Liyu Police. According to Mr Fiseha the arrangement of Liyu police is not found within the structural arrangement of the regular police and Militia of the Somalia Region.

Furthermore Human Rights Watch discloses that the legal status of the Liyu police is unclear, but credible sources have informed Human Rights Watch that members have received training, uniforms, arms, and salaries from the Ethiopian government via the regional authorities<sup>137</sup>

So from the evidences presented above it is possible to conclude that Liyu police of the Somali region is operational within the region but there is no law for its establishment.

#### **3.4.2.2. Objective**

As we have seen above Liyu police of the Somalia region was set up as a counter insurgency force against the Ogaden national Liberation Front. It was set up by the Somali state as a counter-terrorism special force.<sup>138</sup> Comprised of ethnic Somalis, many of them from the Ogaden clan, the Liyu police slowly replaced the EDF in their battle against the ONLF inside Somali Region. This shifted the conflict away from what many Ethiopian Somalis framed as an Ethiopia versus Somali conflict, one with long standing historical dimensions, into a conflict between different actors from within the same Ethiopian Somali clan.

#### **3.4.2.3. Organization**

As it is ascertained by different bodies Liyu police of the Somali region is not organized within the organizational structure of the regular police of the region. Most of the units of the Liyu police were recruited from the clan of former president of the region Abdi Mohamed Omar. Five

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<sup>135</sup> Interview of Mr Jamal Diri Halis(,previously represented the Somali region in the HPR) with BBC News Amharic, available at BBC News Amharic.16 August 2018 available at ,<https://www.bbc.com/amharic/news-accessed on September , 2019>

<sup>136</sup> Interview of Mr Fiseha Tekle with BBC News Amharic, available at BBC News Amharic.16 August 2018 available at ,<https://www.bbc.com/amharic/news-accessed on September , 2019>

<sup>137</sup> Human Rights Watch, Ethiopia: 'Special Police' Execute 10, 2012,<http://www.refworld.org/docid/4fc60f0d2.html> ,accessed on September, 2019

<sup>138</sup> Amnesty International , <https://www.amnesty.org/en/latest/news/2018/06/ethiopia-abusive-police-unit-must-be-stopped>, accessed on September , 2019

individuals involved with Somali region security forces, including two former Liyu police members, told Human Rights Watch<sup>139</sup> of the command responsibility he has over the Liyu police, describing how he regularly communicates with Liyu police regiments on various operational matters. One said that “no operation is carried out without his knowledge and his support.”

One interviewee also expressed that Liyu police is not organized within the regular police structure of the region rather it has its own commander who is accountable to the former president.<sup>140</sup> According to one widely-credited report, Abdi Iley maintains a close relationship with the EDF’s Eastern Command Post in Harar who are generally understood to retain oversight over Abdi Iley and security affairs in Somali Region.<sup>141</sup>

From the above it is clear that Liyu police of the Somali region is not organized in a clear chain of command which is contrary to the concept of democratic policing.

#### **3.4.2.4. Duties and function**

Different sources ascertained that the primary mandate of Liyu police of the Somali region was to combat ONLF. According to Mr. Fiseha Tekle Human Rights Researcher of Amnesty International Horn of Africa Liyu police of the Somali region was established to control ONLF which was declared as terrorist organization by the government. The Ogaden National Liberation Front (ONLF) is a secessionist movement active in Ethiopia’s Somali region. The United States Department of State describes the ONLF, established in 1984, as ‘an ethnically based, violent, and fragmented separatist group.’<sup>142</sup> The ONLF has been engaged in low intensity armed conflict with government forces, was banned in 1994, and has since been designated as a terrorist

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<sup>139</sup> Human Rights Watch, *Torture and other Human Rights Abuses in Jail Ogaden, Somali Regional State, Ethiopia*, July 4, 2018

<sup>140</sup> Mr. Interview of Mr. Fiseha Tekle ,Human Rights Researcher of Amnesty International Horn of Africa, with BBC News Amharic, available at BBC News Amharic.16 August 2018 available at <https://www.bbc.com/amharic/new>, accessed on September , 2019

<sup>141</sup> UN Security Council, (2013) , *Report of the Monitoring Group on Somalia and Eritrea pursuant to the Security Council resolution 2111 (2013), [S/2014/727], 13 October 2014 Para 56. Available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2014/727](http://www.un.org/ga/search/view_doc.asp?symbol=S/2014/727) accessed on 3 August 2019.*

<sup>142</sup> United States Department of State, (2015). *Country Report on Human Rights Practices 2014 Ethiopia*. 25 June 2015. Available at <http://www.state.gov/j/drl/rls/hrrpt/2014/af/236358.htm> accessed 15 August 2019

organization. According to the United Nations Security Council, the ONLF now bases its operations from Mogadishu, Somalia, and receives support from the Eritrean Government.<sup>143</sup> Other sources also expressed that Liyu police was set up as a counter insurgency force against the Ogden national Liberation Front (ONLF).

There are also instances that showed Liyu police holds regular police duties. According to a research conducted by Land Info even thou the Somali Region have its own regional police it is Liyu Police which maintains the real police authority in the region. The study conducted by Human Rights Watch also reveals that as time has gone on, the Liyu police have taken on more and more responsibility in the Jail Ogden.<sup>144</sup>

It is also stated that over the years, the Liyu Police's mandate has expanded far beyond fighting ONLF. Liyu Police was responsible for protecting the border and for handling general security challenges in the region.

It was granted similar powers to those possessed by the military in the region.<sup>145</sup> Evidences show that members of Liyu police were paid directly by the government and equipped as the military. Their military equipment is reportedly supplied by the Somali Region Administration of the Ethiopian Ministry of Defense. Nearly 20 Toyota four wheel drive (4WD) pickup trucks and a dozen 26-30 ton Isuzu pickup trucks were purchased for the Liyu police, though they frequently use both civilian and government-owned vehicles. They are mostly equipped with AK-47s, PKMs and other military-grade weapons, and dress in green Ethiopian Federal Police uniforms<sup>146</sup>

It is also expressed that Liyu police of the Somali region have been more active outside of Ethiopia's Somali Region, including inside both Somalia and Ethiopia's Oromiya region.

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<sup>143</sup> UN Security Council, *Report of the Monitoring Group on Somalia and Eritrea pursuant to the Security Council resolution 2111 (2013), [S/2014/727], 13 October 2014 para 56. Available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2014/727](http://www.un.org/ga/search/view_doc.asp?symbol=S/2014/727) accessed on 3 August 2019.*

<sup>144</sup> Human Rights Watch, *Torture and other Human Rights Abuses in Jail Ogaden, Somali Regional State, Ethiopia, July 4, 2018*

<sup>145</sup> Rasaasa(n 134)

<sup>146</sup> Rasaasa (n 134)

According to a report by the Rift Valley Institute, one of the main security aims of the Ethiopian government in the Somali Region is securing the porous border between Ethiopia and Somalia from enemy infiltration, particularly by radical Islamic groups like al-Shabab. It is also expressed that In contrast to countries like Kenya, Ethiopia has been able to avoid a large-scale attack by al Shabaab. Ethiopian security forces and regional special police successfully prevented al Shabab attacks on Addis Ababa and other major towns .According to several anonymous sources consulted by the Dutch Foreign Ministry, the Special Police Forces sometimes also conduct actions outside of the region and just across the border in Kenya and Somalia. It operates regional checkpoints and patrols border areas, especially along the Ethiopia-Somalia border

Similarly, government report disclosed the direct involvement of the Liyu Police on intensification of the border conflicts occurred with the neighboring regional state the Oromiya Regional State.<sup>147</sup>

As noted by government officials of Oromiya regional sate the primary goal of the attackers is illegal territorial expansion. This is evident in the fact that when the group ambushes a given area and the locals flee for their lives, they hoist the Somali region's flag to make it appear it is their territory.<sup>148</sup>

We can conclude that the basic function of Liyu police of the Somali region was not limited to maintaining peace and order in the region as enumerated under both the revised constitution of Somali regional state and FDRE constitution .Rather it was involved in performing tasks which are mandates of the National Defense Force and Federal police according to the arrangement of power division under the FDRE constitution. It is clear that protecting and defending the sovereignty and territorial integrity of the nation is the mandate of Defense Forces of the Federal Democratic Republic of Ethiopia not regional police forces.<sup>149</sup>

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<sup>147</sup> Report presented to the HPR by Human Rights commission in 2010 E.C.

<sup>148</sup> An interview of Addis Araga, Oromiya Regional State Government Communication Affairs Bureau Head, with Voice of America Afaan Oromo, March 6, 2017

<sup>149</sup> See Preamble and Article 9(1) of Defense Forces Proclamation No. 1100/2019

Furthermore preventing and investigating the crime of terrorism is the power of the federal police commission.<sup>150</sup> But as we have seen above the Liyu police of the Somali region was responsible in fighting against ONLF and Al shabab which are acknowledged as terrorist organizations. So it is clear that the Liyu police of the Somali region performed tasks which are mandates of the federal government. From this it is clear that the Somali region by establishing defacto police force have abused its constitutional power to establish a regular police force mandated for the maintenance of peace and public order within the region.

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<sup>150</sup> *The Ethiopian Federal Police Commission Establishment Proclamation No. 720/2011, Art 6(5)(c)*

## **CHAPTER FOUR**

### **THE POWER OF REGIONAL STATES TO ESTABLISH LIYU POLICE**

The FDRE Constitution provides for the distribution of powers between the Federal Government and the States. The distribution of powers set by the Constitution pertains to the legislative, executive and judicial authority as supposed to be divided between the Federal Government and the States.

Regarding police competence distribution under FDRE constitution the Federal Government and the state's share the police structure. Article 51 sub article 6 of the constitution provides the right of the Federal Government to institute a Federal Police Force. And also Article 52 sub article 2 (g) of the constitution gives power to regional states to own and administer regional police officers with the aim of maintaining public order and peace within the state. The constitution is too general concerning the role and nature of the police forces. For this reason there are critics concerning the constitutionality of establishing the Liyu Police.

The constitution only empowers regional states to establish police force to the extent necessary to maintain public order and peace within the state. The objective of maintaining peace and order is only to undertake the normal function of police in relation to enforcement of laws. These includes preventing, detecting, and investigating criminal activities. The objective should not be understood to allow regional states to establish a kind of regional police force which is trained and equipped like the military. During the formation of the federation the primary function of the police forces were related with maintaining public order and safety, enforcing the law and preventing, detecting, and investigating criminal activities.

Different scholars are also expressed their views concerning the constitutional basis of establishing Liyu police in Ethiopia. According to Dr Zemelak Aytnew<sup>151</sup> the constitution

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<sup>151</sup> Interview of Dr Zemelak Aytnew (Director of Addis Ababa University center of federalism and Governance studies ) with Ahadu Radio Live stream, August 14,2018,available at <https://us.search.yahoo.com>, accessed on September , 2019

empowers regional states to establish a regular police force not paramilitary force. He expressed that Liyu police which is established in regional states of Ethiopia have military nature in terms of its training, firearm usage and measures taken. He further noted that Liyu police seems border keeper rather than maintaining peace and order of the respected regions. Another interviewee<sup>152</sup> also noted that Regional states have the power to establish their own police force. In his view they are responsible for order and security within their jurisdiction. According to his view even though nothing specified in the Constitution what the nature of the police force should be, to the extent regional states have organized the police force to the extent of dealing with order and security, it is constitutional. The federal government is responsible for external defense and the Federal Police for internal security. Another interviewee<sup>153</sup> from Hawassa University also expressed that he has noted instances of excessive use of force by Liyu police and instances by which two regional Special Forces launch fully fledged gunfire which would be a cause for loss of life. In his view since Liyu Hayl has a different purpose from the normal police he doesn't think it has constitutional base. So it is clear that from the views of these scholars that the FDRE constitution mandates regional states to establish a police force capable of undertaking a regular police functions.

The conception of the makers of the constitution is for the term police was not the establishment of Liyu Police which involve on activities related with the military. In this connection it is important to mention the fact that Liyu police of the Somali region was established to control ONLF which was declared as terrorist organization by the government and also to overcome terrorist acts to be committed on the eastern part of Ethiopia by the Al-Shabab. We have also seen that the Liyu Police's mandate has expanded far beyond fighting ONLF it was involved in performing tasks which are mandates of the National Defense Force and Federal police according to the arrangement of power division under the FDRE constitution.

It is clear that protecting and defending the sovereignty and territorial integrity of the nation is the mandate of Defense Forces of the Federal Democratic Republic of Ethiopia not regional police forces.<sup>154</sup> Furthermore preventing and investigating the crime of terrorism is the power of

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<sup>152</sup> Interview with Gosaye Ayele, Lecturer at Ethiopian Civil Service University (ECSU), April 11/2020

<sup>153</sup> Interview with Hunegnaw Tesfaye, Lecturer at Hawassa University, April 15/2020

<sup>154</sup> See Preamble and Article 9(1) of Defense Forces Proclamation No. 1100/2019

the federal police commission.<sup>155</sup> So it is clear that the Liyu police of the Somali region performed tasks which are mandates of the federal government, to this end it is against the constitution.

The experience of the studied federations also testifies that the regional states are not allowed to establish a police force which functions on activities which are given their military. This is clearly provided under the federal constitution of the selected federations. For example the

South African constitution clearly provides that the defense force to be structured and managed as a disciplined military force.<sup>156</sup> It also provides that the objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.<sup>157</sup> From this it safe to conclude that the regional states have no constitutional power to establish police force which is equipped and trained like the military.

The close analysis of the minutes of the draft constitution reveals that the incorporation of article 52(2)(g) in to the constitution is not to give regional sates the power to establish additional police force which replace or involve the role of the national defense force.<sup>158</sup> Furthermore from the discussions held among members of the draft committee it is clear that the constitution envisaged members of the police to be professional and recruited in accordance of the interest of the peoples. The discussion also makes it clear that the role of the police is to deliver service to the people and maintain public order. Ironically, the studied Liyu Police forces have not established on the basis of enabling law which provide adequate legal protection for the promotion of human rights and rule of law.

Members of HPR raised questions for the former prime minister of Ethiopia challenging the constitutionality of Liyu Police in 2010 E, C<sup>159</sup>. The prime minister had responded that the main

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<sup>155</sup> *The Ethiopian Federal Police Commission Establishment Proclamation No. 720/2011, Art 6(5)(c)*

<sup>156</sup> *South African constitution article 200(1)*

<sup>157</sup> *Ibid article 205(3)*

<sup>158</sup> *Minute of the draft Ethiopian constitution, volume 4 ,1994,p(28-31)*

<sup>159</sup> *Reporter magazine 1 November 2017 available at ,<https://www.ethiopianreporter.com>, accessed on September 2019*

problem is lack of consistent standard of policing and the draft is being prepared. The speech made by the former prime minister clearly confirms that Liyu police have no legal basis.

The FDRE constitution mandated the Federal government to determine the organization of national defense, public security, and a national police force.<sup>160</sup> Furthermore the federal police commission establishment proclamation<sup>161</sup> provides that the Commission have the powers and duties to issue national standards on police recruitment and employment, education and training, ranks, wearing of uniform, equipment and other related matters. Recently the HOPR enacted

Firearm Administration and Control Proclamation<sup>162</sup> since this proclamation is only intended to regulate firearms no other basic features of police like structure, organization etc. so it is not comprehensive enough to solve problems raised by members of the parliament to the prime minister. Till now there is no law that set consistent standard as claimed by former Prime minister.

Thus, the Liyu Police force is not envisaged by the makers of FDRE constitution. And for the purpose of military related function the makers have mandated the federal government to establish the National Armed Force. The constitution has also mandated the federal government to determine the manner of using arms including the manner of training, equipping the regional police who are in charge of maintaining peace and order by undertaking the normal function of police in relation to enforcement of laws like investigation of criminal law, patrolling and prevention of crimes. So it is clear that regional states established Liyu police beyond their power provided under the constitution.

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<sup>160</sup> *FDRE constitution Article 55(7)*

<sup>161</sup> *The Ethiopian Federal Police Commission Establishment Proclamation No. 720/2011, Article 6(7)*

<sup>162</sup> *Firearm Administration and Control Proclamation No. 1177-2020*

# **CHAPTER FIVE**

## **CONCLUSION AND RECOMMENDATION**

### **4.1. Conclusion**

The police are the most apparent appearance of government authority responsible for public security. Police typically are responsible for maintaining public order and safety, enforcing the law and preventing, detecting, and investigating criminal activities. More and more countries, particularly those making political transitions to democracy and those engaged in genuinely deepening democracy, are adopting a democratic model of policing, which is founded on principles of equity and equality, accountability, transparency, participation, respect for diversity, the accommodation of difference, protection of individual and group rights, and encouragement of human potential. The primary responsibility of police in democratic societies is to guard the fundamental rights of citizens and the primary criteria for police governance includes equity, delivery of service, responsiveness, distribution of power, redress, and participation.

The Police while fulfilling their obligations are duty bound to respect the national as well as the international legal framework applicable to the law enforcement task. To this end, different international human rights instruments set forth basic principles that policing in every democratic society should be guided with and, from which policing standards and behaviors can be inferred: police must be oriented and operate in accord with the principles of democracy, consistent with the constitution and with law; polices, as recipients of public trust, are professionals whose conduct must be governed by professional code of conduct; Police must have as their highest priority the protection of life, fundamental human right; police and serve the public and are accountable to the public; protection of life and property is the primary function of police operations, and a central focus of police activity must be on measure of preventing crime; police must conduct their activities with respect for human dignity and basic human rights of all person; and police must discharge their duties in a non-discriminatory manner.

Federal political order which is characterized by the existence of federal and regional governments has great implication for the establishment of a police system. Guided by the principle of subsidiarity, patterns of police power distribution in federations show that police power is shared between the federal and regional governments. To this end the experience of India, South Africa and Switzerland reveals that the distribution of police powers is established by the Federal constitution. Distribution is often presented in lists of competences. The experience of these countries also shows that the federal constitution established the foundation of the police system which has a great role in establishing democratic policing.

We have seen that the FDRE Constitution provides for the establishment of two orders of government structured at federal and state level. It has also divided legislative, executive, and judicial powers between the federal and state governments. According to the FDRE constitution the federal government is responsible for external defense and the Federal Police for internal security. We have also seen that FDRE constitution gives power to regional states to own and administer regional police officers with the aim of maintaining public order and peace within the state. To this end SNNPRS and Somali regional states have established their police forces mandated on policing activities.

However regional states especially the Somali regional state has failed to act within the proper scope of power allocated by the FDRE constitution. Even though the constitution mandates regional states to establish a police force capable of undertaking regular police functions, it is found that the Somali regional state has established Liyu police that has been engaged in an act of a paramilitary nature and operated beyond the scope of power. It has been performing tasks which are mandates of the federal government.

It is also found that Liyu police of SNNPRS and Somali regional states have existed de facto and have no legal basis for their establishment which is against the principle of rule of law recognized both under FDRE constitution as well as international standards of policing.

## **4.2. Recommendations**

In this thesis the establishment of Liyu police in the regional states of Ethiopia and the constitutional power of regional states to establish a police force has been discussed. And it is found that the Somali regional state has failed to act within the proper scope of power allocated to regional states by the FDRE constitution and also the federal government has failed to respect the power defined by the constitution since it allowed it's mandated to be exercised by regional Liyu police. It is also ascertained that Liyu Police of SNNPRS and Somali have no legal basis for their establishment. Therefore, the writer forwards the following recommendations.

- It is clear that the FDRE constitution defined the powers of both Federal and Regional governments. And it provides that States shall respect the powers of the Federal Government and The Federal Government shall likewise respect the powers of the States. So both the federal government and regional states should act within the framework of power structure provided by the FDRE constitution.
- There should be effective Intergovernmental system ensuring the fact that both federal government and regional states are exercising their power within the power framework provided by the FDRE constitution.
- Regional states should enact a law that provides legal basis of Liyu police in a way that conforms to international standards of policing.
- further research should be undertaken in order to build democratic policing in Ethiopia

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## APPENDICES

### Appendix-I

#### Semi-structured Interview Questions

I Tiruneh Endeshaw Masters student in Addis Ababa University, kindly request you to prepare or inscribe your answer for the following interview questions. These interview questions are prepared for the purpose of gathering information for my Master's thesis entitled "*Assessment of the Establishment of Liyu Police In The Ethiopian Federation: The Case Of Selected Regional Liyu Police*" that I am pursuing in AAU college of Law and Governance. I am grateful for your kind cooperation and investing your precious time to respond to my interview questions. In case you may not need your name to be mentioned the writer will use anonymity and you can refrain from writing your name.

Thank you in advance!

#### For SNNPRS Researchers and Legal drafters

1. When did Liyu police is established?
2. What is the legal basis for its establishment?
3. What is the objective of Liyu police?
4. How do Liyu police is structured and organized?
5. What are the powers and duties vested to Liyu police?
6. What is the relationship of Liyu police with other government organs?
7. What are the jurisdictional scopes of Liyu police within these regions?

#### For constitutional law scholars

1. How do you see the power of regional sates to establish police force under the FDRE constitution?
2. Do you think Regional sates established Liyu police within the proper scope of their power?
3. What problems do you observe regarding the establishment of Liyu police in regional states from the perspective of the constitution?